



# VIRGINIA

## REGISTER OF REGULATIONS

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# VIRGINIA REGISTER INFORMATION PAGE

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

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

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

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

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

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

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

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

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

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

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

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

## **STATEMENT**

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

## **CITATION TO THE VIRGINIA REGISTER**

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

*The Virginia Register of Regulations* is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **James M. LeMunyon**, Vice Chair; **Gregory D. Habeeb**; **Ryan T. McDougle**; **Robert L. Calhoun**; **Carlos L. Hopkins**; **Leslie L. Lilley**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Timothy Oksman**; **Charles S. Sharp**; **Mark J. Vucci**.

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

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## December 2016 through February 2018

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
33:9	December 7, 2016	December 26, 2016
33:10	December 19, 2016 ( <b>Monday</b> )	January 9, 2017
33:11	January 4, 2017	January 23, 2017
33:12	January 18, 2017	February 6, 2017
33:13	February 1, 2017	February 20, 2017
33:14	February 15, 2017	March 6, 2017
33:15	March 1, 2017	March 20, 2017
33:16	March 15, 2017	April 3, 2017
33:17	March 29, 2017	April 17, 2017
33:18	April 12, 2017	May 1, 2017
33:19	April 26, 2017	May 15, 2017
33:20	May 10, 2017	May 29, 2017
33:21	May 24, 2017	June 12, 2017
33:22	June 7, 2017	June 26, 2017
33:23	June 21, 2017	July 10, 2017
33:24	July 5, 2017	July 24, 2017
33:25	July 19, 2017	August 7, 2017
33:26	August 2, 2017	August 21, 2017
34:1	August 16, 2017	September 4, 2017
34:2	August 30, 2017	September 18, 2017
34:3	September 13, 2017	October 2, 2017
34:4	September 27, 2017	October 16, 2017
34:5	October 11, 2017	October 30, 2017
34:6	October 25, 2017	November 13, 2017
34:7	November 8, 2017	November 27, 2017
34:8	November 21, 2017 ( <b>Tuesday</b> )	December 11, 2017
34:9	December 6, 2017	December 25, 2017
34:10	December 19, 2017 ( <b>Tuesday</b> )	January 8, 2018
34:11	January 3, 2018	January 22, 2018
34:12	January 17, 2018	February 5, 2018

\*Filing deadlines are Wednesdays unless otherwise specified.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending **12VAC30-20, Administration of Medical Assistance Services**. The purpose of the proposed action is to promulgate a regulation related to reconsideration of a final agency decision in accordance with Chapter 694 of the 2016 Acts of Assembly.

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

Statutory Authority: § 2.2-4023.1 of the Code of Virginia.

Public Comment Deadline: January 25, 2017.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov).

V.A.R. Doc. No. R17-4817; Filed December 6, 2016, 2:46 p.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending **12VAC30-50, Amount, Duration, and Scope of Medical and Remedial Care and Services**. The purpose of the proposed action is to permit the Department of Medical Assistance Services to cover low-dose computed tomography (LDCT) screenings for high-risk adults as a preventive service, thereby enabling the department to help make further reductions in lung cancer morbidity and mortality. Additionally, the action will align the regulation with established federal recommendations that support LDCT screening.

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

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

Public Comment Deadline: January 25, 2017.

Agency Contact: Emily McClellan, Regulatory Supervisor, Department of Medical Assistance Services, Policy Division, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov).

V.A.R. Doc. No. R17-4949; Filed December 6, 2016, 2:48 p.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending **12VAC30-120, Waivered Services**. The purpose of the proposed action is to ensure that Medicaid authorization and reimbursement for consumer-directed personal care, respite, and companion services is limited to 40 hours per week for an attendant serving a single consumer, in accordance with Item 306 PPPP of Chapter 780 of the 2016 Acts of Assembly, the 2016 Appropriation Act. This action will also clarify that the limit will not be applied to live-in attendants consistent with the U.S. Department of Labor's requirements under the Fair Labor Standards Act, as set out in Fact Sheet 79B.

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

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

Public Comment Deadline: January 25, 2017.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov).

V.A.R. Doc. No. R17-4749; Filed December 6, 2016, 2:49 p.m.

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 1. ADMINISTRATION

### DEPARTMENT OF GENERAL SERVICES

#### Final Regulation

Title of Regulation: **1VAC30-105. Regulations Banning Concealed Firearms in Offices Owned or Occupied by Executive Branch Agencies (adding 1VAC30-105-10 through 1VAC30-105-80).**

Statutory Authority: § 2.2-1102 of the Code of Virginia.

Effective Date: January 27, 2017.

Agency Contact: Rhonda Bishton, Regulatory Coordinator, Department of General Services, 1100 Bank Street, Suite 420, Richmond, VA 23219, telephone (804) 786-3311, FAX (804) 371-8305, or email rhonda.bishton@dgs.virginia.gov.

#### Summary:

*The regulation prohibits concealed firearms in offices and workplace facilities under the ownership, lease, or control of an executive branch agency and includes a requirement for posting signs to this effect.*

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

#### CHAPTER 105

#### REGULATIONS BANNING CONCEALED FIREARMS IN OFFICES OWNED OR OCCUPIED BY EXECUTIVE BRANCH AGENCIES

##### **1VAC30-105-10. Purpose.**

The purpose of this chapter is to ban the carrying of concealed firearms in offices occupied by executive branch agencies, with certain exceptions as set forth herein.

##### **1VAC30-105-20. Applicability.**

A. This chapter applies to all buildings owned, leased, or controlled in whole or in part by or for an executive branch agency. This chapter is intended to be consistent with the Virginia Department of Human Resource Management Policy 1.80 – Workplace Violence, which prohibits state employees from possessing, brandishing, or using a weapon that is not required by the employee's position while on state premises or engaged in state business.

B. This chapter applies to the concealed carrying of firearms; the Department of General Services has issued a guidance document elsewhere prohibiting the open carrying of firearms.

C. The prohibition against carrying a concealed firearm does not apply to law-enforcement officers, authorized security personnel, or military personnel when such individuals are authorized to carry a firearm in accordance with their duties and when they are carrying the firearm within that authority. It also does not apply to state employees where the employee's position requires carrying a concealed firearm.

D. This chapter does not apply to individuals who are on public hunting lands, are engaged in lawful hunting, and are in compliance with the Department of Game and Inland Fisheries hunting and trapping regulations found in 4VAC15, regarding allowable firearms and hunting license requirements.

##### **1VAC30-105-30. Definitions.**

"Authorized security personnel" means a natural person who is employed to (i) perform the functions of observation, detection, reporting, or notification of appropriate authorities or designated agents regarding persons or property on the premises he is assigned to protect; (ii) safeguard and protect persons and property; or (iii) deter theft, loss, or concealment of any tangible or intangible personal property on the premises he is assigned to protect.

"Concealed firearm" means a firearm hidden from common observation, including a firearm hidden when it is observable but is of such deceptive appearance as to disguise the firearm's true nature.

"Executive branch agency" means any administrative unit of state government in the executive branch, including any department, institution, commission, board, council, authority, or other body, however designated.

"Firearm" means any handgun, pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material.

"Law-enforcement officer" means the same as that term is defined in § 18.2-307.1 of the Code of Virginia. This shall also include retired law-enforcement officers certified pursuant to § 18.2-308.016 of the Code of Virginia.

"State office" means any building or portion of a building owned, leased, or controlled by or for an executive branch agency. This includes that portion of any building open to others and then used exclusively for functions or activities sponsored by an executive branch agency tenant or tenants while such functions are taking place. It shall not include parking facilities, lodges or cabins owned by the Commonwealth and used solely for the public for recreational activities, any buildings that serve as living quarters for

Commonwealth employees, or any buildings at a rest area on an interstate highway.

**1VAC30-105-40. Possession of firearms prohibited.**

Possession or carrying of any concealed firearm by any person is prohibited in state offices. Entry upon a state office in violation of this prohibition is expressly forbidden. This prohibition does not apply to law-enforcement officers, authorized security personnel, or military personnel when such individuals are authorized to carry a firearm in accordance with their duties and when they are carrying the firearm within that authority. It also does not apply to state employees where the employee's position requires carrying a concealed firearm.

**1VAC30-105-50. Required lease terms for state offices.**

All leases entered into where an executive branch agency is the lessor shall contain a prohibition on concealed firearms consistent with this chapter. All leases entered into for the benefit of an executive branch agency shall contain this prohibition to indicate the lessor's acknowledgment. Exceptions may be allowed where approved in writing by the Governor or his designee.

**1VAC30-105-60. Posting of signs.**

A. Posting location. Signs shall be posted at all state offices indicating the prohibition against carrying concealed firearms. Where the entire premises are owned or occupied by an executive branch agency, signs shall be displayed at every entrance. Where only a portion of the premises are leased for an executive branch agency, the signs shall be displayed within the leased space. If an executive branch agency is using an office open to others, temporary signs shall be displayed at or near the entry to the office during the time the office is being used exclusively for Commonwealth sponsored functions or activities while such functions are taking place.

B. Size and design. Signs shall be of a size and design approved by the Department of General Services. Agencies shall be responsible for obtaining signage design from the Department of General Services and for posting of the signs.

**1VAC30-105-70. Enforcement.**

The occupying agency shall be responsible for enforcing this chapter.

**1VAC30-105-80. Exemptions.**

A. A state institution of higher education is exempt from this chapter if the institution has implemented its own policies or regulations governing firearms.

B. Members of the Virginia National Guard (the guard) who possess a valid concealed handgun permit shall be exempt from this chapter while at facilities owned by the guard or under contract or lease to the guard. This exemption may be withdrawn by the commanding officer of any member while such member is participating in any training or other exercises where the commanding officer determines that (i)

such possession would interfere with the conduct of such training or other exercises, (ii) such possession may result in mission impairment, or (iii) the member is unfit to carry a handgun.

C. The Governor or his designee may otherwise grant exemptions from the requirements of this chapter. To qualify for an exemption, the applying executive branch agency must show that an alternative policy consistent with the Commonwealth's policy against firearms in state offices is appropriate.

VA.R. Doc. No. R16-4572; Filed December 6, 2016, 4:36 p.m.



**TITLE 8. EDUCATION**

**STATE BOARD OF EDUCATION**

**Final Regulation**

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

**Title of Regulation:** 8VAC20-22. Licensure Regulations for School Personnel (amending 8VAC20-22-40, 8VAC20-22-110).

**Statutory Authority:** § 22.1-298.1 of the Code of Virginia.

**Effective Date:** January 25, 2017.

**Agency Contact:** Elizabeth Morris, Senior Policy Analyst, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2117, or email elizabeth.morris@doe.virginia.gov.

**Summary:**

*Pursuant to Chapter 649 of the 2016 Acts of Assembly, the amendment requires every person seeking initial licensure or renewal of a license to complete awareness training on the indicators of dyslexia and the evidence-based interventions and accommodations for dyslexia.*

**8VAC20-22-40. Conditions for licensure.**

A. Applicants for licensure must:

1. Be at least 18 years of age;
2. Pay the appropriate fees as determined by the Board of Education and complete the application process;
3. Have earned a baccalaureate degree (with the exception of the Technical Professional License) from a regionally accredited institution of higher education and meet requirements for the license sought. Persons seeking initial

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# Regulations

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licensure who graduate from Virginia institutions of higher education shall only be licensed as instructional personnel by the Board of Education if the endorsement areas offered at such institutions have been assessed by a national accrediting agency or by a state approval process with final approval by the Board of Education; and

4. Possess good moral character (free of conditions outlined in Part VII (8VAC20-22-690 et seq.) of this chapter).

B. All candidates who hold at least a baccalaureate degree from a regionally accredited college or university and who seek an initial Virginia teaching license must obtain passing scores on professional teacher's assessments prescribed by the Board of Education. With the exception of the career switcher program that requires assessments as prerequisites, individuals must complete the professional teacher's assessments within the three-year validity of the initial provisional license. Candidates seeking a Technical Professional License, the International License, the School Manager License, or the Pupil Personnel Services License are not required to take the professional teacher's assessments. Individuals who hold a valid out-of-state license (full credential with no deficiencies) and who have completed a minimum of three years of full-time, successful teaching experience in a public or accredited nonpublic school (kindergarten through grade 12) in a state other than Virginia are exempted from the professional teacher's assessment requirements.

C. All individuals seeking an initial endorsement in early/primary education preK-3, elementary education preK-6, special education-general curriculum, special education-hearing disorders, special education-visual impairments and individuals seeking an endorsement as a reading specialist must obtain passing scores on a reading instructional assessment prescribed by the Board of Education.

D. Licensure by reciprocity is set forth in 8VAC20-22-100. A school leader's assessment prescribed by the Board of Education must be met for all individuals who are seeking an initial endorsement authorizing them to serve as principals and assistant principals in the public schools. Individuals seeking an initial administration and supervision endorsement who are interested in serving as central office instructional personnel are not required to take and pass the school leaders assessment prescribed by the Board of Education.

E. Individuals seeking initial licensure must demonstrate proficiency in the use of educational technology for instruction, complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Board of Education in consultation with the Department of Social Services, and receive professional development in instructional methods tailored to promote student academic progress and effective preparation for the Standards of Learning end-of-course and end-of-grade assessments.

F. Every person seeking initial licensure of a license shall provide evidence of completion of certification or training in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators. The certification or training program shall be based on the current national evidenced-based emergency cardiovascular care guidelines for cardiopulmonary resuscitation and the use of an automated external defibrillator, such as a program developed by the American Heart Association or the American Red Cross. The Virginia Board of Education shall provide a waiver for this requirement for any person with a disability whose disability prohibits such person from completing the certification or training.

G. Every teacher seeking an initial license in the Commonwealth with an endorsement in the area of career and technical education shall have an industry certification credential, as defined in 8VAC20-22-10, in the area in which the teacher seeks endorsement. If a teacher seeking an initial license in the Commonwealth has not attained an industry certification credential in the area in which the teacher seeks endorsement, the board may, upon request of the employing school division or educational agency, issue the teacher a provisional license to allow time for the teacher to attain such credential.

H. Effective July 1, 2017, every person seeking initial licensure or renewal of a license shall complete awareness training, provided by the Department of Education, on the indicators of dyslexia, as that term is defined by the board pursuant to regulations, and the evidence-based interventions and accommodations for dyslexia.

## **8VAC20-22-110. Requirements for renewing a license.**

A. The Division Superintendent, Postgraduate Professional, Collegiate Professional, Technical Professional, Pupil Personnel Services, and School Manager Licenses may be renewed upon the completion of 180 professional development points within a five-year validity period based on an individualized professional development plan that includes ongoing, sustained, and high-quality professional development. Every person seeking renewal of a license shall complete all renewal requirements, including professional development in a manner prescribed by the board, except that no person seeking renewal of a license shall be required to satisfy any such requirement by completing coursework and earning credit at an institution of higher education.

B. Virginia public school divisions and public education agencies must report annually to the Department of Education that instructional personnel have completed high quality professional development each year as set forth by the Virginia Department of Education.

C. Any individual licensed and endorsed to teach (i) middle school civics or economics or (ii) high school government or history who is seeking renewal of such license is required to demonstrate knowledge of Virginia history or state and local government by completing a module or professional

development course specifically related to Virginia history or state and local government that has a value of five professional development points. This requirement applies for purposes of the individual's next or initial renewal occurring after July 1, 2014.

D. Every person seeking renewal of a license shall provide evidence of completion of certification or training in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators. The certification or training program shall be based on the current national evidenced-based emergency cardiovascular care guidelines for cardiopulmonary resuscitation and the use of an automated external defibrillator, such as a program developed by the American Heart Association or the American Red Cross. The Virginia Board of Education shall provide a waiver for this requirement for any person with a disability whose disability prohibits such person from completing the certification or training.

E. Effective July 1, 2017, every person seeking renewal of a license shall complete awareness training, provided by the Department of Education, on the indicators of dyslexia, as that term is defined by the board pursuant to regulations, and the evidence-based interventions and accommodations for dyslexia.

~~E.~~ F. Professional development points may be accrued by the completion of professional development activities to improve and increase instructional personnel's knowledge of the academic subjects the teachers teach or the area assigned from one or more of the following eight options.

1. College credit. Acceptable coursework offers content that provides new information and is offered on-campus, off-campus, or through extension by any regionally accredited two-year or four-year college or university. College coursework must develop further experiences in subject content taught, teaching strategies, uses of technologies, leadership, and other essential elements in teaching to high standards and increasing student learning. Instructional personnel must complete coursework to improve and increase the knowledge of the academic subjects or endorsement areas in which they are assigned. No person seeking renewal of a license shall be required to complete coursework and earn credit at an institution of higher education.

2. Professional conference. A professional conference is a workshop, institute, or seminar of four or more hours that contributes to ongoing, sustained, and high-quality professional development.

3. Curriculum development. Curriculum development is a group activity in which the license holder contributes to the improvement of the curriculum of a school, a school division, or an education institution in the teaching area assigned. This includes the alignment of curriculum frameworks, instructional materials, and assessments to

provide a system with clear expectations of what is to be taught and learned.

4. Publication of article. The article must contribute to the education profession or to the body of knowledge of the license holder's teaching area or instructional position. Grant reports that present the results of educational research are acceptable provided the license holder had an active role in planning, analyzing, interpreting, demonstrating, disseminating, or evaluating the study or innovation. The article must be published in a recognized professional journal.

5. Publication of book. Books must be published for purchase and must contribute to the education profession or to the body of knowledge of the license holder's teaching area or instructional position. The published book must increase the field of content knowledge, planning and assessment for evaluating and providing students with feedback that encourages student progress and measures student achievement, instruction, safety and learning environment, communication and community relations working with students, parents, and members of the community to promote broad support for student learning. Points will not be awarded for books self-published.

6. Mentorship. Mentoring is the process by which an experienced professional, who has received mentorship training, provides assistance to one or more persons for the purpose of improving their performance. Assistance may involve role modeling, direct instruction, demonstration, observation with feedback, developing of plans, and consultation to promote instructional excellence and increased student achievement. Mentoring may include the supervision of a field experience of a preservice student teacher or an intern in an approved teacher/principal preparation program, as well as mentoring as part of the induction process for a beginning teacher or a first-year administrator. Individuals serving in this role and submitting documentation for license renewal based on the mentorship option shall receive training as a mentor prior to the assignment and at least once during the five-year renewal cycle.

7. Educational project. Educational projects must be planned, focused projects based on high standards of teaching and learning. Projects must result in a written report or other tangible product. Projects must contribute to the education profession or to the body of knowledge of the license holder's teaching area or instructional position. A project could include participation in new professional responsibilities, such as leading a school improvement initiative.

8. Professional development activity. Professional development activities must focus on student learning and achievement, schoolwide educational improvement, leadership, subject content, teaching strategies, and use of technologies and other essential elements in teaching to

high standards. Activities must be planned, rigorous, systematic, and promote continuous inquiry and reflection. Local employing educational agencies are encouraged to design professional development activities that are conducted in school settings and linked to student learning and achievement.

**F. G.** Points may be accrued by activities drawn from one or more of the eight renewal options. Renewal work is designed to provide licensed personnel with opportunities for professional development relative to the grade levels or teaching fields to which they are assigned or for which they seek an added endorsement. Such professional development encompasses (i) responsible remediation of any area of an individual's knowledge or skills that fail to meet the standards of competency and (ii) responsible efforts to increase the individual's knowledge of new developments in his field and to respond to new curricular demands within the person's area of professional competence.

**G. H.** The proposed work toward renewal in certain options must be approved in advance by the chief executive officer or designee of the employing educational agency. Persons who are not employed by an educational agency may renew or reinstate their license by submitting to the Office of Professional Licensure, Department of Education, their individualized renewal record and verification of points, including official student transcripts of coursework taken at an accredited two-year or four-year college or university.

**H. I.** Accrual of professional development points shall be determined by criteria set forth by the Virginia Department of Education.

**I. J.** Persons seeking license renewal as teachers must demonstrate proficiency in the use of educational technology for instruction.

**J. K.** Virginia school divisions and nonpublic schools will recommend renewal of licenses using the renewal point system. The renewal recommendation must include verification of demonstrated proficiency in the use of educational technology for instruction.

**K. L.** Training in instructional methods tailored to promote academic progress and effective preparation for the Standards of Learning tests and end-of-grade assessments is required for licensure renewal.

**L. M.** If they have not already met the requirement, persons seeking licensure renewal as teachers must complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Board of Education in consultation with the Department of Social Services that are relevant to the specific teacher licensure routes.

VA.R. Doc. No. R17-4940; Filed November 29, 2016, 1:36 p.m.

## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Emergency Regulation

**Title of Regulation:** 12VAC30-20. Administration of Medical Assistance Services (adding 12VAC30-20-570).

**Statutory Authority:** § 2.2-4023.1 of the Code of Virginia.

**Effective Dates:** December 6, 2016, through June 5, 2018.

**Agency Contact:** Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

**Preamble:**

*Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which 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, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia. Chapter 694 of the 2016 Acts of Assembly, which enacted § 2.2-4023.1 of the Code of Virginia, establishes a reconsideration process by which appellants may petition the agency director to reconsider the final agency decision made pursuant to the § 2.2-4020 of the Code of Virginia. Chapter 694 specifically authorizes the agency to promulgate emergency regulations to specify the scope of the reconsideration review. This emergency regulation adding 12VAC30-20-570 is needed to accomplish the goal of establishing and defining the scope of review for reconsiderations conducted in accordance with § 2.2-4023.1 of the Code of Virginia. The reconsideration shall not authorize the reopening of the formal administrative hearing or acceptance of evidence or testimony not part of the record of the case in accordance with 1st Stop Health Services v. DMAS, 63 Va. App. 266, 756 S.E.2d 183 (2014).*

*This regulatory action is essential to protect the health, safety, and welfare of citizens by ensuring the integrity of the Department of Medical Assistance Services appeals process by ensuring that it is in accordance with the Code of Virginia so that individuals and providers may challenge health care determinations made by the state Medicaid agency.*

*Prior to the enactment of § 2.2-4023.1 of the Code of Virginia, there was no process by which an appellant could petition the agency director to reconsider a final agency case decision made pursuant to § 2.2-4020 of the Code of Virginia.*



**12VAC30-20-570. Reconsideration of final agency decision.**

A. Reconsiderations of a DMAS final appeal decision issued on a formal appeal conducted pursuant to § 2.2-4020 of the Code of Virginia shall be conducted in accordance with § 2.2-4023.1 of the Code of Virginia.

B. The DMAS director's review shall be made upon the case record of the formal appeal. Testimony or documentary submissions that were not part of the formal appeal case record prior to issuance of the final agency decision shall not be considered.

VA.R. Doc. No. R17-4817; Filed December 6, 2016, 2:46 p.m.

**Emergency Regulation**

**Title of Regulation:** 12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-220).

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

**Effective Dates:** December 6, 2016, through June 5, 2018.

**Agency Contact:** Emily McClellan, Regulatory Supervisor, Department of Medical Assistance Services, Policy Division, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

**Preamble:**

*Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which 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, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia. Item 306 OOOO of Chapter 780 of the 2016 Acts of Assembly, the 2016 Appropriation Act, directs the Department of Medical Assistance Services (DMAS) to cover low-dose computed tomography lung cancer screenings for high-risk adults. The amendments conform the regulation to this requirement.*

**12VAC30-50-220. ~~Other diagnostic~~ Diagnostic, screening, preventive, and rehabilitative services, ~~i.e.,~~ other than those provided elsewhere in this plan.**

A. Diagnostic services are provided but only when necessary to confirm a diagnosis.

B. Screening services.

1. Screening mammograms for the female recipient population aged 35 and over shall be covered, consistent with the guidelines published by the American Cancer Society.

2. Screening PSA (prostate specific antigen) and the related DRE (digital rectal examination) for males shall be covered, consistent with the guidelines published by the American Cancer Society.

3. Screening Pap smears shall be covered annually for females, consistent with the guidelines published by the American Cancer Society.

4. Screening services for colorectal cancer, specifically screening with an annual fecal occult blood test, flexible sigmoidoscopy or colonoscopy, or in appropriate circumstances radiologic imaging, in accordance with the most recently published recommendations established by the American College of Gastroenterology, in consultation with the American Cancer Society, for the ages, family histories, and frequencies referenced in such recommendations.

5. Low-dose computed tomography lung cancer screening shall be covered annually for individuals between the ages of 55 years and 79 years who are current smokers, have quit smoking within the last 15 years, or have a history of smoking at least one pack of cigarettes per day for 30 or more years.

C. Maternity length of stay and early discharge.

1. If the mother and newborn, or the newborn alone, are discharged earlier than 48 hours after the day of delivery, DMAS will cover one early discharge follow-up visit as recommended by the physicians in accordance with and as indicated by the "Guidelines for Perinatal Care," 4th Edition, August 1997, as developed by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists. The mother and newborn, or the newborn alone if the mother has not been discharged, must meet the criteria for early discharge to be eligible for the early discharge follow-up visit. This early discharge follow-up visit does not affect or apply to any usual postpartum or well-baby care or any other covered care to which the mother or newborn is entitled; it is tied directly to an early discharge.

2. The early discharge follow-up visit must be provided as directed by a physician. The physician may coordinate with the provider of his choice to provide the early discharge follow-up visit, within the following limitations. Qualified providers are those hospitals, physicians, nurse midwives, nurse practitioners, federally qualified health clinics, rural health clinics, and health departments' clinics that are enrolled as Medicaid providers and are qualified by the appropriate state authority for delivery of the service. The staff providing the follow-up visit, at a minimum, must be a registered nurse having training and experience in maternal and child health. The visit must be provided within 48 hours of discharge.

VA.R. Doc. No. R17-4949; Filed December 6, 2016, 2:48 p.m.

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## Proposed Regulation

**Title of Regulation:** 12VAC30-135. Demonstration Waiver Services (adding 12VAC30-135-400 through 12VAC30-135-498).

**Statutory Authority:** § 32.1-325 of the Code of Virginia Section; 42 USC § 1396 et seq. and 42 USC § 1315.

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

**Public Comment Deadline:** February 24, 2017.

**Agency Contact:** Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

**Basis:** Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services. Section 1115 of the Social Security Act (42 USC § 1315) provides authority for DMAS to create a demonstration program of limited services that waives certain designated federal Medicaid requirements, and DMAS has secured federal approval, with the concomitant federal funding, to waive the following standard Title XIX requirements to implement this program:

1. Amount, Duration, and Scope of Services – Section 1902(a)(10)(B) allowing Virginia to offer individuals in the Governor's Access Plan Demonstration Waiver for Individuals with Serious Mental Illness (GAP) a benefit package that differs from the State Plan for Medical Assistance.
2. Freedom of Choice – Section 1902(a)(23)(A) (42 CFR 431.51) allowing Virginia the flexibility to assign program individuals to the most appropriate program provider partner for peer supports GAP case management, including allowing Virginia to provide different delivery systems for the population under this demonstration for peer supports.
3. Reasonable Promptness – Section 1902(a)(8) allowing Virginia to limit enrollment via modification to eligibility thresholds. Section 1902(a)(8) provides that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals;
4. Methods of Administration – Transportation – Section 1902(a)(4) insofar as it incorporates 42 CFR 431.53 allowing Virginia, to the extent necessary, to not provide

nonemergency transportation to and from providers for individuals.

5. Retroactive Eligibility – DMAS is waiving the requirements of § 1902(a)(34) (42 CFR 435.914) regarding retroactive eligibility for demonstration participation.

This action complies with the legislative mandates set out in the Item 306 XXX of Chapter 780 of the 2016 Acts of Assembly, effective July 1, 2016, as well as the Governor's original directive to DMAS.

**Purpose:** This program proposes to provide individuals who have diagnoses of serious mental illness access to some basic medical and behavioral health services. The three main goals of this initiative are (i) improve access to health care for a segment of the uninsured population in Virginia who have significant behavioral and medical needs; (ii) improve health and behavioral health outcomes of demonstration participants; and (iii) serve as a bridge to closing the insurance coverage gap for uninsured Virginians.

This program was originally proposed to provide uninsured individuals who have diagnoses of serious mental illness access to medical and behavioral health care in order to improve their health and lives in their families and communities.

**Substance:** The regulations that are affected by this action are the Governor's Access Plan Demonstration Waiver for Individuals with Serious Mental Illness (12VAC30-135-400). On September 5, 2014, DMAS submitted a request to the Governor requesting his approval pursuant to § 2.2-4011 of the Code of Virginia to promulgate emergency regulations to address the emergency. In the letter, DMAS Director Cynthia B. Jones stated the following:

"It has come to our attention that the lack of health insurance coverage for approximately one half of the population of the Commonwealth has created an urgent situation that necessitates the implementation of emergency regulations to speedily address the significant medical needs of Virginia's uninsured population.

The primary concern is the need for accessible mental health care for Virginians who suffer with serious mental illness. It is estimated that about 308,000 Virginia adults have experienced a serious mental illness (SMI) during the past year. Of that number, approximately 54,000 are uninsured. While these individuals face profound difficulties in accessing treatment, almost half of them also have a co-occurring substance use disorders and have increased risk for medical conditions such as diabetes, heart disease and obesity. The average lifespan of an individual with SMI is 25 years shorter than those without.

More importantly, Virginia's recent history with the shootings at Virginia Tech, and the tragedy experienced by State Senator Creigh Deeds, point to the dire consequences that may arise from the lack of effective treatment of SMI. Providing persons with SMI access to behavioral health

and needed medical services would help prevent the reoccurrence of such tragedies, and it would provide a means for such individuals to recover and participate fully in the community."

The emergency regulations were approved, and this action is to promulgate replacement regulations.

The proposed demonstration waiver program uses an income limit of 80% of the federal poverty level on the incomes of persons applying for this assistance. DMAS determines financial eligibility via its current modified adjusted gross income financial and household composition rules. This program also covers a wide range of medical and behavioral health services, including outpatient physician and clinic services, specialists, diagnostic procedures, laboratory procedures, and pharmacy services.

The proposed regulation provides uninsured individuals who have diagnoses of serious mental illness access to medical and behavioral health care to improve their health and lives in their families and communities. Uninsured individuals, who have diagnoses of serious mental illness, can have profound difficulties accessing basic medical and behavioral health services, including prescription medications, and often have co-morbidities of substance abuse and chronic health conditions. Such individuals often have reduced life spans as well as limited parenting capabilities and community (jobs, schooling) participation.

Issues: There are no advantages or disadvantages to private citizens in this program. The advantage to uninsured citizens, who have diagnoses of serious mental illness, will be the accessing of basic health care and behavioral health care services, including prescriptions. Helping such affected individuals with these services will stabilize their lives, enabling them to parent and maintain employment, schooling, or both. The advantages to the agency, the Commonwealth, and the public are that the GAP program improves access to health care for a segment of the uninsured population in Virginia who have significant behavioral and medical needs, improves health and behavioral health outcomes of participants, and serves as a bridge to closing the insurance gap for uninsured Virginians.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. On behalf of the Board of Medical Assistance Services (Board), the Director of the Department of Medical Assistance Services (DMAS) proposes to promulgate a replacement for an emergency regulation that will expire December 29, 2016. This regulation, and the emergency regulation it replaces, sets rules for the Governor's Access Plan (GAP) Demonstration Waiver for Individuals with Serious Mental Illness (SMI) which provides specified medical benefits to uninsured individuals who meet specified mental health, financial and non-financial criteria.

Result of Analysis. There is insufficient information to ascertain whether benefits will outweigh costs for this proposed regulation.

Estimated Economic Impact. The emergency regulation that implemented the GAP SMI program became effective January 1, 2015. The Director of DMAS now proposes this regulation which will replace the emergency regulation that is set to expire on December 29, 2016. This proposed regulation, and the emergency regulation that it replaces, sets requirements for seriously mentally ill individuals to receive a number of defined services that include insurance coverage for: 1) primary care office visits, 2) outpatient specialty care, 3) outpatient hospital coverage (including observation and ambulatory diagnostic procedures), 4) outpatient laboratory tests, 5) outpatient pharmacy, 6) outpatient and behavioral telemedicine, 7) medical equipment and supplies for diabetes treatment, 8) outpatient psychiatric treatment, 9) GAP case management, 10) psychosocial rehabilitation assessment and treatment, 11) mental health crisis intervention and stabilization, 12) therapeutic or diagnostic injections, 13) outpatient substance abuse treatment and 14) intensive outpatient substance abuse treatment.<sup>1</sup>

In order to receive these services, individuals must have household income that does not exceed 80% of the federal poverty level.<sup>2</sup> These individuals must also have been diagnosed with one of the following serious mental illnesses: 1) a schizophrenia spectrum disorder or other psychotic disorder (with the exception of substance/medication induced psychotic disorder), 2) major depressive disorder, 3) bipolar and related disorders (with the exception of cyclothymic disorder)<sup>3</sup> or 4) post-traumatic stress disorder. They also must either 1) be expected to require services for an extended duration, 2) have undergone psychiatric treatment more intensive than outpatient care more than once in their lifetime or 3) have experienced an episode of continuous supportive residential care other than hospitalization for a long enough period that their normal living situation was significantly disrupted.

In order to be eligible for the GAP SMI program, individuals must also be 1) between the ages of 21 and 64, 2) U.S. citizens or lawfully residing aliens, 3) residents of Virginia, 4) uninsured and currently ineligible for any state or federal health insurance program and 5) not current residents of a nursing home, mental health facility or penal institution.<sup>4</sup>

DMAS staff reports that, as of October 22, 2016, there are 9,434 GAP SMI enrollees, that the per enrollee cost is \$439 per month and that total costs for this program were expected to be \$38.2 million in fiscal year (FY)2016 and \$58.6 million in FY2017. Virginia currently covers half the costs of this program and the federal government covers the other half. DMAS staff also reports that health care professionals who provide care to GAP SMI program participants would have to maintain standard health care records but that such professionals are unlikely to incur additional costs they are

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not already subject to since records are required to be maintained under other Medicaid rules.

DMAS reports that some of the individuals who are eligible for the GAP SMI program are homeless or transient and may be eligible to sign up for other programs such as Social Security Disability Insurance (SSDI) and Medicaid once they are stabilized under the waiver program. Given this, some individuals will likely only be in the GAP SMI program for a short time. All individuals who are eligible for this program will likely benefit from being enrolled as it will allow them to receive regular medical, mental health and substance abuse treatment that they might not otherwise be able to access. To the extent that uninsured individuals who would be eligible for the GAP SMI program would already be receiving health care (likely on an emergency basis), enrollment in the GAP SMI program may allow federal funds to be partially substituted for state funds (as costs for indigent care is covered by the state). This substitution may or may not lead to a net savings of state funds as these individuals will likely be using more health care services once enrolled in the GAP SMI program than they would if they remained uninsured.

Implementation of this program may also provide the benefit of reduced public safety costs in Virginia if the individuals enrolled in the GAP SMI program receive treatment that stabilizes their behavior and allows them to avoid committing crimes that might lead to their arrest and incarceration. There is not enough specific information, however, to accurately quantify the benefits of this program. Therefore, there is insufficient information to ascertain whether the benefits of this program will outweigh its costs.

**Businesses and Entities Affected.** This proposed regulatory program affects individuals with serious mental illnesses who meet criteria for the GAP SMI program. DMAS staff reports that 9,434 individuals have met the requirements for the program and been enrolled since January 1, 2015.

**Localities Particularly Affected.** No locality will be particularly affected by this proposed regulatory program.

**Projected Impact on Employment.** These proposed regulatory changes are unlikely to affect employment in the Commonwealth.

**Effects on the Use and Value of Private Property.** These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

**Real Estate Development Costs.** These proposed regulatory changes are unlikely to affect real estate development costs in the Commonwealth.

**Small Businesses:**

**Definition.** Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

**Costs and Other Effects.** No small business health care professionals are likely to incur additional bookkeeping costs for treating GAP SMI enrollees above what they already incur for adding new patients and these professionals have the choice of whether to treat these enrollees. Health care professionals would be unlikely to take on these patients unless they expected the benefits of doing so to outweigh the costs. Given this, no small businesses will be adversely affected by these proposed regulatory changes.

**Alternative Method that Minimizes Adverse Impact.** No small businesses will be adversely affected by these proposed regulatory changes.

**Adverse Impacts:**

**Businesses.** No businesses will be adversely affected by these proposed regulatory changes.

**Localities.** Localities in the Commonwealth are unlikely to see any adverse impacts on account of these proposed regulatory changes.

**Other Entities.** No other entities are likely to be adversely affected by these proposed changes.

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<sup>1</sup> Intensive outpatient substance abuse treatment is provided in a day treatment setting that is much longer in duration than outpatient substance abuse treatment that consists of office visits with professionals providing substance abuse treatment.

<sup>2</sup> This percentage has been changed several times. The initial Emergency/NOIRA regulation that became effective January 1, 2015 set the required income level at 100% of the federal poverty level. This percentage was changed to 60% (effective July 1, 2015) and was changed again, effective October 28, 2016, to 80%. Both of the changes to this percentage were on account of legislative mandates. Currently, yearly household income that meets 100% of the poverty level for one person is \$11,880. Eighty percent of this would be \$9,504. Additional information on poverty level by household size can be found at: <https://www.uscis.gov/sites/default/files/files/form/i-864p.pdf>.

<sup>3</sup> Cyclothymic disorder is a type of chronic mood disorder that is considered milder and a subthreshold form of bipolar disorder.

<sup>4</sup> Prisoners who are being released from a jail or prison would be considered for eligibility.

**Agency's Response to Economic Impact Analysis:** The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget and raises no issues with this analysis.

**Summary:**

*The proposed action establishes the Governor's Access Plan (GAP) Demonstration Waiver for Individuals with Serious Mental Illness to provide individuals who have diagnoses of serious mental illness access to certain basic medical and behavioral health services. Under the proposed regulation, an individual must meet the GAP serious mental illness, financial, and nonfinancial criteria to qualify for the program. The serious mental illness criteria include specific diagnoses, for example, schizophrenia, bipolar disorders, post-traumatic stress disorder; specific duration of illnesses; specific levels of impairment; and consistent need for help in accessing*

health care services. Other criteria include that an eligible individual (i) is an adult between the ages of 21 years and 64 years; (ii) is a United States citizen or lawfully residing alien; (iii) is a resident of the Commonwealth; (iv) is uninsured; (v) is ineligible for any state or federal health insurance programs; (vi) is not a current resident of a nursing facility, a mental health facility, or a penal institution; and (viii) has a household income, as determined by the Department of Medical Assistance Services (DMAS) current modified adjusted gross income methodology, of less than or equal to 80% of the federal poverty level in accordance with Item 306 XXX of Chapter 780 of the 2016 Acts of Assembly.

The proposed regulation provides a wide range of benefits, including (i) primary care office visits including diagnostic and treatment services performed in the physician's office; (ii) outpatient specialty care, consultation, and treatment; (iii) outpatient hospital including observation and ambulatory diagnostic procedures; (iv) outpatient laboratory; (v) outpatient pharmacy; (vi) outpatient telemedicine; (vii) medical equipment and supplies for diabetic treatment; (viii) outpatient psychiatric treatment; (ix) GAP case management; (x) psychosocial rehabilitation assessment and psychosocial rehabilitation services; (xi) mental health crisis intervention; (xii) mental health crisis stabilization; (xiii) therapeutic or diagnostic injection; (xiv) behavioral telemedicine; (xv) outpatient substance abuse treatment services; and (xvi) intensive outpatient substance abuse treatment services. Care coordination, recovery navigation (peer supports), crisis line, and prior authorization for services are provided through the DMAS behavioral health services administrator.

**Part III**

**Governor's Access Plan Demonstration Waiver for Individuals with Serious Mental Illness**

**12VAC30-135-400. Definitions.**

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

"Action" means an action by DMAS, Cover Virginia, the service authorization contractor, or the BHSA that constitutes (i) a denial in whole or in part of payment of a covered service; or (ii) a termination or denial of eligibility or services or limited authorization of a service authorization request including (a) type or level of service; (b) reduction, suspension, or termination of a previously authorized service; (c) failure to act on a service request; (d) denial in whole or in part of coverage for a service; or (e) failure by Cover Virginia, the service authorization contractor, or the BHSA to render a decision within the required timeframes.

"Agency" means DMAS.

"Alternative home care" means mental health services more intensive than outpatient services provided (i) in the individual's home or (ii) in a therapeutic living setting that

provides intensive mental health services such as residential crisis stabilization if the individual is temporarily (less than two weeks) placed in that setting.

"Appellant" means an applicant for or recipient of GAP benefits who seeks to challenge an action regarding eligibility, services, or coverage determinations.

"Behavioral health" means mental health and substance use disorder services.

"BHSA" means the same as defined in 12VAC30-50-226.

"Care coordination" means the collaboration and sharing of information among health care providers who are involved with an individual's health care to (i) improve the health and wellness of an individual with complex and special care needs and (ii) integrate services around the needs of such individual at the local level by working collaboratively with all partners, including the individual, his family, and providers.

"Care coordinator" means an individual or entity that provides care coordination services.

"Case manager" means the person or entity that provides GAP case management as defined in this section.

"CAT" means computer aided tomography.

"Certified prescriber" means an employee of the local community services board or behavioral health authority or its designee who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by DBHDS.

"Client" means an applicant for, or recipient of, GAP benefits.

"Client appeal" means an individual's request for review of an eligibility or coverage determination and is an individual's challenge to the actions regarding benefits, services, and coverage determinations provided by the department, its service authorization contractor, Cover Virginia, or the BHSA.

"Cover Virginia" or "Cover VA" means a department contractor that receives applications for the GAP Demonstration Waiver for Individuals with SMI, determines eligibility, and attends and defends its eligibility decisions at appeal hearings.

"CSB" means the local community services board or behavioral health authority agency, which is the entry point for citizens into behavioral health services as established in Chapter 5 (§ 37.2-500 et seq.) and Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia.

"DBHDS" means the Department of Behavioral Health and Developmental Services consistent with Chapter 3 (§ 37.2-300 et seq.) of Title 37.2 of the Code of Virginia.

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

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"Direct services" means the provision of direct behavioral health and medical treatment, counseling, or other supportive services not included in the definition of care coordination or case management services.

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

"DSM-5" means the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, copyright 2013, American Psychiatric Association.

"Duration of illness" means the individual (i) is expected to require treatment and supportive services for the next 12 months; (ii) has undergone psychiatric treatment more intensive than outpatient care such as crisis response services, alternative home care, partial hospitalization, or inpatient hospitalization more than once in his lifetime; or (iii) has experienced an episode of continuous, supportive residential care, other than hospitalization, for a period long enough to have significantly disrupted his normal living situation. A significant disruption of a normal living situation means the individual has been unable to maintain his housing or has had difficulty maintaining his housing due to being in a supportive residential facility or program that was not a hospital. This includes group home placement as an adolescent and assisted living facilities but does not include living situations through the Department of Social Services.

"Eight dimensions of wellness" means the same as found on the website for the Substance Abuse and Mental Health Services Administration at <http://www.promoteacceptance.samhsa.gov/10by10/dimensions.aspx>.

"Enrollee" means an individual who has applied for the GAP SMI program, was determined eligible, and was enrolled in the GAP SMI program.

"Ex parte renewal" means the same as set forth in 42 CFR 435.916(a)(2).

"Expedited appeal" means an appeal that must have a decision issued within a shortened timeframe when the treating provider indicates that taking the time for a standard resolution could seriously jeopardize the individual's life, physical health, mental health, or ability to attain, maintain, or regain maximum function.

"Final decision" means a written determination pertaining to client appeals by a department hearing officer that is binding on the department.

"FPL" means the federal poverty level.

"FOHC" means a federally qualified health center.

"GAP" means Governor's Access Plan.

"GAP case management" means services to assist individuals in solving problems, if any, in accessing needed medical, behavioral health, social, educational, vocational, and other supports essential to meeting basic needs, including

(i) assessment and planning services, including developing an individual service plan (does not include performing medical and psychiatric assessment but does include referral for such assessment); (ii) linking the individual to services and supports specified in the individual service plan; (iii) assisting the individual for the purpose of locating, developing, or obtaining needed services and resources; (iv) coordinating services and service planning with other agencies and providers involved with the individual; (v) enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic, and recreational services; (vi) making collateral contacts with the individual's significant others to promote implementation of the service plan and community adjustment; (vii) follow-up and monitoring to assess ongoing progress and to ensure services are delivered; and (viii) education and counseling that guides the individual and develops a supportive relationship that promotes the service plan.

"GAP screening entity" means the entity that conducts the SMI screening for the GAP SMI program and shall be a CSB, participating FOHC, participating free clinic, inpatient psychiatric hospital, general hospital with an inpatient psychiatric unit, local or regional jail, or the Department of Corrections and shall be conducted for the purpose of determining eligibility for participation in the GAP SMI program.

"GAP SMI program" means the program within the Governor's Access Plan Demonstration Waiver for individuals with serious mental illness.

"Good cause" means to provide sufficient cause or reason for failing to file a timely appeal or for missing a scheduled appeal hearing. The existence of good cause shall be determined by the hearing officer.

"Grievance" means an expression of dissatisfaction about any matter other than an action. A grievance shall be filed and resolved at Cover Virginia, the service authorization contractor, or the BHSA. Possible subjects for grievances include the quality of care or services provided, aspects of interpersonal relationships such as rudeness of a provider or employee, or failure to respect an enrollee's rights.

"Hearing" means an informal evidentiary proceeding conducted by a hearing officer during which an individual has the opportunity to present his concerns with or objections to an action taken by Cover Virginia, the service authorization contractor, or the BHSA.

"Hearing officer" means an impartial decision maker who conducts evidentiary hearings on behalf of the department.

"High intensity case management" means the same as GAP case management and is reimbursed for months in which a face-to-face contact with the individual takes place in a community setting outside of the GAP case management office.

"Individual" means the client, enrollee, or recipient of services described in this section, and these terms are used interchangeably.

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

"Intensive outpatient services" means the same as set forth in 12VAC30-50-228 A 2 b.

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

"LMHP-resident" or "LMHP-R" means the same as "resident" as defined in (i) 18VAC115-20-10 for licensed professional counselors; (ii) 18VAC115-50-10 for licensed marriage and family therapists; or (iii) 18VAC115-60-10 for licensed substance use disorder treatment practitioners. An LMHP-resident shall be in continuous compliance with the regulatory requirements of the applicable counseling profession for supervised practice and shall not perform the functions of the LMHP-R or be considered a "resident" until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Counseling. For purposes of Medicaid reimbursement to their supervisors for services provided by such residents, they shall use the title "Resident" in connection with the applicable profession after their signatures to indicate such status.

"LMHP-resident in psychology" or "LMHP-RP" means the same as an individual in a residency program as defined in 18VAC125-20-10 for clinical psychologists. An LMHP-resident in psychology shall be in continuous compliance with the regulatory requirements for supervised experience as found in 18VAC125-20-65 and shall not perform the functions of the LMHP-RP or be considered a "resident" until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Psychology. For purposes of Medicaid reimbursement by supervisors for services provided by such residents, they shall use the title "Resident in Psychology" after their signatures to indicate such status.

"LMHP-supervisee in social work" or "LMHP-S" means the same as "supervisee" as defined in 18VAC140-20-10 for licensed clinical social workers. An LMHP-supervisee in social work shall be in continuous compliance with the regulatory requirements for supervised practice as found in 18VAC140-20-50 and shall not perform the functions of the LMHP-S or be considered a "supervisee" until the supervision for specific clinical duties at a specific site is preapproved in writing by the Virginia Board of Social Work. For purposes of Medicaid reimbursement to their supervisors for services provided by supervisees, these persons shall use the title "Supervisee in Social Work" after their signatures to indicate such status.

"MAGI" means modified adjusted gross income and is an eligibility methodology for how income is counted and how household composition and family size are determined.

MAGI is based on federal tax rules for determining adjusted gross income.

"MRI" means magnetic resonance imaging.

"Peer support services" or "peer support" means supportive services provided by adults who self-disclose as living with or having lived with a behavioral health condition and includes (i) planning for engaging in natural community support resources as part of the recovery process, (ii) helping to initiate rapport with therapists, and (iii) increasing teaching and modeling of positive communication skills with individuals to help them self-advocate for individualized services to promote successful community integration strategies.

"PSN" means a peer support navigator who has self-declared that he is living with or has lived with a behavioral health condition. PSNs assist individuals to successfully remain in or transition back into their communities from inpatient hospital stays, help them avoid future inpatient stays, and increase community tenure by providing an array of linkages to peer run services, natural supports, and other recovery oriented resources.

"Qualified mental health professional-adult" or "QMHP-A" means the same as defined in 12VAC35-105-20.

"Qualified mental health professional-eligible" or "QMHP-E" means the same as defined in 12VAC35-105-20.

"Register" or "registration" means notifying DMAS or its designee that an individual will be receiving services that do not require service authorization.

"Regular case management" means the same as GAP case management and is reimbursed for months in which the minimum requirements are met for GAP case management.

"Remand" means the return of a case by the hearing officer to Cover Virginia, the service authorization contractor, or the BHSA for further review, evaluation, and action.

"Representative" means an attorney or other individual who has been authorized to represent an applicant or enrollee pursuant to this part.

"Reverse" means to overturn the action of Cover Virginia, the service authorization contractor, or the BHSA and direct that eligibility or requested services be fully approved for the amount, duration, and scope of requested services.

"Serious mental illness" or "SMI" means, for the purpose of this part, a diagnosis of (i) schizophrenia spectrum disorders and other psychotic disorders but not substance/medication induced psychotic disorder; (ii) major depressive disorder; (iii) bipolar and related disorders but not cyclothymic disorder; (iv) post-traumatic stress disorder; (v) obsessive-compulsive disorder; (vi) agoraphobia; (vii) panic disorder; (viii) anorexia nervosa; or (ix) bulimia nervosa.

"Service authorization" means the same as defined in 12VAC30-50-226.

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"Service-specific provider intake" means the same as defined in 12VAC30-50-130.

"State fair hearing" means the DMAS evidentiary hearing process as administered by the DMAS Appeals Division.

"State Plan" or "the Plan" means the document required by § 1902(a) of the Act.

"Sustain" means to uphold the action of Cover Virginia, the service authorization contractor, or the BHSA.

"Title XIX of the Social Security Act" or "the Act" means the United States Code beginning at 42 USC § 1396.

"Virtual engagement" means electronic and telephonic communications between a peer support navigator and GAP enrolled individual to discuss and promote engagement with resources that may be available to the individual to promote his recovery.

"Warm line" means a peer-support telephone line that provides peer support for adult individuals who are living with or have lived with behavioral health conditions. The peer support navigators shall have specific training to provide telephonic support, and such systems may operate regionally or statewide and beyond traditional business hours.

"Withdrawal" means a written request from the applicant or enrollee or his representative for the department to terminate the appeal process without a final decision on the merits.

## **12VAC30-135-410. Administration; authority; waived provisions.**

A. DMAS shall cover a targeted set of services as set forth in 12VAC30-135-440 for currently uninsured individuals who have diagnoses of serious mental illnesses with incomes less than or equal to 80% of the federal poverty level (FPL) using the MAGI eligibility methodology. All individuals already enrolled in the GAP SMI program with incomes between 61% and 100% of the FPL as of May 15, 2015, who continue to meet other program eligibility rules shall maintain enrollment in the GAP SMI program until their next eligibility renewal period or July 1, 2016, whichever comes first.

B. Consistent with § 1115 of the Social Security Act (42 USC § 1315), the department covers certain limited services specified in 12VAC30-135-440 for certain targeted individuals specified in 12VAC30-135-420.

C. The Secretary of the U.S. Department of Health and Human Resources has waived compliance for the department with the following for the purpose of the GAP SMI program:

1. Consistent with § 1902(a)(10)(B) of the Act, the amount, duration, and scope of services covered in the State Plan for Medical Assistance shall be waived. The department shall cover a specified set of benefits for the individuals who are determined to be eligible for the GAP SMI program.

2. Consistent with § 1902(a)(23)(A) of the Act, the participating individual's freedom of choice of providers of

services shall be waived for peer supports and GAP case management.

3. Consistent with § 1902(a)(23) of the Act, the services shall be provided by a different delivery system than otherwise used for full State Plan services for peer supports and GAP case management.

4. Consistent with § 1902(a)(4) of the Act, insofar as it incorporates 42 CFR 431.53 permitting the Commonwealth to waive providing nonemergency transportation to and from participating providers for eligible, participating individuals.

5. Consistent with § 1902(a)(35) of the Act, permitting the Commonwealth to waive offering eligible, participating individuals retroactive eligibility for the GAP SMI program.

D. The GAP SMI program shall operate statewide.

E. The GAP SMI program shall operate for at least two years beginning January 2015 and continuing through January 2017 or until the Commonwealth implements an alternative plan to provide health care coverage to all individuals having incomes less than or equal to 80% of the FPL using the MAGI eligibility methodology.

F. The GAP SMI program shall not affect or modify components of the Commonwealth's existing medical assistance or children's health insurance programs.

## **12VAC30-135-420. Individual eligibility; limitations; referrals; eligibility determination process.**

A. The GAP SMI program eligibility determination process shall have two parts: (i) a determination of whether the applicant meets the GAP nonfinancial eligibility criteria including a diagnosed SMI and (ii) a determination of whether the applicant meets the GAP SMI Program financial eligibility criteria.

1. A person may apply through Cover Virginia for GAP by phone or through a provider-assisted web portal.

2. If an applicant is found not to meet GAP eligibility criteria, either the GAP financial eligibility criteria or the GAP SMI program nonfinancial eligibility criteria, then the applicant shall be sent a letter with appeal rights. Such applicants shall be assessed and referred for eligibility through Medicaid, FAMIS MOMS, or the federal marketplace for private health insurance as appropriate.

B. Applicants shall have a screening conducted by a DMAS-approved GAP screening entity for the determination of SMI.

C. To be eligible for the GAP SMI program, applicants shall be assessed to determine whether their diagnosed condition is a serious mental illness. The serious mental illness shall be diagnosed according to criteria defined in the DSM-IV-TR or DSM-5. LMHPs, including LMHP-supervisees, LMHP-residents, and LMHP-residents in psychology, shall conduct the clinical screening required to determine the applicant's diagnosis if one has not already been made. At least one of

the following diagnoses shall be documented for the applicant to be approved for GAP SMI program services:

1. Schizophrenia spectrum disorders and other psychotic disorders with the exception of substance/medication induced psychotic disorders;
2. Major depressive disorder;
3. Bipolar and related disorders with the exception of cyclothymic disorder;
4. Post-traumatic stress disorder; or
5. Obsessive compulsive disorder, panic disorder, agoraphobia, anorexia nervosa, or bulimia nervosa.

D. To be eligible for this program, applicants shall meet at least one of the following criteria to reflect the duration of illness:

1. The applicant is expected to require treatment and supportive services for the next 12 months;
2. The applicant has undergone psychiatric treatment more intensive than outpatient care, such as crisis response services, alternative home care, partial hospitalization, or inpatient hospitalization for a psychiatric condition, more than once in his lifetime; or
3. The applicant has experienced an episode of continuous, supportive residential care, other than hospitalization, for a period long enough to have significantly disrupted the normal living situation. A significant disruption of a normal living situation means the applicant has been unable to maintain his housing or had difficulty maintaining his housing due to being in a supportive residential facility or program that was not a hospital. This includes group home placement as an adolescent and assisted living facilities but does not include living situations through the Department of Social Services.

E. To be eligible for this program, applicants shall demonstrate a significant level of impairment on a continuing or intermittent basis. Evidence of severe and recurrent impairment resulting from mental illness shall exist. The impairment shall result in functional limitation in major life activities. Due to the mental illness, the applicant shall meet at least two of the following:

1. The applicant is either unemployed or employed in a sheltered setting or a supportive work situation, has markedly limited or reduced employment skills, or has a poor employment history;
2. The applicant requires public and family financial assistance to remain in his community;
3. The applicant has difficulty establishing or maintaining a personal social support system;
4. The applicant requires assistance in basic living skills such as personal hygiene, food preparation, or money management; or

5. The applicant exhibits inappropriate behavior that often results in intervention by the mental health or judicial system.

F. The applicant shall require assistance to consistently access or to utilize needed medical or behavioral, or both, health services and supports due to the mental illness.

G. In addition, the applicant shall:

1. Be an adult 21 years through 64 years of age;
2. Be a United States citizen or lawfully residing immigrant;
3. Be a resident of the Commonwealth;
4. Be uninsured;
5. Be ineligible for any state or federal benefits health insurance program including Medicaid, Children's Health Insurance Program (CHIP/FAMIS), Medicare, or TriCare Federal Military benefits;
6. Have household incomes less than or equal to 80% of the federal poverty level using the MAGI eligibility methodology. Reported income shall be verified via reliable electronic sources or if not available electronically, by pay stubs or other income documents accepted under Medicaid policy. All individuals enrolled in the GAP SMI program with incomes between 61% and 100% of the FPL using the MAGI eligibility methodology as of May 15, 2015, who continue to meet other program eligibility rules shall maintain enrollment in the GAP SMI program until their next eligibility renewal period or July 1, 2016, whichever comes first. Pursuant to federal authority under the § 1115 waiver, should expenditures for the GAP SMI program compromise the program's budget neutrality, DMAS may amend the waiver to maintain budget neutrality by reducing income eligibility levels to below 80% of the FPL; and
7. Not be a current resident of a long-term care facility, mental health facility, or penal institution.

H. GAP enrollees shall have 12 months of continuous coverage regardless of household or income changes unless the individual becomes 65 years of age, becomes eligible for Medicare or full Medicaid benefits, moves out of the Commonwealth, dies, or is unable to be located.

I. Individuals who are enrolled in the GAP SMI program who require hospitalization shall not be disenrolled from the GAP SMI program during their hospitalization.

J. If a GAP enrollee secures Medicare or Medicaid/FAMIS MOMS coverage, his GAP enrollment shall be canceled to align with the effective date of the Medicare or Medicaid coverage. Enrollees who gain other sources of health insurance, other than Medicare or Medicaid/FAMIS MOMS, shall not be disenrolled from the GAP SMI program during their 12-month enrollment period; however, in such instances, the GAP SMI program shall be the payer of last resort.

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K. DMAS or its designee shall verify income data via existing electronic data sources, such as Virginia Employment Commission and TALX. Citizenship and identity shall be verified through the monthly file exchange between DMAS and the Social Security Administration. The applicant's age, residency, and insurance status shall be verified through self-attestation. Applicants shall be permitted 90 days to resolve any citizenship discrepancies resulting from the Social Security Administration matching process, in any of the information provided, and in the verification process findings of DMAS or its designee.

**12VAC30-135-430. Individual screening requirements; enrollment process.**

A. All applicants shall be screened by a GAP screening entity using the screening tool, DMAS P603, and shall meet the requirements identified in the screening tool to meet the SMI criteria. Screenings shall be provided to persons without regard to whether they have serious mental illness. Screenings may be either limited or a full screening depending on the applicant's prior history of serious mental illness.

B. Two types of screenings shall be conducted:

1. Limited screenings shall be conducted for those applicants who have had a diagnostic evaluation within the past 12 months, and this evaluation is available to the screener. These limited screenings may be conducted by either an LMHP, a QMHP-A, or QMHP-E.

2. Full screenings shall be conducted for those applicants who have not had a diagnostic evaluation within the past 12 months or for whom the evaluation is not available to the screener. These full screenings shall be conducted by an LMHP.

C. All SMI screenings shall be submitted to the BHSA. The diagnostic evaluation shall be signed and contemporaneously dated by the LMHP who completed it.

D. Once an applicant's eligibility has been determined consistent with all of the requirements set out in 12VAC30-135-420, his coverage shall become effective on the first day of the same month in which his signed application was received. No retroactive eligibility shall be permitted in the GAP SMI program. No service coverage shall begin prior to the first day of the month that the applicant's signed and dated application for the GAP SMI program is received.

E. Once an applicant is determined to be eligible for the GAP SMI program, his eligibility shall remain effective for 12 continuous months except if the individual becomes 65 years of age, becomes eligible for Medicare or Medicaid, moves out of the Commonwealth, dies, or is unable to be located.

F. The renewal of an enrollee's eligibility for this GAP SMI program shall be redetermined prior to the end of the 12-month coverage period. No additional determination of serious mental illness shall be required to complete a renewal for program eligibility.

G. GAP SMI program enrollees shall not be required to report changes in their financial circumstances during their 12-month coverage period but only at the time of their renewal application.

1. If an ex parte renewal cannot be completed for the GAP SMI program enrollee, a pre-filled paper renewal application will be generated, and the enrollee shall be given 30 days to return the completed renewal with the requested verification documentation. If the enrollee fails to provide the completed renewal and documentation in the designated timeframe, his GAP enrollment shall be canceled for failure to complete his renewal process.

2. Such an individual shall be permitted a three-month grace period in which to supply the required documentation to have his GAP enrollment reinstated at the first of the month following cancellation.

H. The new application determination process shall be completed within 45 days except in cases of unusual circumstances as described in this subsection:

1. Unusual circumstances include administrative or other emergency beyond the control of DMAS or its designee. In such case, DMAS or its designee shall document in the applicant's record the reasons for delay. DMAS or its designee shall not use the time standards as a waiting period before determining eligibility or as a reason for denying eligibility because it has not determined eligibility within the time standards.

2. Incomplete new applications shall be held open for a period of 45 calendar days to enable applicants to provide outstanding information needed for an eligibility determination. Any applicant who fails to provide within 45 calendar days of the receipt of the initial application information or verifications necessary to determine eligibility shall have his application for GAP SMI program denied.

I. Cover Virginia shall mail a notice to the applicant following the eligibility determination. An approval notice shall include the applicant's identification number, enrollment periods, and a member handbook. A denial notice shall include information about appeal rights.

J. Following an approval notice, the BHSA shall mail the enrollee's GAP identification card to the address provided on the application.

**12VAC30-135-440. Covered services; limitations; restrictions.**

A. GAP SMI program coverage shall be limited to outpatient medical, behavioral health, pharmacy, GAP case management, and care coordination services for individuals determined to meet the GAP SMI program eligibility criteria. This program intends that such services will significantly decrease the severity of the serious mental illnesses of these individuals so that they can recover, work, parent, learn, and participate more fully in their communities.

B. These services are intended to be delivered in a person-centered manner. The individuals who are receiving these services shall be included in all service planning activities.

C. Medical services including outpatient physician and clinic services, telemedicine services, specialists services, diagnostic procedures, laboratory procedures, and pharmacy services shall be covered as follows:

1. Outpatient physician services and medical office visits, which include (i) evaluation and management, (ii) diagnostic and treatment procedures performed in the physician's office, and (iii) therapeutic or diagnostic injections. The requirements of 12VAC30-50-140 shall be met in order for these services to be reimbursed by DMAS.

2. Outpatient clinic services, which include (i) evaluation and management, (ii) treatment and procedures performed in the clinic's office, and (iii) medically necessary therapeutic and diagnostic injections. The requirements of 12VAC30-50-180 shall be met in order for this service to be reimbursed by DMAS.

3. Outpatient specialty care, consultation, management, and treatment, which include (i) evaluation and treatment, (ii) procedures performed in the physician's office, and (iii) medically necessary therapeutic or diagnostic injections consistent with 12VAC30-50-140.

4. Outpatient diagnostic services, which include ultrasounds, electrocardiogram, service-authorized CAT and MRI scans, and diagnostic services that can be performed in a physician's office with the exception of colonoscopy procedures and other services listed as not covered in 12VAC30-135-450. The requirements of 12VAC30-50-140 O shall be met as they pertain to GAP services for these services to be reimbursed by DMAS. CAT and MRI scans shall be covered if the service is authorized by either DMAS or the service authorization contractor.

5. Outpatient laboratory services consistent with 12VAC30-50-120.

6. Outpatient pharmacy services consistent with 12VAC30-50-210.

7. Outpatient family planning consistent with 12VAC30-50-130 D; sterilization procedures and abortions shall not be covered.

8. Outpatient telemedicine, which is covered the same as Medicaid for services that are not otherwise excluded from GAP coverage.

9. Outpatient durable medical equipment and supplies coverage shall be limited to diabetic equipment and supplies consistent with 12VAC30-50-165.

10. Outpatient hospital procedures shall be limited to (i) diagnostic ultrasound procedures; (ii) electrocardiogram (EKG/ECG) including stress tests; and (iii) radiology procedures except for positron emission tomography (PET) scans, colonoscopy, and radiation treatment procedures.

D. Behavioral health services shall be covered as follows:

1. Behavioral health services shall be subject to service authorization or registration as specified 12VAC30-50-226.

2. GAP case management as defined in 12VAC30-135-400.

a. GAP case management shall be provided by CSB case managers with consultation and support from BHSA care coordinators. This service shall be targeted to individuals who are expected to benefit from assistance with medication management and appropriate use of community resources. The CSB GAP case managers shall have the same knowledge, skills, and abilities as set out in 12VAC30-50-420 E 2 e and the CSB shall maintain all licenses required by DBHDS in 12VAC35-105. GAP case management shall not include the provision of direct treatment services and shall have two levels of service intensity: regular and high intensity case management, as defined in 12VAC30-135-400. GAP care management shall be focused on assisting individuals to access needed medical, behavioral health (psychiatric and substance use disorder services), social, education, vocational, and other support services.

b. Reimbursement shall be provided only for active case management individuals. An active individual for GAP case management purposes means an individual for whom there is a current ISP that requires regular direct or client-related contacts or activity or communication with the individuals or families, significant others, service providers, or others. Billing may be submitted only for months in which direct or individual-related contacts, activity, or communications occur. Regular case management shall be reimbursed for months in which the minimum requirements as described in 12VAC30-135-410, are met for case management. High intensity case management shall be reimbursed for months in which a face-to-face contact with the individual takes place in a community setting outside of the case management office.

c. Case management shall not be billed for enrollees while they are in institutions for mental disease.

d. The case management entity shall collaborate monthly with the BHSA for care coordination efforts.

3. Crisis intervention shall be covered consistent with the limits and requirements set out in 12VAC30-50-226 B 3 and 12VAC30-60-143.

4. Crisis stabilization shall be covered consistent with the limits and requirements set out in 12VAC30-50-226 B and 12VAC30-60-143 except that service authorization shall be required in place of registration.

5. Psychosocial rehabilitation service-specific provider intake and services shall be covered consistent with the limits and requirements set out in 12VAC30-50-226 B 4.

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E. Outpatient psychotherapy services shall be covered consistent with 12VAC30-50-140 D 2 through D 5.

F. Community substance use disorder services shall be covered as follows:

1. Services shall include intensive outpatient services and opioid treatment services. These services shall be rendered to individuals consistent with the criteria for these two services specified in 12VAC30-50-228 A 2.

2. Evaluations required. Prior to initiation of intensive outpatient or opioid treatment services, an evaluation shall be conducted consistent with 12VAC30-60-180 C.

G. Care coordination, crisis phone line, and peer supports shall be administered through the BHSA as follows:

1. Care coordination shall be provided by the BHSA care coordinators. BHSA-LMHP care coordinators shall work closely with behavioral health providers including local CSB staff to provide information to the enrollee in accessing covered services, provider selection, and how to access all services including noncovered services.

2. The BHSA shall provide crisis phone lines 24 hours per day and seven days per week including access to a licensed care coordinator during a crisis.

3. The BHSA or its designee shall provide peer support services seven days per week. A telephonic support shall be staffed by peer support navigators who have been trained specifically in telephonic support operations and resources. The telephonic support associated with the peer support services shall offer extended hours, toll-free access, and dedicated data collection capabilities. The BHSA shall provide trained peer navigators as part of its care coordination team or may contract with other entities to do so. The BHSA shall utilize community-based peer navigators to work in provider settings, community settings, and peer-run organizations. The scope of peer support services shall include:

a. Visiting enrollees in inpatient settings to develop the peer relationship.

b. Describing and developing a plan for engaging in peer and natural community support resources as part of the recovery process.

c. Initiating rapport, teaching, and modeling positive communication skills with enrollees to help them self-advocate for an individualized services plan and assisting the enrollee with the coordination of services to promote successful community integration strategies.

d. Assisting in developing strategies to decrease or avoid the need for future hospitalizations by offering social and emotional support and an array of individualized services.

e. Providing social, emotional, and other supports framed around the eight dimensions of wellness as defined in 12VAC30-135-400.

## **12VAC30-135-450. Noncovered medical and behavioral health services.**

A. Noncovered medical services shall include:

1. Inpatient hospital treatment including psychiatric facilities and psychiatric facility partial hospitalization programs;

2. Emergency room treatment;

3. Ambulatory surgical centers;

4. Military treatment facilities;

5. Outpatient hospital procedures other than diagnostic procedures;

6. Positron emission tomography (PET) scans;

7. Home health;

8. Skilled and intermediate nursing facilities;

9. Long-term care including home and community-based care waiver services, custodial care facilities, and intermediate care facilities for individuals with intellectual disabilities;

10. Residential substance use disorder treatment facilities;

11. Psychiatric residential treatment centers;

12. Comprehensive inpatient/outpatient rehabilitation facilities;

13. End-stage renal disease treatment facilities;

14. Hospice;

15. Ambulance (including land, air, and water);

16. Early and periodic screening diagnosis and treatment (EPSDT) services;

17. Dental services;

18. Nonemergency transportation;

19. Physical therapy (PT), occupational therapy (OT), and speech therapies;

20. Obstetrics/maternity care including birthing centers (gynecology services are covered);

21. Routine eye exams;

22. Abortions, sterilization (vasectomy or tubal ligation);

23. Chemotherapy, radiation therapy;

24. Colonoscopy;

25. Dialysis;

26. Durable medical equipment (DME) and supply items (other than those required to treat diabetes); orthotics; prosthetics; home IV therapy; nutritional supplements;

27. Cosmetic procedures;

28. Eyeglasses, contact lenses, hearing aids;

29. Private duty nursing;

30. Assisted living;

31. Other unspecified facilities;

32. Services specifically excluded under Virginia Medicaid;

33. Services not deemed medically necessary;

34. Services that are considered experimental or investigational;

35. Services from non-Medicaid-enrolled providers; and

36. Any medical services not otherwise defined as covered.

B. Noncovered traditional behavioral health services shall include:

1. Inpatient hospital or partial hospital services, hospital observation services, emergency room services;

2. Electroconvulsive therapy and related services (e.g., anesthesia and hospital charges);

3. Residential treatment services;

4. Psychological and neuropsychological testing;

5. Smoking and tobacco cessation and counseling;

6. Transportation;

7. Services specifically excluded under Virginia Medicaid;

8. Services not deemed medically necessary;

9. Services that are considered experimental or investigational;

10. Services from non-Medicaid-enrolled providers; and

11. Any behavioral health or substance use disorder services not otherwise defined as covered.

C. Noncovered nontraditional behavioral health services shall include:

1. Substance use disorder case management, substance use disorder day treatment for pregnant women, substance use disorder residential treatment for pregnant women, substance use disorder day treatment, and substance use disorder crisis intervention;

2. Day treatment partial hospitalization, mental health skill building services, and intensive community treatment;

3. Treatment foster care case management;

4. Virginia Independent Clinical Assessment Program assessments;

5. Transportation;

6. Services specifically excluded under Virginia Medicaid;

7. Services not deemed medically necessary;

8. Services that are considered experimental or investigational;

9. Services from non-Medicaid-enrolled providers; and

10. Any behavioral health or substance use disorder treatment services not otherwise defined as covered.

**12VAC30-135-460. (Reserved.)**

**12VAC30-135-470. Provider qualifications; requirements.**

The provider qualifications and requirements for GAP-covered services shall be the same as those set forth for each service in 12VAC30-50.

**12VAC30-135-475. Individual service plan requirements.**

A. Individual service plans shall contain all of the elements as set out in 12VAC30-50-226. ISPs that do not contain the specified elements shall be considered by DMAS to be incomplete and not adequate to support service reimbursement.

B. Prior to the development of an ISP:

1. A service-specific provider intake shall be completed for the following services: (i) psychosocial rehabilitation, (ii) crisis intervention, and (iii) crisis stabilization.

2. An evaluation consistent with 12VAC30-60-180 C shall be completed for substance use disorder intensive outpatient and opioid treatment services.

3. DBHDS licensure requirements for assessment and planning as defined in 12VAC35-105-650 shall be completed for GAP case management.

**12VAC30-135-480. Utilization review.**

A. The utilization requirements of this section shall apply to all GAP covered services unless otherwise specified.

B. DMAS, or its designee, shall perform reviews of the utilization of all GAP-covered services in accordance with 42 CFR 440.260 and 42 CFR Part 456.

C. DMAS shall recover expenditures made for covered services when provider documentation does not comport with standards specified in state and federal Medicaid requirements.

D. The utilization review requirements for GAP-covered services shall be the same as those set forth for each service in 12VAC30-60.

**12VAC30-135-485. Reimbursement.**

A. All services covered in the GAP SMI program shall be billed and reimbursed through the existing Medicaid/CHIP fee-for-service methodology and claims process.

B. Reimbursement for substance use disorder services shall be consistent with subdivisions 1 through 6 of 12VAC30-80-32.

C. Service authorization shall not guarantee payment for the service.

**12VAC30-135-487. Client appeals.**

A. Notwithstanding the provisions of 12VAC30-110-10 through 12VAC30-110-370, the regulations for client appeals described in this section through 12VAC30-135-495 govern state fair hearings for GAP SMI program applicants and enrolled individuals. Appeal procedures for GAP SMI providers are set out in 12VAC30-135-496.

B. GAP SMI program applicants and enrollees shall have the right to a hearing pursuant to 42 CFR 431.220.

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C. Applicants shall be notified in writing of the appeals process at the time of the request for enrollment by Cover Virginia. Enrollees shall be notified in writing of the appeals process upon receipt of an adverse decision in a notice of action from the BHSA or the service authorization contractor.

D. An appellant shall have the right to representation by an attorney or other individual of his choice at all stages of an appeal at the administrative agency level.

1. For those appellants who wish to have a representative, a representative shall be designated in a written statement that is signed by the appellant whose GAP SMI program benefits were adversely affected. If the appellant is physically unable to sign a written statement, the DMAS Appeals Division shall allow a family member or other person acting on the appellant's behalf to be the representative. If the appellant is mentally unable to sign a written statement, the DMAS Appeals Division shall require written documentation that a family member or other person has been appointed or designated as his legal representative.

2. If the representative is an attorney or a paralegal working under the supervision of an attorney, a signed statement by such attorney or paralegal that he is authorized to represent the appellant, prepared on the attorney's letterhead, shall be accepted as a designation of representation.

3. A member of the same law firm as the designated representative shall have the same rights as the designated representative.

4. An appellant may revoke representation by another person at any time. The revocation is effective when the DMAS Appeals Division receives written notice from the appellant.

E. Any written communication from an applicant or enrollee or his representative that clearly expresses that he wants to present his case to a reviewing authority shall constitute an appeal request.

1. The written communication should explain the basis for the appeal of the action taken by Cover Virginia, the BHSA, or the service authorization contractor.

2. The appellant or his representative may examine witnesses or documents, or both, provide testimony, submit evidence, and advance arguments during the hearing.

F. Appeals to the state fair hearing process shall be made to the DMAS Appeals Division in writing, with the exception of requests for expedited appeals, and may be made via U.S. mail, fax transmission, hand-delivery, or electronic transmission.

G. Cover Virginia, the BHSA, or the service authorization contractor shall attend and defend its decisions at all appeal hearings or conferences, whether in person or by telephone, as deemed necessary by the DMAS Appeals Division.

H. Requests for expedited appeals referenced in subsection K of this section may be filed by telephone or by any of the methods set forth in subsection F in this section.

I. The agency shall continue benefits while the appeal is pending when all of the following criteria are met:

1. The enrollee or his representative files the appeal within 10 calendar days, plus five mail days, of the date the notice of action was sent by the agency;

2. The appeal involves the termination, suspension, or reduction of eligibility or a previously authorized course of treatment;

3. In the case of services, the services were ordered by an authorized provider, and the original period covered by the initial authorization has not expired; and

4. The enrollee or his representative requests continuation of benefits.

J. After the final resolution and if the final resolution of the appeal is adverse to the enrollee (e.g., the agency's action is upheld), the department may recover the costs of services furnished to the enrollee while the appeal was pending to the extent they were furnished solely because of the pending appeal.

K. The department shall maintain an expedited process for appeals when the treating provider of an appellant certifies in writing that taking the time for a standard resolution could seriously jeopardize the appellant's life, physical health, mental health, or ability to attain, maintain, or regain maximum function. DMAS will make every effort to facilitate an expedited hearing and appeal decision process to accommodate the serious health condition of the appellant.

1. For eligibility matters, the hearing officer shall render appeal decisions within a reasonable amount of time. In setting timeframes, the hearing officer shall consider the need for expedited appeals that meet criteria described in this subsection.

2. For health services matters, the hearing officer shall ensure that appeals that meet the criteria for expedited resolution are completed no later than 72 hours after the agency receives a fair hearing request. The hearing officer may extend the timeframes for resolution of an expedited appeal by up to 14 calendar days if the appellant or the appellant's representative requests the extension, or if the hearing officer:

a. Shows that there is a need for additional information and how the delay is in the appellant's best interest;

b. Promptly notifies the appellant of the reason for an extension and provides the date the extension expires; and

c. Resolves the appeal as expeditiously as the appellant's health condition requires and no later than the date the extension expires.

**12VAC30-135-489. Appeal timeframes.**

A. Appeals to the Medicaid state fair hearing process shall be filed with the DMAS Appeals Division within 30 days of the date the notice of action was sent by the agency, unless the time period is extended by DMAS upon a finding of good cause in accordance with subsection G of this section.

B. It is presumed that applicants or enrollees will receive the notice of action five days after the agency or its designee mails it, unless the applicant or enrollee shows that he did not receive the notice within the five-day period. For purposes of calculating the five-day period, it is presumed that the notice was mailed by the agency on the date that is indicated on the notice.

C. A request for appeal on the grounds that the agency or its designee has not acted with reasonable promptness in response to an eligibility or service request may be filed at any time until the agency or its designee has acted.

D. The date of filing shall be (i) the date the request is postmarked if by U.S. mail or (ii) the date the request is received by the department if delivered other than by U.S. mail.

E. Documents postmarked on or before a time limit's expiration shall be accepted as timely.

F. In computing any time period under 12VAC30-135-487 through 12VAC30-135-495, the day of the act or event from which the designated period of time begins to run shall be excluded and the last day included. If a time limit would expire on a Saturday, Sunday, or state or federal holiday, it shall be extended until the next regular business day.

G. An extension of the 30-day period for filing a request for appeal may be granted for good cause shown. Examples of good cause include the following situations:

1. The appellant was seriously ill and was prevented by illness from contacting the department;
2. The notice of action completed by the agency was not sent to the appellant. The agency may rebut this claim by evidence that the decision was mailed to the appellant's last known address or that the notice was received by the appellant;
3. The appellant sent the request for appeal to another government agency in good faith within the time limit; or
4. Unusual or unavoidable circumstances prevented a timely filing of the appeal request.

H. Appeals shall be heard and decisions issued within 90 days of (i) the postmark date if delivered by U.S. mail or (ii) the receipt date if delivered by any method other than U.S. mail.

I. Exceptions to standard appeal resolution timeframes. Decisions may be issued beyond the standard timeframe when the appellant or his representative requests or causes a delay. Decisions may also be issued beyond the standard

appeal resolution timeframe when any of the following circumstances exist:

1. The appellant or representative requests to reschedule or continue the hearing;
2. The appellant or representative provides good cause for failing to keep a scheduled hearing appointment and the DMAS Appeals Division reschedules the hearing;
3. Inclement weather, unanticipated system outage, or the department's closure that prevents the hearing officer's ability to work;
4. Following a hearing, the hearing officer orders an independent medical assessment as described in 12VAC30-110-200;
5. The hearing officer leaves the hearing record open after the hearing to receive additional evidence or argument from the appellant or representative;
6. The hearing officer receives additional evidence from a person other than the appellant or his representative, and the appellant or representative requests to comment on such evidence in writing or to have the hearing reconvened to respond to such evidence; or
7. The hearing officer determines that a need for additional information exists and documents how the delay is in the appellant's interest.

J. For delays requested or caused by an appellant or his representative, the delay date for the decision will be calculated as follows:

1. If an appellant or representative requests or causes a delay within 30 days of the request for a hearing, the 90-day time limit will be extended by the number of days from the date when the first hearing was scheduled until the date to which the hearing is rescheduled.
2. If an appellant or representative requests or causes a delay within 31 to 60 days of the request for a hearing, the 90-day time limit will be extended by 1.5 times the number of days from the date when the first hearing was scheduled until the date to which the hearing is rescheduled.
3. If an appellant or representative requests or causes a delay within 61 to 90 days of the request for a hearing, the 90-day time limit will be extended by two times the number of days from the date when the first hearing was scheduled until the date to which the hearing is rescheduled.

K. Post hearing delays requested or caused by an appellant or representative (e.g., requests for the record to be left open) will result in a day-to-day delay for the decision date. The hearing officer shall provide the appellant and representative with written notice of the reason for the decision delay and the delayed decision date, if applicable.

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## **12VAC30-135-491. Prehearing decisions.**

A. If the DMAS Appeals Division determines that any of the conditions as described in this subsection exist, a hearing will not be held and the client appeal process shall be terminated.

1. A request for appeal may be invalidated if:

a. The request was not filed within the time limit imposed by 12VAC30-135-489 A or extended pursuant to 12VAC30-135-489 G, and the hearing officer sends a letter to the appellant for an explanation as to why the appeal request was not filed timely, and:

(1) The appellant or his representative did not reply to the request within 10 calendar days for an explanation of why good cause criteria were met for the untimely filing; or

(2) The appellant or his representative replied within 10 calendar days of the request and the DMAS Appeals Division had sufficient facts to determine that the reply did not meet good cause criteria pursuant to 12VAC30-135-489 G.

b. The individual who filed the appeal ("filer") is not the appellant or parent of a minor appellant and the DMAS Appeals Division sends a letter to the filer requesting proof of his authority to appeal on behalf of the appellant, and:

(1) The filer did not reply to the request for authorization to represent the appellant within 10 calendar days; or

(2) The filer replied within 10 calendar days of the request and the hearing officer determined that the authorization submitted was insufficient to allow the filer to represent the appellant under the provisions of 12VAC30-135-487 D.

2. A request for appeal may be administratively dismissed if:

a. The action being appealed was not taken by Cover Virginia, BHSA, or the service authorization contractor; or

b. The sole issue is a federal or state law requiring an automatic change adversely affecting some or all GAP SMI program applicants or enrollees.

3. An appeal case may be closed if:

a. The hearing officer schedules a hearing and sends a written schedule letter notifying the appellant or his representative of the date, time, and location of the hearing, the appellant or his representative failed to appear at the scheduled hearing, and the hearing officer sends a letter to the appellant for an explanation as to why he failed to appear, and:

(1) The appellant or his representative did not reply to the request within 10 calendar days with an explanation that met good cause criteria; or

(2) The appellant or his representative replied within 10 calendar days of the request and the DMAS Appeals

Division determined that the reply did not meet good cause criteria.

b. The hearing officer sends a written schedule letter requesting that the appellant or his representative provide a telephone number at which he can be reached for a telephonic hearing and the appellant or his representative failed to respond within 10 calendar days to the request for a telephone number at which he could be reached for a telephonic hearing.

c. The appellant or his representative withdraws the appeal request in writing.

d. Cover Virginia, the BHSA, or the service authorization contractor approves the full amount, duration, and scope of services requested.

e. Evidence in the record shows that the decision made by Cover Virginia, the BHSA, or the service authorization contractor was clearly in error and that the case should be fully resolved in the appellant's favor.

B. Remand to Cover Virginia, the BHSA, or the service authorization contractor. If the hearing officer determines from the record, without conducting a hearing, that the case might be resolved in the appellant's favor if Cover Virginia, the BHSA, or the service authorization contractor obtains and develops additional information, documentation, or verification, the hearing officer may remand the case to Cover Virginia, the BHSA, or the service authorization contractor for action consistent with the hearing officer's written instructions pursuant to 12VAC30-135-494.

C. The appellant shall have no opportunity to seek judicial review except in cases where the hearing officer receives and analyzes a response from the appellant or representative as described in subdivisions A 1 a (2), A 1 b (2), A 3 a (2), and subsection B of this section.

D. A letter shall be sent to the appellant or his representative that explains the determination made on his appeal.

## **12VAC30-135-494. Evidentiary hearings and final decisions.**

A. All hearings shall be scheduled at a reasonable time, date, and place, and the appellant and his representative shall be notified in writing at least 15 days before the hearing.

1. The hearing location shall be determined by the DMAS Appeals Division.

2. A hearing shall be rescheduled at the appellant's request no more than twice unless compelling reasons exist.

3. Rescheduling the hearing at the appellant's or his representative's request will result in automatic waiver of the 90-day deadline for resolution of the appeal. The delay date for the decision will be calculated as set forth in 12VAC30-135-489 J.

B. The hearing shall be conducted by a department hearing officer. The hearing officer shall review the complete record for all Cover Virginia, BHSA, or service authorization

contractor actions that are properly appealed; conduct informal, fact-gathering hearings; evaluate evidence presented; research the issues; and render a written final decision.

C. Subject to the requirements of all applicable federal and state laws regarding privacy, confidentiality, disclosure, and personally identifiable information, the appeal record shall be made accessible to the appellant and his representative at a convenient place and time at least five working days before the date of the hearing and during the hearing. The appellant and his representative may examine the content of the appellant's case file and all documents and records the department will rely on at the hearing except those records excluded by law.

D. Appellants or their representatives who require the attendance of witnesses or the production of records, memoranda, papers, and other documents at the hearing may request in writing the issuance of a subpoena. The request must be received by the hearing officer at least 10 working days before the scheduled hearing. Such request shall include (i) the witness or respondent's name, home and work addresses, and county or city of work and residence if the subpoena is for witnesses, (ii) a description of the specific records requested if the subpoena is for records, and (iii) the name and address of the sheriff's office that will serve the subpoena.

E. The hearing officer shall conduct the hearing; decide on questions of evidence, procedure, and law; question witnesses; and assure that the hearing remains relevant to the issue or issues being appealed. The hearing officer shall control the conduct of the hearing and decide who may participate in the hearing.

F. Hearings shall be conducted in an informal, nonadversarial manner. The appellant or his representative shall have the right to bring witnesses, establish all pertinent facts and circumstances, present an argument without undue interference, and question or refute the testimony or evidence, including the opportunity to confront and cross-examine agency representatives.

G. The rules of evidence shall not strictly apply. All relevant, nonrepetitive evidence may be admitted, but the probative weight of the evidence will be evaluated by the hearing officer.

H. The hearing officer may leave the hearing record open for a specified period of time after the hearing to receive additional evidence or argument from the appellant or his representative.

1. The hearing officer may order an independent medical assessment when the appeal involves medical issues such as a diagnosis, an examining physician's report, or a medical review team's decision, and the hearing officer determines that it is necessary to have an assessment by someone other than the person or team who made the original decision (e.g., to obtain more detailed medical

findings about the impairments, to obtain technical or specialized medical information, or to resolve conflicts or differences in medical findings or assessments in the existing evidence). A medical assessment ordered pursuant to this subsection shall be at the department's expense and shall become part of the record.

2. The hearing officer may receive evidence that was not presented by either party if the record indicates that such evidence exists, and the appellant or his representative requests to submit it or requests that the hearing officer secure it.

3. If the hearing officer receives additional evidence from an entity other than the appellant or his representative, the hearing officer shall (i) send a copy of such evidence to the appellant and his representative and to Cover Virginia, the BHSA, or the service authorization contractor and (ii) provide each party the opportunity to comment on such evidence in writing or to have the hearing reconvened to respond to such evidence.

4. Any additional evidence received will become a part of the hearing record, but the hearing officer must determine whether it will be used in making the decision.

I. After conducting the hearing, reviewing the record, and deciding questions of law, the hearing officer shall issue a written final decision that either (i) sustains or reverses, in whole or in part, the action of Cover Virginia, the BHSA, or the service authorization contractor or (ii) remands the case for further evaluation consistent with the hearing officer's written instructions. Some decisions may be a combination of these dispositions. The hearing officer's final decision shall be considered as the department's final administrative action pursuant to 42 CFR 431.244(f). The final decision shall include:

1. Identification of the issue or issues;
2. Relevant facts, to include a description of the procedural development of the case;
3. Conclusions of law, regulations, and policy that relate to the issue or issues;
4. Discussions, analysis of the accuracy of the agency's action, conclusions, and the hearing officer's decision;
5. Further action, if any, to be taken by the agency to implement the decision;
6. The deadline date by which further action must be taken; and
7. A cover letter informing the appellant and representative of the hearing officer's decision. The letter must indicate that the hearing officer's decision is final and that the final decision may be appealed directly to circuit court.

J. A copy of the hearing record shall be forwarded to the appellant and his representative with the final decision.

K. An appellant who disagrees with the hearing officer's final decision as defined in this section may seek judicial

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review pursuant to the Administrative Process Act (§ 2.2-4026 of the Code of Virginia) and Rules of the Supreme Court of Virginia, Part Two A. Written instructions for requesting judicial review must be provided to the appellant or representative with the hearing officer's decision, and upon request by the appellant or representative.

## **12VAC30-135-495. Department of Medical Assistance Services Appeals Division appeal records.**

A. No person shall take from the DMAS Appeals Division's custody any original record, paper, document, or exhibit that has been certified to the division except as the division's director or his designee authorizes, or as may be necessary to furnish or transmit copies for other official purposes.

B. Information in the appellant's record can be released only to the appellant or the appellant's authorized representative: Cover Virginia, the BHSA, or the service authorization contractor; and other persons named in a release of information authorization signed by an appellant or his representative.

C. The fees to be charged and collected for any copies of DMAS Appeals Division records will be in accordance with Virginia's Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia) or other controlling law.

D. When copies are requested from records in the division's custody, the required fee shall be waived if the copies are requested in connection with an appellant's own appeal.

## **12VAC30-135-496. Provider appeals.**

A. GAP SMI program provider appeals shall be conducted in accordance with the department's provider appeal regulations in Part XII (12VAC30-20-500 et seq.) of 12VAC30-20, § 32.1-325 et seq. of the Code of Virginia, and the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The department's appeal decision shall be binding on and shall not be subject to further appeal by Cover Virginia, the BHSA, and the service authorization contractor.

## **12VAC30-135-498. Individual rights.**

A. Individuals who have been found eligible for and have been enrolled in the GAP SMI program shall have the right to be treated with respect and dignity by health care provider staff and to have their personal health information kept in confidence per the Health Insurance Portability and Accountability Act.

B. No premiums, copayments, coinsurance, or deductibles shall be charged to individuals who have been found to be eligible for and are enrolled in the GAP SMI program.

**NOTICE:** The following form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the form with a hyperlink to access it. The form is also available from the agency contact or may be viewed at the Office of the

Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

## **FORMS (12VAC30-135)**

[Governor's Access Plan \(GAP\) Serious Mental Illness \(SMI\) Screening Tool, DMAS-P603 \(eff. 11/14\)](#)

## **DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-135)**

~~Child Adolescent Functional Assessment Scale (Uniform Assessment Instrument), Functional Assessment Systems, 2000.~~

[Diagnostic and Statistical Manual of Mental Disorders \(DSM-IV-TR\), Fourth Edition, Text Revision, copyright 2000, American Psychiatric Association, 1000 Wilson Boulevard, Suite 1825, Arlington, Virginia 22209, <http://www.psychiatry.org>](#)

[Diagnostic and Statistical Manual of Mental Disorders \(DSM-5®\), Fifth Edition, copyright 2013, American Psychiatric Association, 1000 Wilson Boulevard, Suite 1825, Arlington, Virginia 22209, <http://www.psychiatry.org/dsm5>](#)

VA.R. Doc. No. R15-4171; Filed December 6, 2016, 2:50 p.m.

## **TITLE 14. INSURANCE**

### **STATE CORPORATION COMMISSION**

#### **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:** **14VAC5-190. Rules Governing the Reporting of Cost and Utilization Data Relating to Mandated Benefits and Mandated Providers (amending 14VAC5-190-10, 14VAC5-190-20, 14VAC5-190-30, 14VAC5-190-50, 14VAC5-190-60, 14VAC5-190-70; repealing 14VAC5-190-40, Appendix A, Appendix B).**

**Statutory Authority:** §§ 12.1-13 and 38.2-233 of the Code of Virginia.

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

**Public Comment Deadline:** January 31, 2017.

**Agency Contact:** Eric Lowe, Policy Advisor, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9628, FAX (804) 371-9944, or email [eric.lowe@scc.virginia.gov](mailto:eric.lowe@scc.virginia.gov).

Summary:

*Section 38.2-3419.1 of the Code of Virginia requires that certain insurers, health services plans, and health maintenance organizations report to the commission no less often than biennially cost and utilization information for each of the mandated benefits and providers set forth in Article 2 (§ 38.2-3408 et seq.) of Chapter 34 of Title 38.2 of the Code of Virginia. The proposed amendments streamline the reporting process related to costs and utilization associated with mandated benefits and mandated providers, while continuing to provide the information required by § 38.2-3419.1 of the Code of Virginia.*

AT RICHMOND, DECEMBER 5, 2016

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2016-00223

Ex Parte: In the matter of  
Amending the Rules Governing the Reporting of  
Cost and Utilization Data Relating to  
Mandated Benefits and Mandated Providers

**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>.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to rules set forth in Chapter 190 of Title 14 of the Virginia Administrative Code, entitled Rules Governing the Reporting of Cost and Utilization Data Relating to Mandated Benefits and Mandated Providers, 14 VAC 5-190-10 *et seq.* ("Rules"), which amend the Rules at 14 VAC 5-190-10 through 14 VAC 5-190-30, and 14 VAC 5-190-50 through 14 VAC 5-190-80; and repeal the Rules at 14 VAC 5-190-40. In addition, forms have been repealed and a new form added.

Section 38.2-3419.1 of the Code requires that certain insurers, health services plans, and health maintenance organizations report to the Commission, no less often than biennially, cost and utilization information for each of the mandated benefits and providers set forth in Article 2 of Chapter 34 of Title 38.2 of the Code. The amendments to the Rules are necessary to make the reporting process related to costs and utilization associated with mandated benefits and

mandated providers more efficient, while continuing to provide the information required by § 38.2-3419.1 of the Code.

NOW THE COMMISSION is of the opinion that the proposed amendments submitted by the Bureau to amend the Rules at 14 VAC 5-190-10 through 14 VAC 5-190-30 and

14 VAC 5-190-50 through 14 VAC 5-190-80; repeal the Rules at 14 VAC 5-190-40 and forms; and add a new form, should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposal to amend the Rules at 14 VAC 5-190-10 through 14 VAC 5-190-30 and 14 VAC 5-190-50 through 14 VAC 5-190-80; repeal the Rules at 14 VAC 5-190-40 and forms; and add a new form, 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 the Rules, shall file such comments or hearing request on or before January 31, 2017, 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-2016-00223.

(3) If no written request for a hearing on the proposal to amend the Rules is received on or before January 31, 2017, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may amend the Rules.

(4) The Bureau forthwith shall provide notice to all health insurance issuers licensed to issue policies of accident and sickness insurance, subscription contracts, or evidences of coverage in this Commonwealth, 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.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Kiva B. Pierce, Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 202 North Ninth Street, Richmond, Virginia 23219; and a copy hereof shall be delivered to the

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# Regulations

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Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Althelia P. Battle.

## **14VAC5-190-10. Purpose.**

The purpose of this regulation is to implement § 38.2-3419.1 of the Code of Virginia with respect to mandated health insurance benefits and providers:

This regulation is designed to:

1. Provide the format for the reporting of costs and utilization associated with mandated benefits and providers;
2. ~~Describe the system for reporting such data;~~ 3. Define the information that is required to be reported; and
4. ~~Report~~ 3. Describe general data reporting elements related to costs and utilization associated with mandated benefits and mandated providers. ~~However, due to the numerous means of filing claims through various procedure codes, the regulation limits the data requested to that information required to be submitted.~~

## **14VAC5-190-20. Scope.**

This regulation shall apply to every ~~insurer, health services plan and health maintenance organization~~ health insurance issuer licensed to issue policies of accident and sickness insurance, subscription contracts, or evidences of coverage in this Commonwealth.

## **14VAC5-190-30. Definitions.**

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

"Applicable policy" or "contract" means any accident and sickness insurance policy providing hospital, medical and surgical, or major medical coverage on an expense incurred basis or any accident and sickness subscription contract or evidence of coverage or any health care plan provided by a health maintenance organization issued or issued for delivery in the Commonwealth of Virginia.

"Covered lives" means the total number of covered lives reported by a health insurance issuer on the National Association of Insurance Commissioners (NAIC) Supplemental Health Care Exhibit for Individual Comprehensive Health Coverage, Small Group Employer Comprehensive Health Coverage, and Large Group Employer Comprehensive Health Coverage combined as defined in the NAIC Annual Statement Instructions, or equivalents in a successor form.

"Earned premiums" means the aggregate of the earned premium on all policies during a given period. The figure is calculated by adding the premiums written to the unearned premiums as of the beginning of the period and subtracting the unearned premiums as of the end of the period.

"Health insurance issuer" means an insurance company or insurance organization (including a health maintenance organization) that is licensed to engage in the business of

insurance in the Commonwealth and is subject to the laws of the Commonwealth that regulate insurance within the meaning of § 514(b)(2) of the Employee Retirement Income Security Act of 1974 (29 USC § 1144 (b)(2)). Such term does not include a group health plan.

"Incurred claims" means the total losses sustained whether paid or unpaid.

~~"Insurer" means any association, aggregate of individuals, business, corporation, individual, joint stock company, Lloyds type of organization, organization, partnership, receiver, reciprocal or interinsurance exchange, trustee or society engaged in the business of making contracts of insurance, as set forth in § 38.2-100 of the Code of Virginia.~~

"Mandated benefits" means those benefits that must be included or offered in policies delivered or issued for delivery in the Commonwealth as required by §§ 38.2-3409 through 38.2-3419 of the Code of Virginia.

"Mandated providers" means those practitioners that are listed in §§ 38.2-3408 and 38.2-4221 of the Code of Virginia.

"Paid claims" means the aggregate of loss payments, less deductions for all credits, except that no deduction is made for reinsurance recoveries, during a given period.

"Reporting period" means the two individual calendar year years immediately preceding the May 1 reporting date, reported separately.

~~"Written premiums" means gross premiums written minus premiums on policies cancelled and all returned premiums during a given period. Premiums paid to reinsurance carriers on reinsurance ceded are not deducted.~~

## **14VAC5-190-40. Reporting requirements. (Repealed.)**

A. Full report required. ~~Except as set forth in subsections B and C of this section, all insurers, health services plans and health maintenance organizations licensed to issue policies of accident and sickness insurance or subscription contracts in the Commonwealth of Virginia must file a full and complete Form MB-1 report in accordance with the provisions of 14VAC5-190-50.~~

B. Exemption: No report required. ~~Any insurer, health services plan or health maintenance organization whose total Virginia annual written premiums for all accident and sickness policies or subscription contracts, as reported to the commission on its Annual Statement for a particular reporting period is less than \$500,000 shall, for that reporting period, be exempt from filing a report as required by these rules, and shall not be required to notify the commission of such exemption other than through the timely filing of its Annual Statement.~~

C. Eligibility to file abbreviated report. ~~Any insurer, health services plan or health maintenance organization that does not qualify for an exemption under subsection B of this section may file an abbreviated report, as described in subsection D of this section if its Virginia annual written premiums for applicable policies or contracts, as defined in 14VAC5-190-~~

30 of these rules, that were subject to the requirements of § 38.2-3408 or § 38.2-4221, and the requirements of §§ 38.2-3409 through 38.2-3419 of the Code of Virginia during the reporting period total less than \$500,000.

D. ~~Abbreviated report defined. The abbreviated report shall include a completed first page of the Form MB-1 report format prescribed by the commission in Appendix A of this chapter, or as later modified pursuant to 14VAC5-190-60, along with a breakdown of the insurer's, health services plan's, or health maintenance organization's Virginia written premiums for all accident and sickness policies or contracts for the reporting period by policy type (e.g., Medicare supplement, major medical, disability income, limited benefit) and by situs (e.g., Virginia, Illinois).~~

#### **14VAC5-190-50. Procedures Reporting and filing requirements.**

A. ~~Each insurer, health services plan or health maintenance organization shall submit a full and complete Form MB-1 report to the Bureau of Insurance by May 1, of each year unless: 1. It is exempted from this requirement by 14VAC5-190-40 B; or 2. It is eligible to file an abbreviated report pursuant to 14VAC5-190-40 C. Abbreviated reports must be submitted by May 1 of each year Beginning May 1, 2017, and every other year thereafter, any health insurance issuer licensed to issue an applicable policy or contract in the Commonwealth of Virginia who reported greater than 5,000 covered lives in Virginia during either of the individual calendar years comprising the reporting period shall file with the Bureau of Insurance a separate Form 190-A report for each calendar year in the reporting period.~~

B. ~~The Form MB-1 190-A report may be obtained on the Bureau of Insurance's webpage at <http://www.scc.virginia.gov/boi/co/health/mandben.aspx>, and shall be filed in the format prescribed in Appendix A of this chapter electronically in accordance with the instructions that appear on the Bureau of Insurance's webpage. Information shall be converted to the required coding systems by the insurer, health services plan or health maintenance organization prior to submission to the Bureau of Insurance.~~

C. ~~Reports may be filed by use of machine readable computer diskettes issued by the Bureau of Insurance expressly for this purpose, although typewritten reports are acceptable provided that the exact format set forth in this chapter, and as subsequently modified as set forth in 14VAC5-190-60, is utilized.~~

#### **14VAC5-190-60. Annual notification and modification of reporting form.**

The Bureau of Insurance shall be permitted to modify the data requirements of the ~~MB-1 reporting form~~ Form 190-A report and data reporting instructions on an annual basis. Any such modifications, including ~~but not limited to~~ the addition of new benefit or provider categories as necessitated by the addition of new mandated benefit or provider requirements to the Code of Virginia, as well as instructions related to

tracking and compiling data through medical procedure and diagnostic codes, shall be provided to all entities the health insurance issuers described in 14VAC5-190-20, in the form of an administrative letter sent by regular mail to the entity's mailing address shown in the bureau's records 14VAC5-190-50 A via letter or on the Bureau of Insurance's webpage. Failure by an entity to receive or review such annual notice notification shall not be cause for exemption or grounds for noncompliance with the reporting requirements set forth in these rules this chapter.

#### **14VAC5-190-70. Penalties.**

~~The failure by an insurer, health services plan or health maintenance organization, unless exempt pursuant to 14VAC5-190-20 B, a health insurance issuer to file a substantially complete and accurate report as required by this chapter by the required date may be considered a willful violation and is subject to an appropriate penalty in accordance with §§ 38.2-218 and 38.2-219 of the Code of Virginia.~~

#### **APPENDIX A. FORM MB-1 INSTRUCTIONS AND INFORMATION. (Repealed.)**

##### Cover Sheet:

~~The figure entered for Total Premium for all Accident and Sickness Lines should be consistent with the total accident and sickness premium written in Virginia for all accident and sickness lines including credit accident and sickness, disability income, and all others, whether subject to §§ 38.2-3408 or 38.2-4221 and §§ 38.2-3409 through 38.2-3419 of the Code of Virginia or not, as reported in the Company's Annual Statement for the reporting period. This figure should not be adjusted.~~

~~The figure entered for Total Premiums on Applicable Policies and Contracts should be the total accident and sickness premiums written in Virginia on applicable policies and contracts, as defined in 14VAC5-190-30 that are subject to §§ 38.2-3408 or 38.2-4221 and §§ 38.2-3409 through 38.2-3419 for the reporting period. Written premium on applicable policies only should be included. Policies situated outside of Virginia, and policies situated in Virginia, but not subject to Mandated Benefits as provided in § 38.2-3408 or § 38.2-4221 and § 38.2-3409 through § 38.2-3419 are not considered applicable policies.~~

~~Report Type (Abbreviated or Complete) – the company must determine eligibility to file an abbreviated report under 14VAC5-190-40 C or a complete report for this reporting period. Companies submitting an abbreviated report must submit the cover sheet of Form MB-1 as well as the information required by 14VAC5-190-40 D.~~

##### Part A: Claim Information – Benefits

~~Part A requires disclosure of specific claim data for each mandated benefit and mandated offer for both individual and group business. Carriers are reminded that the basis on which claim data is presented, either "Paid" or "Incurred" must~~

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always be completed. This is entered at the top of the form, and the basis must be consistent throughout the report.

~~Total claims paid/incurred for individual contracts and group certificates refers to all claims paid or incurred under the types of policies subject to the reporting requirements. This figure should not be the total of claim payments entered in column c, rather a total of all claims paid or incurred under the applicable contracts or certificates. This number has been omitted by several carriers reporting previously. The Bureau can not compile the information reported without this number. It is imperative that this number be entered.~~

~~Columns a and b "Number of Visits" or "Number of Days" refers to the number of provider and physician visits, and the number of inpatient or partial hospital days, as applicable. The numbers reported should be consistent with the type of service rendered. For example, number of days (column b) should not be reported unless the claim dollars being reported were paid or incurred for inpatient or partial hospitalization.~~

~~Claims reported for § 38.2-3409, Handicapped Dependent Children should include only those claims paid or incurred as a result of a continuation of coverage because of the criteria provided in this section of the Code of Virginia.~~

~~Claims reported for § 38.2-3410, Doctor to Include Dentist, should include only claims for treatment normally provided by a physician, but which were provided by a dentist. Claims for normal or routine dental services should not be reported.~~

~~Column c Total Claims Payments—companies should enter the total of claims paid or incurred for the mandate.~~

#### ~~Column d Number of Contracts~~

~~Individual business—companies should report the number of individual contracts in force in Virginia which contain the benefits and providers listed. The number of contracts should be consistent throughout column d, except in the case of mandated offers, which may be less.~~

~~Group business—companies should report the number of group certificates in force in Virginia which contain the benefits and providers listed, not the number of group contracts. This number should also be consistent except for mandated offers, which may be less.~~

~~Column e Claim Cost Per Contract/Certificate. This figure is computed by dividing the amount entered in column c by the figure entered in column d. It is no longer necessary for reporting companies to enter this figure. The Bureau's software will compute this figure automatically.~~

~~Column f Annual Administrative Cost should only include 1996 administrative costs (not start up costs, unless those costs were incurred during the reporting period).~~

~~Column g Percent of Total Health Claims is the claims paid or incurred for this benefit as a percentage of the total amount of health claims paid or incurred subject to this reporting requirement. It is no longer necessary for reporting companies to enter this figure. The Bureau's software will compute this figure automatically.~~

#### Part B: Claim Information—Providers

~~In determining the cost of each mandate, it is expected that claim and other actuarial data will be used. A listing of the CPT 4 and ICD 9CM Codes which should be used in collecting the required data is attached for your convenience.~~

~~Column a Number of Visits is the number of visits to the provider group for which claims were paid or incurred.~~

~~Column b Total Claims Payments is the total dollar amount of claims paid to the provider group.~~

~~Column c Cost Per Visit is computed by dividing the amount entered in column b by the figure entered in column a. It is no longer necessary for reporting companies to enter this figure. The Bureau's software will compute this figure automatically.~~

#### ~~Column d Number of Contracts~~

~~Individual business—report the number of individual contracts subject to this reporting requirement.~~

~~Group business—report the number of group certificates subject to this reporting requirement.~~

~~Column e Claim Cost Per Contract/Certificate—(both group and individual business) is the amount entered in column b divided by the figure entered in column d. It is no longer necessary for reporting companies to enter this figure. The Bureau's software will compute this figure automatically.~~

~~Column f Annual Administrative Cost should only include 1996 administrative costs (not start up costs, unless those costs were incurred during the reporting period).~~

~~Column g Percent of Total Health Claims is the claims paid or incurred for services administered by each provider type as a percentage of the total amount of health claims paid or incurred subject to this reporting requirement. It is no longer necessary for reporting companies to enter this figure. The Bureau's software will compute this figure automatically.~~

#### Part C: Premium Information

##### Standard Policy

~~Use what you consider to be your standard individual policy and/or group certificate to complete the deductible amount, the coinsurance paid by the insurer, and the individual/employee out of pocket maximum. These amounts should be entered under the heading of Individual Policy and/or Group certificates, as applicable, in the unshaded blocks.~~

~~For your standard health insurance policy in Virginia, provide the total annual premium that would be charged per unit of coverage assuming inclusion of all of the benefits and providers listed. A separate annual premium should be provided for Individual policies and Group certificates, both single and family.~~

##### Premium Attributable to Each Mandate

~~Provide the portion (dollar amount) of the annual premium for each policy that is attributable to each mandated benefit,~~

offer and provider. If the company does not have a "Family" rating category, coverage for two adults and two children is to be used when calculating the required family premium figures.

Please indicate where coverage under your policy exceeds Virginia mandates. It is understood that companies do not usually rate each benefit and provider separately. However, for the purpose of this report it is required that a dollar figure be assigned to each benefit and provider based on the company's actual claim experience, such as that disclosed in Parts A and B, and other relevant actuarial information.

**Number of Contracts/Certificates**

Provide the number of individual policies and/or group certificates issued or renewed by the Company in Virginia during the reporting period in the appropriate fields under each heading.

Provide the number of individual policies and/or group certificates in force for the company in Virginia as of the last day of the reporting period in the appropriate fields under each heading.

**Annual Premium for Individual Standard Policy (30-year old male in Richmond)**

Enter the annual premium for an individual policy with no mandated benefits or mandated providers for a 30-year old male in the Richmond area in your standard premium class in the appropriate line. Enter the cost for a policy for the same individual with present mandates in the appropriate line. (Assume coverage including \$250 deductible, \$1,000 stop-loss limit, 80% co-insurance factor, and \$250,000 policy maximum.) If you do not issue a policy of this type, provide the premium for a 30-year old male in your standard premium class for the policy that you offer that is most similar to the one described and summarize the differences from the described policy in a separate form. The premium for a policy "with mandates" should include all mandated benefits, offers, and providers.

**Average Dollar Amount for Converting Group to Individual**

Companies should provide information concerning the cost of converting group coverage to an individual policy. Information should be provided only as relevant to your company's practices.

If the company adds an amount to the annual premium of a group policy or certificate to cover the cost of conversion to an individual policy, provide the average dollar amount per certificate under the "group certificate" heading in the fields for single and family coverages, as appropriate.

If the cost of conversion is instead covered in the annual premium of the individual policy, provide the average dollar amount attributable to the conversion requirement under the heading "Individual Policy" in the fields for single or family coverages, as appropriate. If the cost of conversion is instead covered by a one-time charge made to the group policyholder for each conversion, provide the average dollar amount under

the heading "Group Certificates" in the fields for single or family coverages, as appropriate.

**Part D—Utilization and Expenditures for Selected Procedures by Provider Type**

Selected Procedure Codes are listed in Part D to obtain information about utilization and costs for specific types of services. Please identify expenditures and visits for the Procedure Codes indicated. Other claims should not be included in this Part. Individual and group data must be combined for this part of the report.

Claim data should be reported by procedure code and provider type. "Physician" refers to medical doctors.

Data should only reflect paid claims. Unpaid claims should not be included.

It is no longer necessary to report the Cost Per Visit. The Bureau's software will compute this figure automatically.

**General**

Information provided on Form MB-1 should only reflect the experience of policies or contracts delivered or issued for delivery in the Commonwealth of Virginia and subject to Virginia mandated benefit, mandated offer and provider statutes.

Note the addition of data to be reported for Coverage of Procedures Involving Bones and Joints, § 38.2-3418.2. This is the first reporting year for this information. Refer to Administrative Letter 1996-16, dated December 4, 1996.

**EDITOR'S NOTE:** Form MB-1 is not shown below, but is being stricken.

**APPENDIX B. CPT-4, ICD-9CM, AND UB-82 REFERENCES: (Repealed.)**

**A. CPT and ICD-9CM Codes**

Va. Code Section 38.2-3410: Doctor to Include Dentist  
(Medical services legally rendered by dentists and covered under contracts other than dental)

**ICD Codes**

520—529 Diseases of oral cavity, salivary glands and jaws

Va. Code Section 38.2-3411: Newborn Children  
(children less than 32 days old)

**ICD Codes**

740—759 Congenital anomalies

760—763 Maternal causes of perinatal morbidity and mortality

764—779 Other conditions originating in the perinatal period

**CPT Codes**

99295 Initial NICU care, per day, for the evaluation and management of a critically ill neonate or infant

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~~99296 Subsequent NICU care, per day, for the evaluation and management of a critically ill and unstable neonate or infant~~

~~99297 Subsequent NICU care, per day, for the evaluation and management of a critically ill though stable neonate or infant~~

~~99431 History and examination of the normal newborn infant, initiation of diagnostic and treatment programs and preparation of hospital records~~

~~99432 Normal newborn care in other than hospital or birthing room setting, including physical examination of baby and conference(s) with parent(s)~~

~~99433 Subsequent hospital care, for the evaluation and management of a normal newborn, per day~~

~~99440 Newborn resuscitation: provision of positive pressure ventilation and/or chest compressions in the presence of acute inadequate ventilation and/or cardiac output~~

## ~~Va. Code Section 38.2-3412.1: Mental/Emotional/Nervous Disorders~~

~~(must use UB 82 place of service codes from Section B of this Appendix to differentiate between inpatient, partial hospitalization, and outpatient claims where necessary)~~

### ~~ICD Codes~~

~~290, 293—294 Organic Psychotic Conditions~~

~~295—299 Other psychoses~~

~~300—302, 306—316 Neurotic disorders, personality disorders, sexual deviations, other non-psychotic mental disorders~~

~~317—319 Mental retardation~~

### ~~CPT Codes~~

~~99221—99223 Initial hospital care, per day, for the evaluation and management of a patient~~

~~99231—99233 Subsequent hospital care, per day, for the evaluation and management of a patient~~

~~99238 Hospital discharge day management; 30 minutes or less~~

~~99241—99255 Initial consultation for psychiatric evaluation of a patient includes examination of a patient and exchange of information with primary physician and other informants such as nurses or family members, and preparation of report.~~

~~99261—99263 Follow up consultation for psychiatric evaluation of a patient~~

~~90801 Psychiatric diagnostic interview examination including history, mental status, or disposition~~

~~90820 Interactive medical psychiatric diagnostic interview examination~~

~~90825 Psychiatric evaluation of hospital records, other psychiatric reports, psychometric and/or projective tests,~~

~~and other accumulated data for medical diagnostic purposes~~

~~96100 Psychological testing (includes psychodiagnostic assessment of personality, psychopathology, emotionality, intellectual abilities, e.g., WAIS-R, Rorschach, MMPI) with interpretation and report, per hour~~

~~90835 Nareosynthesis for psychiatric diagnostic and therapeutic purposes~~

~~90841 Individual medical psychotherapy by a physician, with continuing medical diagnostic evaluation, and drug management when indicated, including insight-oriented, behavior-modifying or supportive psychotherapy; (face to face with the patient); time unspecified~~

~~90842 approximately 75 to 80 minutes (90841)~~

~~90843 approximately 20 to 30 minutes (90841)~~

~~90844 approximately 45 to 50 minutes (90841)~~

~~90845 Medical psychoanalysis~~

~~90846 Family medical psychotherapy (without the patient present)~~

~~90847 Family medical psychotherapy (conjoint psychotherapy) by a physician, with continuing medical diagnostic evaluation, and drug management when indicated~~

~~90849 Multiple family group medical psychotherapy by a physician, with continuing medical diagnostic evaluation, and drug management when indicated~~

~~90853 Group medical psychotherapy by a physician, with continuing medical diagnostic evaluation and drug management when indicated~~

~~90855 Interactive individual medical psychotherapy~~

~~90857 Interactive group medical psychotherapy~~

~~90862 Pharmacologic management, including prescription, use, and review of medication with no more than minimal medical psychotherapy~~

### ~~Other Psychiatric Therapy~~

~~90870 Electroconvulsive therapy, single seizure~~

~~90871 Multiple seizures, per day~~

~~90880 Medical hypnotherapy~~

~~90882 Environmental intervention for medical management purposes on a psychiatric patient's behalf with agencies, employers, or institutions~~

~~90887 Interpretation or explanation of results of psychiatric, other medical examinations and procedures, or other accumulated data to family or other responsible persons, or advising them to assist patient~~

~~90889 Preparation of report of patient's psychiatric status, history, treatment, or progress (other than for legal or consultative purposes) for other physicians, agencies, or insurance carriers~~

Other Procedures

90899 Unlisted psychiatric service or procedure

Va. Code Section 38.2-3412.1: Alcohol and Drug Dependence

ICD Codes

291 Alcoholic Psychoses

303 Alcohol dependence syndrome

292 Drug Psychoses

304 Drug dependence

305 Nondependent abuse of drugs

CPT Codes

Same as listed above for Mental/Emotional/Nervous Disorders, but for above listed conditions.

Va. Code Section 38.2-3414: Obstetrical Services

Normal Delivery, Care in Pregnancy, Labor and Delivery

ICD Codes

650 Delivery requiring minimal or no assistance, with or without episiotomy, without fetal manipulation [e.g., rotation version] or instrumentation [forceps] of spontaneous, cephalic, vaginal, full term, single, live born infant. This code is for use as a single diagnosis code and is not to be used with any other code in the range 630-676

CPT Codes

Any codes in the maternity care and delivery range of 59000-59899 associated with ICD Code 650 listed above

All Other Obstetrical Services

ICD Codes

630-677, Complications of pregnancy, childbirth, and the puerperium

CPT Codes

Incision, Excision, Introduction, and Repair

59000 Amniocentesis, any method

59012 Cordocentesis (intrauterine), any method

59015 Chorionic villus sampling, any method

59020 Fetal contraction stress test

59025 Fetal non-stress test

59030 Fetal scalp blood sampling

59050 Fetal monitoring during labor by consulting physician (ie., non-attending physician) with written report (separate procedure); supervision and interpretation

59100 Hysterotomy, abdominal (e.g., for hydatidiform mole, abortion)

59120 Surgical treatment of ectopic pregnancy; tubal or ovarian, requiring salpingectomy and/or oophorectomy, abdominal or vaginal approach

59121 tubal or ovarian, without salpingectomy and/or oophorectomy (59120)

59130 abdominal pregnancy (59120)

59135 interstitial, uterine pregnancy requiring total hysterectomy (59120)

59136 interstitial, uterine pregnancy with partial resection of uterus (59120)

59140 cervical, with evacuation (59120)

59150 Laparoscopic treatment of ectopic pregnancy; without salpingectomy and/or oophorectomy

59151 with salpingectomy and/or oophorectomy (59150)

59160 Curettage, postpartum (separate procedure)

59200 Insertion of cervical dilator (e.g., laminaria, prostaglandin) (separate procedure)

59300 Episiotomy or vaginal repair, by other than attending physician

59320 Cerclage or cervix, during pregnancy; vaginal

59325 abdominal (59320)

59350 Hysterorrhaphy of ruptured uterus

Vaginal Delivery, Antepartum and Postpartum Care

59400 Routine obstetric care including antepartum care, vaginal delivery (with or without episiotomy, and/or forceps) and postpartum care

59409 Vaginal delivery only (with or without episiotomy and/or forceps)

59410 including postpartum care (59409)

59412 External cephalic version, with or without tocolysis

59414 Delivery of placenta (separate procedure)

59425 Antepartum care only; 4-6 visits

59426 7 or more visits (59425)

59430 Postpartum care only (separate procedure)

Cesarean Delivery

59510 Routine obstetric care including antepartum care, cesarean delivery, and postpartum care

59514 Cesarean delivery only

59515 including postpartum care (59514)

59525 Subtotal or total hysterectomy after cesarean delivery (list in addition to 59510 or 59515)

Abortion

99201-99233 Medical treatment of spontaneous complete abortion, any trimester

59812 Treatment of incomplete abortion, any trimester, completed surgically

59820 Treatment of missed abortion, completed surgically; first trimester

59821 second trimester (59820)

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~~59830 Treatment of septic abortion, completed surgically~~  
~~59840 Induced abortion, by dilation and curettage~~  
~~59841 Induced abortion, by dilation and evacuation~~  
~~59850 Induced abortion, by one or more intra-amniotic injections (amniocentesis injections), including hospital admission and visits, delivery of fetus and secundines;~~  
~~59851 with dilation and curettage and/or evacuation (59850)~~  
~~59852 with hysterotomy (failed intra-amniotic injection) (59850)~~

## ~~Other Procedures~~

~~59870 Uterine evacuation and curettage for hydatidiform mole~~  
~~59899 Unlisted procedure, maternity care and delivery~~

## ~~Anesthesia~~

~~00850 Cesarean section~~  
~~00855 Cesarean hysterectomy~~  
~~00857 Continuous epidural analgesia, for labor and cesarean section~~

~~Va. Code Section 38.2-3418: Pregnancy from Rape/Incest Same Codes as Obstetrical Services/Any Other Appropriate in cases where coverage is provided solely due to the provisions of § 38.2-3418 of the Code of Virginia~~

~~Va. Code Section 38.2-3418.1: Mammography~~

## ~~CPT Codes~~

~~76092 Screening Mammography, bilateral (two-view film study of each breast)~~

~~Va. Code Section 38.2-3411.1: Child Health Supervision, Services~~

~~(Well Baby Care)~~

## ~~CPT Codes~~

~~90700 Immunization, active; diphtheria, tetanus toxoids, and acellular pertussis vaccine (DTaP)~~  
~~90701 Diphtheria and tetanus toxoids and pertussis vaccine (DTP)~~  
~~90702 Diphtheria and tetanus toxoids (DT)~~  
~~90703 Tetanus toxoid~~  
~~90704 Mumps virus vaccine, live~~  
~~90705 Measles virus vaccine, live, attenuated~~  
~~90706 Rubella virus vaccine, live~~  
~~90707 Measles, mumps and rubella virus vaccine, live~~  
~~90708 Measles, and rubella virus vaccine, live~~  
~~90709 Rubella and mumps virus vaccine, live~~  
~~90710 Measles, mumps, rubella, and varicella vaccine~~  
~~90711 Diphtheria, tetanus toxoids, and pertussis (DTP) and injectable poliomyelitis vaccine~~  
~~90712 Poliovirus vaccine, live, oral (any type (s))~~

~~90716 Varicella (chicken pox) vaccine~~  
~~90720 Diphtheria, tetanus toxoids, and pertussis (DTP) and Hemophilus influenza B (HIB) vaccine~~  
~~90737 Hemophilus influenza B~~

## ~~New Patient~~

~~99381 Initial preventive medicine evaluation and management of an individual including a comprehensive history, a comprehensive examination, counseling/anticipatory guidance/risk factor reduction interventions, and the ordering of appropriate laboratory/diagnostic procedures, new patient; infant (age under 1 year)~~

~~99382 early childhood (age 1 through 4 years) (99381)~~

~~99383 late childhood (age 5 through 11 years) (99381)~~

## ~~Established Patient~~

~~99391 Periodic preventive medicine reevaluation and management of an individual including a comprehensive history, comprehensive examination, counseling/anticipatory guidance/risk factor reduction interventions, and the ordering of appropriate laboratory/diagnostic procedures, established patient; infant (age under 1 year)~~

~~99392 early childhood (age 1 through 4 years) (99391)~~

~~99393 late childhood (age 5 through 11 years) (99391)~~

~~96110 Developmental testing; limited (e.g., Developmental Screening Test II, Early Language Milestone Screen), with interpretation and report~~

~~81000 Urinalysis, by dip stick or tablet reagent for bilirubin, glucose, hemoglobin, ketones, leukocytes, nitrite, pH, protein, specific gravity, urobilinogen, any number of these constituents; non-automated, with microscopy~~

~~84030 Phenylalanine (PKU), blood~~

~~86580 Tuberculosis, intradermal~~

~~86585 Tuberculosis, tine test~~

~~Va. Code Section 38.2-3418.1.1: Bone Marrow Transplants (applies to Breast Cancer Only)~~

## ~~ICD Codes~~

~~174 through 174.9 female breast 175 through 175.9 male breast~~

## ~~CPT Codes~~

~~36520 Therapeutic apheresis (plasma and/or cell exchange)~~

~~38241 autologous~~

~~86950 Leukocyte transfusion~~

~~The Bureau is aware that because of the changing and unique nature of treatment involving this diagnosis and treatment procedures, reporting only those claim costs associated with these codes will lead to significant under~~

reporting. Accordingly, if one of the ICD Codes and any of the CPT codes shown above are utilized, the insurer should report all claim costs incurred within thirty (30) days prior to the CPT Coded procedure as well as all claim costs incurred within ninety (90) days following the CPT Coded procedure.

Va. Code Section 38.2-3418.2: Procedures Involving Bones and Joints

ICD Codes

- 524.6 – 524.69 Temporomandibular Joint Disorders
- 719 – 719.6, 719.9 Other and Unspecified Disorders of Joint
- 719.8 Other Specified Disorders of Joint

CPT Codes

- 20605 Intermediate joint, bursa or ganglion cyst (e.g., temporomandibular, acromioclavicular, wrist, elbow or ankle, olecranon bursa)
- 21010 Arthrotomy, temporomandibular joint
- 21050 Condylectomy, temporomandibular joint (separate procedure)
- 21060 Meniscectomy, partial or complete, temporomandibular joint (separate procedure)
- 21070 Coronoidectomy (separate procedure)
- 21116 Injection procedure for temporomandibular joint arthrography
- 21125 Augmentation, mandibular body or angle; prosthetic material
- 21127 With bond graft, onlay or interpositional (includes obtaining autograft)
- 21141 Reconstruction midface, LeFort I
- 21145 single piece, segment movement in any direction, requiring bone grafts
- 21146 two pieces, segment movement in any direction, requiring bone grafts
- 21147 three or more pieces, segment movement in any direction, requiring bone grafts
- 21150 Reconstruction midface, LeFort II; anterior intrusion
- 21151 any direction, requiring bone grafts
- 21193 Reconstruction of mandibular rami, horizontal, vertical, "C", or "L" osteotomy; without bone graft
- 21194 With bone graft (includes obtaining graft)
- 21195 Reconstruction of mandibular rami and/or body, sagittal split; without internal rigid fixation
- 21196 With internal rigid fixation
- 21198 Osteotomy, mandible, segmental
- 21206 Osteotomy, maxilla, segmental (e.g., Wassmund or Schuchard)

- 21208 Osteoplasty, facial bones; augmentation (autograft, allograft, or prosthetic implant)
- 21209 Reduction
- 21210 Graft, bone; nasal, maxillary or malar areas (includes obtaining graft)
- 21215 Mandible (includes obtaining graft)
- 21240 Arthroplasty, temporomandibular joint, with or without autograft (includes obtaining graft)
- 21242 Arthroplasty, temporomandibular joint, with allograft
- 21243 Arthroplasty, temporomandibular joint, with prosthetic joint replacement
- 21244 Reconstruction of mandible, extraoral, with transosteal bone plate (e.g., mandibular staple bone plate)
- 21245 Reconstruction of mandible or maxilla, subperiosteal implant; partial
- 21246 Complete
- 21247 Reconstruction of mandibular condyle with bone and cartilage autografts (includes obtaining grafts) (e.g., for hemifacial microsomia)
- 21480 Closed treatment of temporomandibular dislocation; initial or subsequent
- 21485 Complicated (e.g., recurrent requiring intermaxillary fixation or splinting), initial or subsequent
- 21490 Open treatment of temporomandibular dislocation
- 29800 Arthroscopy, temporomandibular joint, diagnostic, with or without synovial biopsy (separate procedure)
- 29804 Arthroscopy, temporomandibular joint, surgical
- 69535 Resection temporal bone, external approach (For middle fossa approach, see 69950-69970)
- 70100 Radiologic examination, mandible; partial, less than four views
- 70110 Complete, minimum for four views
- 70328 Radiologic examination, temporomandibular joint, open and closed mouth; unilateral
- 70330 Bilateral
- 70332 Temporomandibular joint arthrography, radiological supervision and interpretation
- 70336 Magnetic resonance (e.g., proton) imaging, temporomandibular joint
- 70486 Computerized axial tomography, maxillofacial area; without contrast material(s)
- 70487 With contrast material(s)
- 70488 Without contrast material, followed by contrast material(s) and further sections

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## B. Uniform Billing Code Numbers (UB-82)

Field Values	PLACE OF SERVICE CODES	Report As:
10q	Hospital, inpatient	Inpatient
1S	Hospital, affiliated hospice	Inpatient
1Z	Rehabilitation hospital, inpatient	Inpatient
20	Hospital, outpatient	Outpatient
2F	Hospital-based ambulatory surgical facility	Outpatient
2S	Hospital, outpatient hospice services	Outpatient
2Z	Rehabilitation hospital, outpatient	Outpatient
30	Provider's office	Outpatient
3S	Hospital, office	Outpatient
40	Patient's home	Outpatient
4S	Hospice (Home hospice services)	Outpatient
51	Psychiatric facility, inpatient	Inpatient
52	Psychiatric facility, outpatient	Outpatient
53	Psychiatric day care facility	Partial Hospitalization
54	Psychiatric night care facility	Partial Hospitalization
55	Residential substance abuse treatment facility	Inpatient
56	Outpatient substance abuse treatment facility	Outpatient
60	Independent clinical laboratory	Outpatient
70	Nursing home	Inpatient
80	Skilled nursing facility/extended care facility	Inpatient
90	Ambulance; ground	Outpatient
9A	Ambulance; air	Outpatient

9C Ambulance; sea Outpatient  
 00 Other unlisted licensed facility Outpatient

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

### FORMS (14VAC5-190)

#### Form 190-A.

<http://www.scc.virginia.gov/boi/co/health/mandben.aspx>.

VA.R. Doc. No. R17-4880; Filed December 6, 2016, 2:01 p.m.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD FOR BARBERS AND COSMETOLOGY

#### Final Regulation

Titles of Regulations: **18VAC41-20. Barbering and Cosmetology Regulations (amending 18VAC41-20-10, 18VAC41-20-20, 18VAC41-20-30, 18VAC41-20-50, 18VAC41-20-60, 18VAC41-20-80 through 18VAC41-20-140, 18VAC41-20-160, 18VAC41-20-180, 18VAC41-20-200, 18VAC41-20-210, 18VAC41-20-220, 18VAC41-20-240 through 18VAC41-20-280; repealing 18VAC41-20-190, 18VAC41-20-230).**

**18VAC41-40. Wax Technician Regulations (repealing 18VAC41-40-10 through 18VAC41-40-260).**

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

Effective Date: February 1, 2017.

Agency Contact: Demetrios J. Melis, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

#### Summary:

*The amendments are the result of a periodic review; repeal 18VAC41-40, Wax Technician Regulations, and incorporate wax technician regulations into 18VAC41-20; and include clarifying changes to text to ensure consistency with other board regulations and state and federal laws and compliance with current industry standards. The amendments (i) add new definitions; (ii) require disclosure of felonies, certain misdemeanors, and disciplinary actions; (iii) require individuals to apply for*

*licensure within five years of taking the exam; (iv) allow the board to decline to issue licenses, temporary permits, and temporary instructor permits if grounds exist that would allow the board to deny licensure; (v) require voided licenses to be returned to the board within 30 days of the license being voided and clarify what circumstances may lead to voiding a license; (vi) allow for board inspection of shops, salons, and schools during reasonable hours; (vii) require schools to provide specific information to the board, including changes to curriculum, and within required time periods; (viii) provide grounds for discipline for several prohibited actions; and (ix) update sanitation requirements, including a requirement that businesses provide a bathroom with hot and cold running water for clients.*

**Summary of Public Comments and Agency's Response:** No public comments were received by the promulgating agency.

Part I  
General

**18VAC41-20-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. All terms defined in Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia are incorporated in this chapter.

"Business entity" means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law.

"Direct supervision" means that a Virginia licensed barber, cosmetologist, ~~or~~ nail technician, or wax technician shall be present in the barbershop, cosmetology salon, ~~or~~ nail ~~technician~~ salon, or waxing salon at all times when services are being performed by a temporary permit holder or registered apprentice.

"Endorsement" means a method of obtaining a license by a person who is currently licensed in another state.

"Firm" means any business entity recognized under the laws of the Commonwealth of Virginia.

"Licensee" means any person, ~~partnership, association, limited liability company, or corporation~~ sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law holding a license issued by the Board for Barbers and Cosmetology, as defined in § 54.1-700 of the Code of Virginia.

"Post-secondary educational level" means an accredited college or university that is approved or accredited by the [ Southern Association of Colleges and Schools ] Commission on Colleges or by an accrediting agency that is recognized by the U.S. Secretary of Education.

"Reciprocity" means a conditional agreement between two or more states that will recognize one another's regulations and laws for equal privileges for mutual benefit.

"Reinstatement" means having a license or certificate restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license or certificate for another period of time.

"Responsible management" means the following individuals:

1. The sole proprietor of a sole proprietorship;
2. The partners of a general partnership;
3. The managing partners of a limited partnership;
4. The officers of a corporation;
5. The managers of a limited liability company;
6. The officers or directors of an association or both; and
7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

"Sole proprietor" means any individual, not a corporation, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Virginia state institution" for the purposes of these regulations means any institution approved by the Virginia Department of Education or the Virginia Department of Corrections.

Part II  
Entry

**18VAC41-20-20. General requirements for a barber, cosmetologist, ~~or~~ nail technician, or wax technician license.**

A. ~~In order to receive a license as a barber, cosmetologist, or nail technician, an applicant must~~ Any individual wishing to engage in barbering, cosmetology, nail care, or waxing shall obtain a license in compliance with § 54.1-703 of the Code of Virginia and shall meet the following qualifications:

1. The applicant shall be in good standing as a licensed barber, cosmetologist, ~~or~~ nail technician, or wax technician in ~~every jurisdiction~~ Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure, any disciplinary action taken in ~~another jurisdiction~~ Virginia and all other jurisdictions in connection with the applicant's practice as a barber, cosmetologist, ~~or~~ nail technician, or wax technician. ~~This includes [ but is not limited to ]~~ monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure ~~whether~~ if he has been previously licensed in Virginia as a

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barber, cosmetologist, ~~or~~ nail technician, or wax technician.

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein the board deems the applicant is unfit or unsuited to engage in barbering, cosmetology, nail care, or waxing. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose his physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia barber and cosmetology license laws and ~~the regulations of the board~~ this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, ~~the each applicant shall not have been convicted in any jurisdiction of a misdemeanor or felony which directly relates to the profession of barbering, cosmetology, or nail care. The board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of barbering, cosmetology, or nail care. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The applicant shall provide a certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the applicant to the board within 10 days after all appeal rights have expired~~ disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution, or physical injury within [ ~~three~~ two ] years of the date of the application; and

b. All felony convictions [ ~~during the applicant's lifetime~~ within 20 years of the date of application ].

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any

applicant in accordance with § 54.1-204 of the Code of Virginia.

5. The applicant shall provide evidence satisfactory to the board that the applicant has passed the ~~board-approved~~ board-approved examination, administered either by the board or by independent examiners.

B. Eligibility to sit for board-approved examination.

1. Training in the Commonwealth of Virginia. Any person completing an approved barber, cosmetology, ~~or~~ nail technician, or wax technician training program in a Virginia licensed barber, cosmetology, ~~or~~ nail technician, or wax technician school, respectively, or a Virginia public school's barber, cosmetology, ~~or~~ nail technician, or wax technician program approved by the State Virginia Department of Education shall be eligible for examination.

2. Training outside of the Commonwealth of Virginia, but within the United States and its territories.

a. Any person completing a barber or cosmetology training program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of 1,500 hours of training to be eligible for examination. If less than 1,500 hours of barber or cosmetology training was completed, an applicant must submit a certificate, diploma, or other documentation acceptable to the board verifying the completion of a substantially equivalent barber or cosmetology course and documentation of six months of barber or cosmetology work experience in order to be eligible for examination.

b. Any person completing a nail technician training program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of 150 hours of training to be eligible for examination. If less than 150 hours of nail technician training was completed, an applicant must submit a certificate, diploma, or other documentation acceptable to the board verifying the completion of a substantially equivalent nail technician course and documentation of six months of nail technician work experience in order to be eligible for the nail technician examination.

c. Any person completing a wax technician training program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of 115 hours of training to be eligible for examination. If less than 115 hours of wax technician training was completed, an applicant must submit a certificate, diploma, or other documentation acceptable to the board verifying the completion of a substantially equivalent wax technician course and documentation of six months of wax technician work experience in order to be eligible for the wax technician examination.

**18VAC41-20-30. License by endorsement.**

Upon proper application to the board, any person currently licensed to practice as a barber, cosmetologist, ~~or~~ nail technician, or wax technician who is a barber, [ ~~cosmetology~~ ~~or cosmetologist,~~ ] nail technician, or wax technician instructor, or who is a licensed instructor in the respective profession in any other state or jurisdiction of the United States and who has completed both a training program and a written and practical examination that is substantially equivalent to that required by ~~these regulations~~ this chapter, may be issued a barber, [ ~~cosmetology~~ cosmetologist ], ~~or~~ nail technician, or wax technician license or a barber, cosmetology ~~or~~, nail technician, or wax technician instructor certificate, respectively, without an examination. The applicant must also meet the requirements set forth in 18VAC41-20-20 [ A and 18VAC41-20-100 ].

**18VAC41-20-50. Exceptions to training requirements.**

A. Virginia licensed cosmetologists with a minimum of two years of work experience shall be eligible for the barber examination; likewise, a Virginia licensed barber with a minimum of two years of work experience shall be eligible for the cosmetology examination.

B. Virginia licensed barbers with less than two years of work experience and Virginia barber students enrolling in a Virginia cosmetology training school shall be given educational credit for the training received for the performances completed at a barber school; likewise, licensed Virginia cosmetologists with less than two years of work experience and Virginia cosmetology students enrolling in a Virginia barber training school shall be given educational credit for the training received for the performances completed at a cosmetology school.

C. Any barber, cosmetologist, ~~or~~ nail technician, or wax technician applicant having been trained as a barber, cosmetologist, ~~or~~ nail technician, or wax technician in any Virginia state institution shall be eligible for the respective examination.

D. Any barber, ~~or~~ cosmetologist, nail technician, or wax technician applicant having a minimum of two years experience in barbering, ~~or~~ cosmetology, nail care, or waxing in the United States armed forces and having provided documentation satisfactory to the board of that experience shall be eligible for the respective examination.

**18VAC41-20-60. Examination requirements and fees.**

A. Applicants for initial licensure shall pass both a practical examination and a written examination approved by the board. The examinations may be administered by the board or by a designated testing service.

B. Any applicant who passes one part of the examination shall not be required to take that part again provided both parts are passed within one year of the initial examination date.

C. Any candidate failing to appear as scheduled for examination shall forfeit the examination fee.

D. The fee for examination or reexamination is subject to contracted charges to the board by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts. The fee shall not exceed \$225 per candidate.

E. Any candidate failing to apply for initial licensure within five years of passing both a practical examination and a written examination shall be required to retake both portions. Records of examinations shall be maintained for a maximum of five years.

**18VAC41-20-80. Examination administration.**

A. The examinations shall be administered by the board or the designated testing service. The practical examination shall be supervised by a chief examiner.

B. Every barber, cosmetology, ~~or~~ nail technician, or wax technician examiner shall hold a current Virginia license in [ ~~their~~ his ] respective [ ~~professions~~ profession ], have three or more years of active experience as a licensed professional, and be currently practicing in that profession. Examiners shall attend training workshops sponsored by the board or by a testing service acting on behalf of the board.

C. No certified barber, cosmetology, ~~or~~ nail technician, or wax technician instructor who is currently teaching, or is a school owner, or is an apprentice sponsor shall be an examiner.

D. Each barber, cosmetology, ~~and~~ nail technician, and wax technician chief examiner shall hold a current Virginia license in his respective profession, have five or more years of active experience in that profession, have three years of active experience as an examiner, and be currently practicing in his respective profession. Chief examiners shall attend training workshops sponsored by the board or by a testing service acting on behalf of the board.

E. The applicant shall follow all procedures established by the board with regard to conduct at the examination. Such procedures shall include ~~any~~ written instructions communicated prior to the examination date and ~~any~~ instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all procedures established by the board and the testing service with regard to conduct at the examination may be grounds for denial of application.

**18VAC41-20-90. Barber, cosmetology, ~~and~~ nail technician, and wax technician temporary permits.**

A. A temporary permit to work under the supervision of a currently licensed barber, cosmetologist ~~or~~, nail technician, or wax technician may be issued only to applicants for initial licensure ~~that~~ who the board finds eligible for examination. There shall be no fee for a temporary permit.

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B. The temporary permit shall remain in force for 45 days following the examination date. The examination date shall be the first test date after the applicant has successfully submitted an application to the board that an examination is offered to the applicant by the board.

C. Any person continuing to practice barbering, cosmetology, ~~or nail care services, or waxing services~~ after a temporary permit has expired may be prosecuted and fined by the Commonwealth under §§ 54.1-111 A 1 and 54.1-202 of the Code of Virginia.

D. No applicant for examination shall be issued more than one temporary permit.

E. Temporary permits shall not be issued where grounds may exist to deny a license pursuant to § 54.1-204 of the Code of Virginia or 18VAC41-20-20.

**18VAC41-20-100. General requirements for a barber instructor certificate, cosmetology instructor certificate, ~~or nail technician instructor certificate, or wax technician instructor certificate.~~**

A. ~~Upon filing an application with the Board for Barbers and Cosmetology, any person meeting the qualifications set forth in this section shall be eligible for a barber, cosmetology, or nail technician instructor certificate, if the person:~~ Any individual wishing to engage in barbering instruction, cosmetology instruction, nail care instruction, or waxing instruction shall meet the following qualifications:

1. ~~Holds a current Virginia barber, cosmetology, or nail technician license, respectively; and The applicant shall be in good standing as a licensed barber, cosmetologist, nail technician, or wax technician, and instructor, respectively, in Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's practice as a barber, cosmetologist, nail technician, or wax technician, or in the practice of teaching any of those professions. This includes [ but is not limited to ] monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant has been previously licensed in Virginia as a barber instructor, cosmetology instructor, nail technician instructor, or wax technician instructor.~~

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein the board deems the applicant is unfit or unsuited to engage in the instruction of barbering, cosmetology, nail care, or waxing. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a

court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action;

2. ~~Passes~~ The applicant shall hold a current Virginia barber, cosmetology, nail technician, or wax technician license, respectively;

3. The applicant shall:

a. Pass a course in teaching techniques at the post-secondary educational level; ~~or~~

~~3. Completes~~ b. Complete an instructor training course approved by the Virginia Board for Barbers and Cosmetology under the supervision of a certified barber, cosmetologist, ~~or nail technician, or wax technician~~ instructor in a barber, cosmetology, ~~or nail technician, or wax technician~~ school, respectively; or

4. ~~Passes~~ c. Pass an examination in barber, cosmetology ~~or, nail technician, or wax technician~~ instruction respectively, administered by the board or by a testing service acting on behalf of the board; and

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution, or physical injury within [ ~~three~~ two ] years of the date of the application; and

b. All felony convictions [ during the applicant's lifetime within 20 years of the date of application ].

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

~~B. Applicants passing the examination for a barber, cosmetology or nail technician instructor certificate~~ Instructors shall be required to maintain a barber, cosmetology, ~~or nail technician, or wax technician~~ license, respectively.

**18VAC41-20-110. Student instructor temporary permit.**

A. A licensed barber, cosmetologist, ~~or nail technician, or wax technician~~ may be granted a student instructor temporary permit to function under the direct supervision of a barber instructor, cosmetology instructor, ~~or nail technician instructor, or wax technician instructor~~ respectively. A licensed nail technician or wax technician may also be granted a student instructor permit to function under the direct supervision of a cosmetology instructor.

B. The student instructor temporary permit shall remain in force for not more than 12 months after the date of issuance and shall be nontransferable and nonrenewable.

C. No applicant for examination shall be issued more than one student instructor temporary permit.

D. Failure to maintain a barber, cosmetology, ~~or~~ nail technician, or wax technician license shall disqualify an individual from holding a student instructor temporary permit.

E. Temporary permits shall not be issued where grounds may exist to deny a license pursuant to § 54.1-204 of the Code of Virginia or 18VAC41-20-100.

**18VAC41-20-120. ~~Shop~~ General requirements for a shop or salon license.**

A. Any ~~individual~~ firm wishing to operate a barbershop, cosmetology ~~or~~ salon, nail salon, or waxing salon shall obtain a shop or salon license in compliance with § 54.1-704.1 of the Code of Virginia; and shall meet the following qualifications in order to receive a license:

1. The applicant [ and all members of the responsible management ] shall be in good standing as a licensed shop or salon in Virginia and all other jurisdictions where licensed. The applicant [ and all members of the responsible management ] shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's operation of any barbershop, cosmetology salon, nail salon, or waxing salon or practice of the profession. This includes [ ~~but is not limited to~~ ] monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant [ or any member of the responsible management ] has been previously licensed in Virginia as a barbershop, cosmetology salon, nail salon, or waxing salon.

Upon review of the applicant's [ and all members of the responsible management's ] prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in the operation of a barbershop, cosmetology salon, nail salon, or waxing salon. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose his physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia barber and cosmetology license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm and all members of the responsible management regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions [ involving moral turpitude, sexual offense, drug distribution, or physical injury ] within [ ~~three~~ two ] years of the date of the application; and

b. All felony convictions [ within 20 years of the date of application ].

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

5. The applicant shall disclose the firm's responsible management.

B. A ~~barbershop, cosmetology, or nail salon~~ license ~~Shop or~~ salon licenses are issued to firms as defined in this chapter and shall not be transferable and shall bear the same name and address of the business. Any changes in the name, or address, or ownership of the shop or salon shall be reported to the board in writing within 30 days of such changes. ~~New owners shall be responsible for reporting such changes in writing to the board within 30 days of the changes.~~ The board shall not be responsible for the licensee's, certificate holder's, or permit holder's failure to receive notices, communications, and correspondence caused by the licensee's, certificate holder's, or permit holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board.

C. In the event of a closing of a barbershop or cosmetology or nail salon, the board must be notified by the owners in writing within 30 days of the closing, and the license must be returned by the owners to the board. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void and shall be returned to the board within 30 days of the change. Additionally, the firm shall apply for a new license, within 30 days of the change in the business entity. Such changes include [ ~~but are not limited to~~ ]:

1. Death of a sole proprietor;

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2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and

3. Conversion, formation, or dissolution of a corporation, a limited liability company, an association, or any other business entity recognized under the laws of the Commonwealth of Virginia.

D. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association shall be reported to the board in writing within 30 days of the change.

E. The board or any of its agents shall be allowed to inspect during reasonable hours any licensed shop or salon for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter. For purposes of a board inspection, "reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee generally is not open to the public substantially during the same hours, "reasonable hours" shall mean the business hours when the licensee is open to the public.

## **18VAC41-20-130. School General requirements for a school license.**

A. Any individual firm wishing to operate a barber, cosmetology, ~~or~~ nail technician, or wax technician school shall submit an application to the board at least 60 days prior to the date for which approval is sought, obtain a school license in compliance with § 54.1-704.2 of the Code of Virginia. All instruction and training of barbers, cosmetologists, or nail technicians shall be conducted under the direct supervision of a licensed barber, cosmetologist, or nail technician, respectively, and meet the following qualifications in order to receive a license:

1. The applicant [ and all members of the responsible management ] shall be in good standing as a licensed school in Virginia and all other jurisdiction where licensed. The applicant [ and all members of the responsible management ] shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's operation of any barbering, cosmetology, nail, or waxing school or practice of the profession. This includes [ but is not limited to ] to monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant [ or any member of the responsible management ] has been previously licensed in Virginia as a barbering, cosmetology, nail, or waxing school.

Upon review of the applicant's [ and all members of the responsible management's ] prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein the board deems the applicant is unfit or unsuited to engage in the operation of a barbering,

cosmetology, nail, or waxing school. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose the applicant's physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia barber and cosmetology license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm and all members of the responsible management regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions [ involving moral turpitude, sexual offense, drug distribution, or physical injury ] within [ ~~three~~ two ] years of the date of the application; and

b. All felony convictions [ within 20 years of the date of application ].

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

5. The applicant shall disclose the firm's responsible management.

B. A ~~barber~~ Barber, cosmetology, ~~or~~ nail technician, and wax technician school ~~license~~ licenses are issued to firms as defined in this chapter, shall not be transferable, and shall bear the same name and address as the school. Any changes in the name or the address of record or principal place of business of the school shall be reported to the board in writing within 30 days of such change. The board shall not be responsible for the licensee's, certificate holder's, or permit holder's failure to receive notices, communications, and correspondence caused by the licensee's, certificate holder's, or permit holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board. The name of the school must indicate that it is an educational institution. All signs, or other advertisements, must reflect the name as indicated on the license issued by the board and contain language indicating it is an educational institution.

C. In the event of a change of ownership of a school, the new owners shall be responsible for reporting such changes in writing to the board within 30 days of the changes.

D. In the event of a school closing, the board must be notified by the owners in writing within 30 days of the closing, and the license must be returned.

C. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void and shall be returned to the board within 30 days of the change. Additionally, the firm shall apply for a new license within 30 days of the change in business entity. Such changes include [ ~~but are not limited to~~ ]:

1. Death of a sole proprietor;
2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and
3. Conversion, formation, or dissolution of a corporation, a limited liability company, an association, or any other business entity recognized under the laws of the Commonwealth of Virginia.

D. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association shall be reported to the board in writing within 30 days of the change.

E. Barber schools, cosmetology schools, nail schools, or waxing schools under the Virginia Department of Education shall be exempted from licensure requirements.

F. The board or any of its agents shall be allowed to inspect during reasonable hours any licensed school for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter. For purposes of a board inspection, "reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee generally is not open to the public substantially during the same hours, "reasonable hours" shall mean the business hours when the licensee is open to the public.

Part III  
Fees

**18VAC41-20-140. Fees.**

The following fees apply:

FEE TYPE	AMOUNT DUE September 1, 2016, through August 31, 2018	AMOUNT DUE September 1, 2018, and after	WHEN DUE
Individuals:			
Application	\$75	\$105	With application

License by Endorsement	\$75	\$105	With application
Renewal:			
Barber	\$75	\$105	With renewal card prior to expiration date
Cosmetologist	\$75	\$105	With renewal card prior to expiration date
Nail <del>technician</del> Technician	\$75	\$105	With renewal card prior to expiration date
Wax Technician	[ \$75 ]	\$105	With renewal card prior to expiration date
Reinstatement	\$150* *includes \$75 renewal fee and \$75 reinstatement fee	\$210* *includes \$105 renewal fee and \$105 reinstatement fee	With reinstatement application
Instructors:			
Application	\$100	\$125	With application
License by Endorsement	\$100	\$125	With application
Renewal	\$100	\$150	With renewal card prior to expiration date
Reinstatement	\$200* *includes \$100 renewal fee and \$100 reinstatement fee	\$300* *includes \$150 renewal fee and \$150 reinstatement fee	With reinstatement application
Facilities:			
Application	\$130	\$190	With application
Renewal	\$130	\$190	With renewal card prior to expiration date

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Reinstatement	\$260* *includes \$130 renewal fee and \$130 reinstatement fee	\$380* *includes \$190 renewal fee and \$190 reinstatement fee	With reinstatement application
Schools:			
Application	\$140	\$220	With application
Add Program	\$100	\$100	With application
Renewal	\$140	\$220	With renewal card prior to expiration date
Reinstatement	\$280* *includes \$140 renewal fee and \$140 reinstatement fee	\$440* *includes \$220 renewal fee and \$220 reinstatement fee	With reinstatement application

## Part IV Renewal/Reinstatement

### 18VAC41-20-160. License renewal required.

A. All barber licenses, cosmetology licenses, nail technician licenses, barbershop licenses, cosmetology salon licenses, and nail technician salon licenses A license or certificate issued under this chapter shall expire two years from the last day of the month in which they were it was issued.

B. All barber instructor certificates, cosmetology instructor certificates, and nail technician instructor certificates shall expire on the same date as the certificate holder's license expiration date.

~~C. All school licenses shall expire on December 31 of each even-numbered year.~~

### 18VAC41-20-180. Failure to renew.

A. When a licensed or certified individual or business entity fails to renew its license or certificate within 30 days following its expiration date, the licensee or certificate holder shall apply for reinstatement of the license or certificate by submitting to the Department of Professional and Occupational Regulation a reinstatement application and renewal fee and reinstatement fee.

B. When a ~~barber, cosmetologist, or nail technician~~ licensed or certified individual or business entity fails to renew his ~~its~~ license within two years following the expiration date, reinstatement is no longer possible. To resume practice, the former licensee or certificate holder shall apply for licensure or certification as a new applicant, and shall meet all current application requirements, shall pass the board's current examination and shall receive a new license. Individuals applying for licensure under this section shall be eligible to

~~apply for a temporary permit from the board under 18VAC41-20-90 entry requirements for each respective license or certificate.~~

~~C. When a barber instructor, cosmetology instructor, or nail technician instructor fails to renew his certificate within two years following the expiration date, reinstatement is no longer possible. To resume practice, the former certificate holder shall apply as a new applicant, meet all current application requirements, and receive a new license or temporary permit from the board. Upon receiving the new license, the individual may apply for a new instructor's certificate.~~

~~D. C.~~ The application for reinstatement for a school shall provide (i) the reasons for failing to renew prior to the expiration date; and (ii) a notarized statement that all students currently enrolled or seeking to enroll at the school have been notified in writing that the school's license has expired. All of these materials shall be called the application package. Reinstatement will be considered by the board if the school consents to and satisfactorily passes an inspection of the school and if the school's records are maintained in accordance with 18VAC41-20-240 and 18VAC41-20-250 and 18VAC41-20-260 by the Department of Professional and Occupational Regulation. Pursuant to ~~18VAC41-20-190~~ 18VAC41-20-130, upon receipt of the reinstatement fee, application package, and inspection results, the board may reinstate the school's license or require requalification or both. If the reinstatement application package and reinstatement fee are not received by the board within six months following the expiration date of the school's license, the board will notify the testing service that prospective graduates of the unlicensed school are not acceptable candidates for the examination. Such notification will be sent to the school and must be displayed in a conspicuous manner by the school in an area that is accessible to the public. No student shall be disqualified from taking the examination because the school was not licensed for a portion of the time the student attended if the school license is reinstated by the board.

~~E. D.~~ The date a renewal fee is received by the Department of Professional and Occupational Regulation, or its agent, will be used to determine whether ~~[ a penalty fee or ]~~ the requirement for reinstatement of a license or certificate is applicable.

~~F. E.~~ When a license or certificate is reinstated, the licensee or certificate holder shall be assigned an expiration date two years from the date of the last day of the month of reinstatement ~~except for school licenses that shall expire on December 31 of each even-numbered year.~~

~~G. F.~~ A licensee or certificate holder ~~who~~ that reinstates ~~his~~ its license or certificate shall be regarded as having been continuously licensed or certified without interruption. Therefore, a licensee or certificate holder shall be subject to the authority of the board for activities performed prior to reinstatement.

H. G. A licensee or certificate holder ~~who~~ that fails to reinstate ~~his~~ its license or certificate shall be regarded as unlicensed or uncertified from the expiration date of the license or certificate forward. Nothing in ~~these regulations~~ this chapter shall divest the board of its authority to discipline a licensee or certificate holder for a violation of the law or regulations during the period of time for which the individual was licensed or certified.

Part V

Barber ~~and~~ Cosmetology, Nail, and Waxing Schools

**18VAC41-20-190. Applicants for state approval. (Repealed.)**

~~A. Any person, firm, or corporation desiring to operate a barber, cosmetology, or nail school shall submit an application to the board at least 60 days prior to the date for which approval is sought.~~

~~B. Barber schools, nail schools, or cosmetology schools under the Virginia Department of Education shall be exempted from licensure requirements.~~

**18VAC41-20-200. General requirements.**

A barber, cosmetology, ~~or~~ nail, or waxing school shall:

1. Hold a school license for each and every location.
2. Hold a salon license if the school receives compensation for services provided in its clinic.
3. Employ a staff of [ and ensure all training is conducted by ] licensed and certified barber, cosmetology, ~~or~~ nail technician, or wax technician instructors, respectively. [ Licensed and certified cosmetology instructors may also instruct in nail and waxing programs. ]
4. Develop individuals for entry level competency in barbering, cosmetology, ~~or~~ nail care, or waxing.
5. Submit its curricula for board approval. [ All changes to curricula must be resubmitted and approved by the board. ]
  - a. Barber curricula shall be based on a minimum of 1,500 clock hours and shall include performances in accordance with 18VAC41-20-220.
  - b. Cosmetology curricula shall be based on a minimum of 1,500 clock hours and shall include performances in accordance with 18VAC41-20-220.
  - c. Nail technician curricula shall be based on a minimum of 150 clock hours and shall include performances in accordance with 18VAC41-20-220.
  - d. Wax technician curricula shall be based on a minimum of 115 clock hours and shall include performances in accordance with 18VAC41-20-220.
6. Inform the public that all services are performed by students if the school receives compensation for services provided in its clinic by posting a notice in the reception area of the shop or salon in plain view of the public.
7. ~~Classroom~~ Conduct classroom instruction ~~must be conducted~~ in an area separate from the clinic area where

practical instruction is conducted and services are provided.

8. Possess the necessary equipment and implements to teach the respective curriculum. If any such equipment or implement is not owned by the school, then a copy of all agreements associated with the use of such property by the school [ ~~the~~ ] shall be provided to the board.

**18VAC41-20-210. Curriculum requirements.**

A. Each barber school shall submit with its application a curriculum including [ ~~but not limited to,~~ ] a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure. The outline for barbering shall include [ ~~but not be limited to,~~ ] the following:

1. School policies;
2. State law, regulations, and professional ethics;
3. Business and shop management;
4. Client consultation;
5. Personal hygiene;
6. Cutting the hair with a razor, clippers, and shears;
7. Tapering the hair;
8. Thinning the hair;
9. Shampooing the hair;
10. Styling the hair with a hand hair dryer;
11. Thermal waving;
12. Permanent waving with chemicals;
13. Shaving;
14. Trimming a moustache or beard;
15. Applying hair color;
16. Lightening or toning the hair;
17. Analyzing skin or scalp conditions;
18. Giving scalp treatments;
19. Giving basic facial massage or treatment;
20. Sanitizing and maintaining implements and equipment; and
21. Honing and stropping a razor.

B. Each cosmetology school shall submit with its application a curriculum including [ ~~but not limited to,~~ ] a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure. The outline for cosmetology shall include [ ~~but not be limited to,~~ ] the following:

1. Orientation:
  - a. School policies;
  - b. State law, regulations, and professional ethics;

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- c. Personal hygiene; and
  - d. Bacteriology, sterilization, and sanitation.
2. Manicuring and pedicuring:
- a. Anatomy and physiology;
  - b. Diseases and disorders;
  - c. Procedures to include both natural and artificial application; and
  - d. Sterilization.
3. Shampooing and rinsing:
- a. Fundamentals;
  - b. Safety rules;
  - c. Procedures; and
  - d. Chemistry, anatomy, and physiology.
4. Scalp treatments:
- a. Analysis;
  - b. Disorders and diseases;
  - c. Manipulations; and
  - d. Treatments.
5. Hair styling:
- a. Anatomy and facial shapes;
  - b. Finger waving, molding, and pin curling;
  - c. Roller curling, combing, and brushing; and
  - d. Heat curling, waving, ~~braiding~~ and pressing.
6. Hair cutting:
- a. Anatomy and physiology;
  - b. Fundamentals, materials, and equipment;
  - c. Procedures; and
  - d. Safety practices.
7. Permanent waving-chemical relaxing:
- a. Analysis;
  - b. Supplies and equipment;
  - c. Procedures and practical application;
  - d. Chemistry;
  - e. Recordkeeping; and
  - f. Safety.
8. Hair coloring and bleaching:
- a. Analysis and basic color theory;
  - b. Supplies and equipment;
  - c. Procedures and practical application;
  - d. Chemistry and classifications;
  - e. Recordkeeping; and
  - f. Safety.
9. Skin care and make-up:
- a. Analysis;

- b. Anatomy;
  - c. Health, safety, and sanitary rules;
  - d. Procedures;
  - e. Chemistry and light therapy;
  - f. Temporary removal of hair; and
  - g. Lash and brow tinting.
10. Wigs, hair pieces, and related theory:
- a. Sanitation and sterilization;
  - b. Types; and
  - c. Procedures.
11. Salon management:
- a. Business ethics; and
  - b. Care of equipment.

C. Each nail school shall submit with its application a curriculum including [ ~~but not be limited to,~~ ] a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure. The outline for nail care shall include [ ~~but not be limited to,~~ ] the following:

1. Orientation:

a. School policies;

b. State law, regulations, and professional ethics;

2. Sterilization, sanitation, bacteriology, and safety;

3. Anatomy and physiology;

4. Diseases and disorders of the nail;

5. Nail procedures (i.e., manicuring, pedicuring, and nail extensions); and

6. Nail theory and nail structure and composition.

D. Each waxing school shall submit with its application a curriculum including [ ~~but not limited to,~~ ] a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure. The outline for waxing shall include [ ~~but not be limited to,~~ ] the following:

1. Orientation:

a. School policies;

b. State law, regulations, and professional ethics; and

c. Personal hygiene.

2. Skin care and treatment:

a. Analysis;

b. Anatomy and physiology;

c. Diseases and disorders of the skin;

d. Health sterilization, sanitation, bacteriology, and safety including infectious disease control measures; and

e. Temporary removal of hair.

- 3. Skin theory, skin structure, and composition.
- 4. Client consultation:
  - a. Health conditions;
  - b. Skin analysis;
  - c. Treatments;
  - d. Client expectations; and
  - d. Health forms and questionnaires.
- 5. Waxing procedures for brow, lip, facial, legs, arms, underarm, chest, back, and bikini areas:
  - a. Fundamentals;
  - b. Safety rules; and
  - c. Procedures.
- 6. Wax treatments:
  - a. Analysis;
  - b. Disorders and diseases;
  - c. Manipulations; and
  - d. Treatments.
- 7. Salon management:
  - a. Business ethics; and
  - b. Care of equipment.

Hair and scalp treatments	10
Hair styling	320
Tinting	15
Bleaching and frosting	10
Temporary rinses	10
Semi-permanent color	10
Cold permanent waving or chemical relaxing	25
Hair shaping	50
Wig care, styling, placing on model	5
Finger waving and thermal waving	30
Manicures/ <u>and</u> pedicures	15
<del>Facials</del> <u>Basic facials</u> and waxings	5
Sculptured nails/ <u>and</u> nail tips/ <u>and</u> wraps	20
TOTAL	525

**18VAC41-20-220. Hours of instruction and performances.**

A. Curriculum and performance requirements shall be offered over a minimum of 1,500 clock hours for barbering and cosmetology, ~~and~~ 150 clock hours for nail care, and 115 clock hours for waxing.

B. The curriculum requirements for barbering must include the following minimum performances:

Hair and scalp treatments	10
Hair styling	320
Tinting	15
Bleaching and frosting	10
Temporary rinses	10
Semi-permanent color	10
Cold permanent waving or chemical relaxing	25
Hair shaping	50
Wig care, styling, placing on model	5
Finger waving and thermal waving	30
<del>Facials</del> <u>Basic facials</u> and waxings	5
TOTAL	490

C. The curriculum requirements for cosmetology must include the following minimum performances:

D. The curriculum requirements for nail care must include the following minimum performances:

Manicures	30
Pedicures	15
Individual sculptured nails/ <u>and</u> nail tips	200
Individual removals	10
Individual nail wraps	20
TOTAL	275

E. The curriculum requirements for waxing must include the following minimum performances:

<u>Arms</u>	<u>4</u>
<u>Back</u>	<u>2</u>
<u>Bikini area</u>	<u>6</u>
<u>Brows</u>	<u>12</u>
<u>Chest</u>	<u>1</u>
<u>Facial (i.e., face, chin, and cheek and lip)</u>	<u>6</u>
<u>Leg</u>	<u>3</u>
<u>Underarm</u>	<u>2</u>
TOTAL	36

**18VAC41-20-230. School identification. (Repealed.)**

~~Each barber, cosmetology, or nail care school approved by the board shall identify itself to the public as a teaching institution.~~

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## 18VAC41-20-240. Records.

A. Schools are required to keep upon graduation shall maintain on the premises of each school and available for inspection by the board or any of its agents the following records for the period of a student's enrollment through five years after the student's completion of the curriculum, termination, or withdrawal, written records of hours and performances showing what instruction a student has received for a period of five years after the student terminates or completes the curriculum of the school. These records shall be available for inspection by the department. All records must be kept on the premises of each school:

1. Enrollment application containing student's signature and a [ 2x2 two-inch by two-inch ] color head and shoulders photograph;
2. Daily record of attendance containing student's signature;
3. Student clock hours containing student's signature and method of calculation;
4. Practical performance completion sheets containing student's signature;
5. Final transcript; and
6. All other relevant documents that account for a student's accrued clock hours and practical applications.

B. Schools shall produce to the board or any of its agents within 10 days of the request any document, book, or record concerning any student, or for which the licensee is required to maintain records, for inspection and copying by the board or its agents. The board may extend such [ time frame timeframe ] upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

C. Schools shall, within 21 days upon receipt of a written request from a student, provide documentation of hours and performances completed by the student as required to be maintained by subsection A of this section.

D. Prior to a school changing ownership or a school closing, the school is required to provide to current students documentation of hours and performances completed.

E. For a period of one year after a school changes ownership, the school shall provide, within 21 days upon receipt of a written request from a student, documentation of hours and performances completed by a current student.

## 18VAC41-20-250. Hours reported Reporting.

A. Schools shall provide, in a manner, format, and frequency prescribed by the board, a roster of all current students and a roster of students who attended in the preceding six months prior to the reporting deadline.

B. Within 30 days of the closing of a licensed barber school, cosmetology school, or nail care school, for any reason, ceasing to operate, whether through dissolution or alteration of the business entity, the school shall provide a written

report to the board on performances and hours of each of its students who have not completed the program.

## Part VI Standards of Practice

### 18VAC41-20-260. Display of license.

A. Each shop [ ~~owner~~ ], salon [ ~~owner~~ ], or school [ ~~owner~~ ] shall ensure that all current licenses, certificates or permits issued by the board shall be displayed in plain view of the public either in the reception area or at individual work stations of the shop, salon, or school ~~in plain view of the public~~. Duplicate licenses, certificates, or permits shall be posted in a like manner in every shop, salon, or school location where the regulant provides services.

B. Each shop [ ~~owner~~ ], salon [ ~~owner~~ ], or school [ ~~owner~~ ] shall ensure that no employee, licensee, student, or apprentice performs any service beyond the scope of practice for the applicable license.

C. All licensees, certificate holders, and permit holders shall operate under the name in which the license, certificate, or permit is issued.

D. Unless also licensed as a cosmetologist, a barber is required to hold a separate nail technician or wax technician license if ~~he will be performing nail care or waxing manicures or pedicures or applying artificial nails.~~

E. All apprenticeship cards issued by the Department of Labor and Industry (DOLI) shall be displayed in plain view of the public either in the reception area or at individual work stations of the shop or salon. The apprentice sponsor shall require each apprentice to wear a badge clearly indicating [ ~~their~~ his ] status as a DOLI registered apprentice.

### 18VAC41-20-270. Sanitation and safety standards for shops, salons, and schools.

A. Sanitation and safety standards. Any shop, salon, school, or facility where barber, cosmetology, or nail ~~services or waxing services~~ are delivered to the public must be clean and sanitary at all times. Compliance with these rules does not confer compliance with other requirements set forth by federal, state, and local laws, codes, ordinances, and regulations as they apply to business operation, physical construction and maintenance, safety, and public health. Licensees shall take sufficient measures to prevent the transmission of communicable and infectious diseases and comply with the sanitation standards identified in this section and shall [ ~~insure~~ ensure ] that all employees likewise comply.

B. Disinfection and storage of implements.

1. A wet disinfection unit is a container large enough to hold a disinfectant solution in which the objects to be disinfected are completely immersed. A wet disinfection unit must have a cover to prevent contamination of the solution. The solution must be a hospital [ ~~(grade)~~ grade ] and tuberculocidal disinfectant solution registered with the Environmental Protection Agency (EPA). Disinfectant solutions shall be used according to manufacturer's

directions. Disinfection is to be carried out in the following manner:

2. Disinfection of multiuse items constructed of hard, nonporous materials such as metal, glass, or plastic that the manufacturer designed for use on more than one client, including [ but not limited to ] clippers, scissors, combs, and nippers is to be carried out in the following manner prior to servicing a client:

- a. Remove ~~hair and~~ all foreign matter from the object, utilizing a brush if needed. Drill bits are to be soaked in acetone and scrubbed with a wire brush to remove all foreign matter.
- b. Wash thoroughly with hot water and soap.
- c. Rinse thoroughly with clean water and dry thoroughly with a clean paper towel.
- d. Fully immerse ~~instruments~~ implements into solution for a minimum of 10 minutes, and
- e. After immersion, rinse articles, thoroughly dry with a clean paper towel, and store in a clean pre-disinfected and dry cabinet, drawer, or nonairtight covered container, or leave instruments in an EPA-registered disinfection/storage solution used according to manufacturer's directions.

3. Single-use items designed by the manufacturer for use on no more than one client should be discarded immediately after use on each individual client, including [ but not limited to ] powder puffs, lip color, cheek color, sponges, styptic pencils, or nail care implements. The disinfection and reuse of these items is not permitted and the use of single-use items on more than one client is prohibited.

~~2.~~ 4. For the purpose of recharging, rechargeable clippers may be stored in an area other than in a closed cabinet or container. This area shall be clean and the cutting edges of any clippers are to be disinfected.

~~3.~~ 5. Electrical clipper blades shall be disinfected before and after each use. ~~Disinfection is to be carried out in the following manner:~~

- a. ~~Remove all hair and foreign matter;~~
- b. ~~Remove blade and all hair and foreign matter under blade; and~~
- e. ~~Completely immerse clipper blade into an EPA-registered hospital (grade) and tuberculocidal disinfectant solution for not less than 10 minutes. Wipe the entire handle down with the solution.~~

~~d.~~ If the clipper blade cannot be removed, the use of a spray or foam used according to the manufacturer's instructions will be acceptable provided that the disinfectant is an EPA-registered hospital [ ~~(grade)~~ grade ] and tuberculocidal disinfectant solution, and that the entire handle is also disinfected by wiping with the disinfectant solution.

~~4. All materials including cosmetic and nail brushes, sponges, chamois, spatulas and galvanic electrodes must be cleaned with warm water and soap or detergent to remove all foreign matter. Implements should then be rinsed, thoroughly dried with a clean paper towel, and completely immersed in an EPA-registered hospital (grade) and tuberculocidal disinfectant solution. Such implements shall be soaked for 10 minutes or more, removed, rinsed, dried thoroughly and stored in a pre-disinfected and dry drawer, cabinet or nonairtight covered container, or left in an EPA-registered disinfection/storage solution used according to manufacturer's directions.~~

~~5.~~ 6. All wax pots ~~will~~ shall be cleaned and disinfected with an EPA-registered hospital [ ~~(grade)~~ grade ] and tuberculocidal disinfectant solution with no sticks left standing in the wax at any time. The area immediately surrounding the wax pot shall be clean and free of clutter, waste materials, spills, and any other items which may pose a hazard.

~~6.~~ 7. Each barber, cosmetologist, ~~and~~ nail technician, and wax technician must have a wet disinfection unit at his station.

~~7. Nail brushes, nippers, finger bowls, disinfectable or washable files and buffers and other instruments must be washed in soap and water (files are to be scrubbed with a brush to remove all foreign matter), rinsed, thoroughly dried with a clean paper towel, and then completely immersed in an EPA-registered hospital (grade) and tuberculocidal disinfectant solution for 10 minutes after each use. After disinfection they must be rinsed, dried thoroughly with a clean paper towel, and placed in a dry, pre-disinfected, nonairtight covered receptacle, cabinet or drawer, or left in an EPA-registered disinfectant/storage system used according to manufacturer's directions.~~

~~8. Drill bits are to be soaked in acetone and scrubbed with a wire brush to remove all foreign matter. All foreign matter must be removed. The drill bits must then be cleaned with warm water and soap or detergent and rinsed, dried thoroughly with a clean paper towel, and completely immersed in an EPA-registered hospital (grade) and tuberculocidal disinfectant solution. Such implements shall be soaked for 10 minutes or more, removed, rinsed, dried thoroughly, and stored in a pre-disinfected and dry drawer, cabinet or nonairtight covered container, or left in an EPA-registered disinfection/storage solution used according to manufacturer's directions.~~

8. Sinks, bowls, tubs, whirlpool units, air-jetted basins, pipe-less units, and non-whirlpool basins used in the performance of nail care shall be maintained in accordance with manufacturer's recommendations. They shall be cleaned and disinfected immediately after each client in the following manner:

- a. Drain all water and remove all debris;

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b. Clean the surfaces and walls with soap or detergent to remove all visible debris, oils, and product residue and then rinse with water;

c. Disinfect by spraying or wiping the surface with an [ appropriate EPA-registered hospital grade and tuberculocidal ] disinfectant; and

d. Wipe dry with a clean towel.

## C. General sanitation and safety requirements.

1. ~~All furniture, walls, floors, and windows shall be clean and in good repair. Wash basins and shampoo sinks shall be clean~~ Service chairs, wash basins, shampoo sinks, workstations and workstands, and back bars shall be clean.

2. ~~The floor surface in the immediate all work area areas~~ must be of a washable surface other than carpet. The floor must be kept clean; and free of hair, nail clippings, dropped articles, spills and clutter, trash, electrical cords, other waste materials, and any other items which may pose a hazard;

3. ~~Walls All furniture, fixtures, walls, floors, windows, and ceilings in the immediate work area must be~~ shall be clean and in good repair; and free of water seepage and dirt. Any mats shall be secured or shall [ lay lie ] flat;

4. ~~A fully functional bathroom in the same building with a working toilet and sink [ must be available for clients~~ shall be maintained exclusively for client use ]. There must be hot and cold running water. Fixtures must be in good condition. The bathroom must be lighted and sufficiently ventilated. If there is a window, it must have a screen. There must be antibacterial soap and clean individual single-use towels or hand air-drying device for the client's use. Laundering of towels is allowed, space permitting. The bathroom must not be used as a work area or for the open storage of chemicals [ . For facilities newly occupied after January 1, 2017, the bathroom shall be maintained exclusively for client use ];

5. ~~General areas for client use must be neat and clean with a waste receptacle for common trash;~~

6. ~~Electrical cords shall be placed to prevent entanglement by the client or licensee; and 7. Electrical electrical outlets shall be covered by plates;~~

7. All sharp tools, implements, and heat-producing appliances shall be in safe working order at all times, safely stored, and placed so as to prevent any accidental injury to the client or licensee;

8. ~~The salon area shall be sufficiently ventilated to exhaust hazardous or objectionable airborne chemicals, and to allow the free flow of air; and~~

9. ~~Adequate lighting shall be provided.~~

## D. Equipment sanitation.

1. ~~Service chairs, wash basins, shampoo sinks and workstations shall be clean. Floors shall be kept free of hair, nail product, and other waste materials. Combs,~~

~~brushes, towels, razors, clippers, scissors, nippers, and other instruments shall be cleaned and sanitized after every use and stored free from contamination.~~

2. ~~The top of workstands or back bars shall be kept clean;~~

3. ~~The work area shall be free of clutter, trash, and any other items that may cause a hazard;~~

4. ~~Heat producing appliances and equipment shall be placed so as to prevent any accidental injury to the client or licensee; and~~

5. ~~Electrical appliances and equipment shall be in safe working order at all times.~~

## E. D. Articles, tools, and products.

1. ~~Clean towels and robes, or other linens shall be used for each patron. Clean towels, robes, or other linens shall be stored in a clean pre-disinfected and dry cabinet, drawer, or nonairtight covered container. Soiled towels and robes, or smocks other linens shall be stored in an enclosed a container enclosed on all sides including the top, except if the towels are stored in a separate laundry rooms. room;~~

2. ~~Whenever a haircloth is used, a clean towel or neck strip shall be placed around the neck of the patron to prevent the haircloth from touching the skin;~~

3. ~~Scissors, razors, clippers, nippers, and all sharp-edged cutting instruments shall be sanitized after each use with a disinfectant in accordance with the manufacturer's instructions.~~

4. ~~Hair brushes and combs shall be washed in soap and hot water and sanitized after each use. Cleaned instruments, such as combs, hair brushes, shears, towels, etc., shall be kept free from contamination.~~

5. ~~No alum or other astringent shall be used in stick form. Liquid or powder astringent must be used.~~

6. ~~Permanent wave rods shall be rinsed after each use. End papers shall not be reused and shall be destroyed after each use.~~

7. ~~3. Soiled implements must be removed from the tops of work stations immediately after use;~~

8. ~~Clean spatulas, other clean tools, or clean disposable gloves shall be used to remove bulk substances from containers;~~

9. ~~Powder puffs, lip color, cheek color, sponges, or styptic pencils that cannot be sanitized or sterilized are prohibited from being used on more than one client;~~

10. ~~4. Lotions, ointments, creams, and powders shall be [ labeled and ] kept in closed containers. A clean spatula, other clean tools, or clean disposable gloves shall be used to remove bulk substances such as creams or ointments from jars. Sterile cotton or sponges shall be used to apply creams, lotions, and powders. Cosmetic containers shall be recovered covered after each use;~~

~~11. 5.~~ For nail care, if a sanitary container shall be is provided to each for a client. Emery boards shall be discarded after use on each individual client, the sanitary container shall be labeled and implements shall be used solely for that specific client. Disinfection shall be carried out in accordance with subdivisions B 1 and B 2 of this section;

~~12. All sharp tools, implements, and heat producing appliances shall be safely stored;~~

~~13. Pre-sanitized tools and implements, linens and equipment shall be stored for use in a sanitary enclosed cabinet or covered receptacle;~~

~~14. Soiled towels, linens and implements shall be deposited in a container made of cleanable materials and separate from those that are clean or pre-sanitized;~~

~~15. 6.~~ No substance other than a sterile styptic powder or sterile liquid astringent approved for homeostasis and applied with a sterile single-use applicator shall be used to check bleeding; and

~~16. 7.~~ Any disposable material making contact with blood or other body fluid shall be disposed of in a sealed plastic bag and removed from the shop, salon, school, or facility in accordance with the guidelines of the Department of Health.

**F. E.** Chemical storage and emergency information.

1. Shops, salons, schools, and facilities shall have in the immediate working area a binder with all [ ~~Material~~ ] Safety Data Sheets [ ~~(MSDS)~~ (SDS) ] provided by manufacturers for any chemical products used;

2. Shop, salons, schools, and facilities shall have a blood spill clean-up kit in the work area that contains at minimum latex gloves, two [ ~~12x12~~ 12-inch by 12-inch ] towels, one disposable trash bag, bleach, one empty spray bottle, and one mask with face shield or any Occupational Safety and Health Administration (OSHA) approved blood spill clean-up kit;

3. Flammable chemicals shall be [ labeled and ] stored in a nonflammable storage cabinet or a properly ventilated room; and

4. Chemicals that could interact in a hazardous manner (oxidizers, catalysts and solvents) shall be [ labeled and ] separated in storage.

**G. E.** Client health guidelines.

1. All employees providing client services shall cleanse their hands with an antibacterial product prior to providing services to each client. Licensees shall require that clients for nail care services shall cleanse their hands immediately prior to the requested nail care service;

2. An artificial nail shall only be applied to a healthy natural nail;

3. A nail drill or motorized instrument shall be used only on the free edge of the nail;

4. No shop, salon, school, or facility providing cosmetology or nail care services shall have on the premises cosmetic products containing hazardous substances that have been banned by the U.S. Food and Drug Administration (FDA) for use in cosmetic products.

5. No product shall be used in a manner that is disapproved by the FDA; and

6. All regulated services must be performed in a facility that is in compliance with current local building and zoning codes.

**H. G.** In addition to any requirements set forth in this section, all licensees and temporary permit holders shall adhere to regulations and guidelines established by the Virginia Department of Health and the Occupational Safety and Health Compliance Division of the Virginia Department of Labor and Industry.

**I. H.** All shops, salons, schools, and facilities shall immediately report the results of any inspection of the shop, salon, or school by the Virginia Department of Health as required by § 54.1-705 of the Code of Virginia.

**J. I.** All shops, salons, schools, and facilities shall maintain a self-inspection form on file to be updated on an annual basis, and kept for five years, so that it may be requested and reviewed by the board at its discretion.

**18VAC41-20-280. Grounds for license revocation or suspension; denial of application, renewal or reinstatement; or imposition of a monetary penalty.**

~~A.~~ The board may, in considering the totality of the circumstances, fine any licensee, certificate holder, or permit holder; suspend or revoke or refuse to renew or reinstate any license, certificate, or permit; or deny any application issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board this chapter if the board it finds that the licensee, certificate holder, permit holder, or applicant;

~~1. The licensee, certificate holder, permit holder or applicant is~~ Is incompetent, or negligent in practice, or incapable mentally or physically, as those terms are generally understood in the profession, to practice as a barber, cosmetologist, ~~or~~ nail technician, or wax technician, or to operate a [ ~~barbershop, cosmetology salon, nail salon, or waxing salon~~ shop, salon, or school ];

~~2. The licensee, certificate holder, permit holder or applicant is~~ Is convicted of fraud or deceit in the practice or teaching of barbering, cosmetology, ~~or~~ nail care, or waxing or fails to teach the curriculum as provided for in this chapter;

~~3. The licensee, certificate holder, permit holder or applicant attempted~~ Attempts to obtain, obtained, renewed or reinstated a license, certificate, or ~~permit~~ temporary license by false or fraudulent representation;

~~4. The licensee, certificate holder, permit holder or applicant violates~~ Violates or induces others to violate, or

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# Regulations

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cooperates with others in violating, any of the provisions of ~~these regulations~~ this chapter or Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of the establishment in which any barber, cosmetologist, ~~or~~ nail technician, or wax technician may practice or offer to practice;

5. Offers, gives, or promises anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing barbering, cosmetology, nail care, or waxing as defined in § 54.1-700 of the Code of Virginia;

6. Fails to respond to the board or any of its agents or provides false, misleading, or incomplete information to an inquiry by the board or any of its agents;

7. Fails or refuses to allow the board or any of its agents to inspect during reasonable hours any licensed shop, salon, or school for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) or this chapter;

~~5. The licensee, certificate holder, permit holder or applicant fails~~ 8. Fails to produce, upon request or demand of the board or any of its agents, any document, book, record, or copy thereof in a licensee's or owner's possession or maintained in accordance with these regulations;

~~6. A licensee, certificate holder, or permit holder fails~~ 9. Fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license, certificate, or permit. ~~The board shall not be responsible for the licensee's, certificate holder's, or permit holder's failure to receive notices, communications and correspondence caused by the licensee's, certificate holder's, or permit holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board;~~

~~7. The licensee, certificate holder, permit holder or applicant publishes~~ 10. Makes any misrepresentation or publishes or causes to be published any advertisement that is false, deceptive, or misleading;

~~8. The licensee, certificate holder, permit holder or applicant fails~~ 11. Fails to notify the board in writing within 30 days of the suspension, revocation, or surrender of a license, certificate, or permit in connection with a disciplinary action in any [ ~~other~~ ] jurisdiction or of any license, certificate, or permit that has been the subject of disciplinary action in any [ ~~other~~ ] jurisdiction; ~~or~~

~~9. In accordance with § 54.1-204 of the Code of Virginia, the licensee, certificate holder, permit holder or applicant has been convicted in any jurisdiction of a misdemeanor or felony that directly relates to the profession of barbering, cosmetology, or nail care. The board shall have the~~

~~authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of barbering, cosmetology, or nail care. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The applicant shall provide a certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the applicant to the board within 10 days after all appeal rights have expired.~~

12. Has been convicted or found guilty, regardless of the manner of adjudication in Virginia or any other jurisdiction of the United States, of a misdemeanor involving moral turpitude, sexual offense, drug distribution, or physical injury or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt;

13. Fails to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty regardless of adjudication of any convictions as stated in subdivision 12 of this section;

14. Allows, as [ ~~an owner or operator~~ responsible management ] of a shop, salon, or school, a person who has not obtained a license or a temporary permit to practice as a barber, cosmetologist, nail technician, or wax technician unless the person is duly enrolled as a registered apprentice;

15. Allows, as [ ~~an owner or operator~~ responsible management ] of a school, a person who has not obtained an instructor certificate or a temporary permit to practice as a barber, cosmetologist, nail technician, or wax technician instructor;

16. Fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with sanitary requirements provided for in this chapter or any local, state, or federal law or regulation governing the standards of health and sanitation for the practices of barbering, cosmetology, nail care, or waxing, or the operation of barbershops, cosmetology salons, nail salons, or waxing salons; or

17. Fails to comply with all procedures established by the board and the testing service with regard to conduct at [ ~~the~~ any board ] examination.

~~B. The board may, in considering the totality of the circumstances, revoke, suspend or refuse to renew or reinstate the license of any school or impose a fine as permitted by law, or both, if the board finds that:~~

- ~~1. An instructor of the approved school fails to teach the curriculum as provided for in these regulations;~~
- ~~2. The owner or director of the approved school permits or allows a person to teach in the school without a current instructor certificate; or~~
- ~~3. The instructor, owner or director is guilty of fraud or deceit in the teaching of barbering, cosmetology or nail care.~~

~~C. The board may, in considering the totality of the circumstances, revoke, suspend or refuse to renew or reinstate the license of any barbershop, cosmetology or nail salon or impose a fine as permitted by law, or both, if the board finds that:~~

- ~~1. The owner or operator of the shop or salon fails to comply with the sanitary requirements of barbershops or cosmetology or nail salons provided for in these regulations or in any local ordinances; or~~
- ~~2. The owner or operator allows a person who has not obtained a license or a temporary permit to practice as a barber, cosmetologist, or nail technician unless the person is duly enrolled as a registered apprentice.~~

~~D. The board may, in considering the totality of the circumstances, revoke, suspend or refuse to renew or reinstate the license of any licensee or impose a fine as permitted by law, or both, if the board finds that the licensee fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with any local, state or federal law or regulation governing the standards of health and sanitation for the practices of barbering, cosmetology, or nail care.~~

**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 (18VAC41-20)

~~Barber – Barber Instructor Examination & Instructor Application, A425-1301\_02EXLIC (eff. 9/2011)~~

~~Cosmetology – Cosmetology Instructor Examination & License Application, A425-1201\_04EXLIC (eff. 9/2011)~~

~~Nail Technician – Nail Technician Instructor Examination & License Application, A425-1206\_07EXLIC (eff. 9/2011)~~

~~Temporary Permit Application, A425-1213TP (eff. 9/2011)~~

~~License by Endorsement Application, A450-1213END-v9 (rev. 9/2016)~~

~~[ Training & Experience Verification Form, A425-1213TREXP (eff. 9/2011) ]~~

~~Individuals – Reinstatement Application, A450-1213REI v8 (rev. 9/2016)~~

~~Salon, Shop, Spa & Parlor License/Reinstatement Application A450-1213BUS v8 (rev. 9/2016)~~

~~Salon, Shop & Spa Self Inspection Form, A425-1213\_SSS\_INSP (eff. 9/2011)~~

~~Instructor Certification Application, A450-1213INST v7 (rev. 9/2016)~~

~~School License Application, A450-1213SCHL v9 (rev. 9/2016)~~

~~School – Reinstatement – Application, A450-1213SCHL\_REIN-v2 (rev. 9/2016)~~

~~[ School Self Inspection Form, A425-1213SCH\_INSP (eff. 9/2011) ]~~

~~Licensure Fee Notice, A450-1213FEE v6 (rev. 9/2016)~~

~~[ [Barber – Barber Instructor Examination & License Application, A450-1301\\_02EXLIC-v13 \(rev. 2/2017\)](#)~~

~~[Cosmetology – Cosmetology Instructor Examination & License Application, A450-1201\\_04EXLIC-v16 \(rev. 2/2017\)](#)~~

~~[Nail Technician – Nail Technician Instructor Examination & License Application, A450-1206\\_07EXLIC-v14 \(rev. 2/2017\)](#)~~

~~[Wax Technician – Wax Technician Instructor Examination & License Application, A450-1214\\_15EXLIC-v13 \(rev. 2/2017\)](#)~~

~~[Temporary Permit Application, A450-1213TEMP-v2 \(rev. 2/2017\)](#)~~

~~[License by Endorsement Application, A450-1213END-v10 \(rev. 2/2017\)](#)~~

~~[Training & Experience Verification Form, A450-1213TREXP-v6 \(eff. 2/2017\)](#)~~

~~[Individuals – Reinstatement Application, A450-1213REI-v9 \(rev. 2/2017\)](#)~~

~~[Salon, Shop, Spa & Parlor License/Reinstatement Application A450-1213BUS-v9 \(rev. 2/2017\)](#)~~

~~[Salon, Shop & Spa Self Inspection Form, A450-1213\\_SSS\\_INSP-v2 \(eff. 5/2016\)](#)~~

~~[Instructor Certification Application, A450-1213INST-v8 \(rev. 2/2017\)](#)~~

~~[Student Instructor – Temporary Permit Application A450-1213ST\\_TEMP-v2 \(rev. 2/2017\)](#)~~

~~[School License Application, A450-1213SCHL-v10 \(rev. 2/2017\)](#)~~

~~[School Reinstatement Application A450-1213SCHL-REIN-v3 \(eff. 2/2017\)](#)~~

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[School Self-Inspection Form, A450-1213 SCH\\_INSP-v4 \(eff. 5/2016\)](#)

[Licensure Fee Notice, A450-1213FEE-v7 \(rev. 1/2017\)](#)

[Change of Responsible Management Application, A450-1213CRM-v1 \(rev. 2/2017\)](#) ]

VA.R. Doc. No. R12-3107; Filed December 2, 2016, 11:54 a.m.

## CEMETERY BOARD

### Fast-Track Regulation

**Title of Regulation:** **18VAC47-11. Public Participation Guidelines (amending 18VAC47-11-50).**

**Statutory Authority:** §§ 2.2-4007.02 and 54.1-201 of the Code of Virginia.

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

**Public Comment Deadline:** January 25, 2017.

**Effective Date:** February 13, 2017.

**Agency Contact:** Christine Martine, Executive Director, Cemetery Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 826-8863, or email cemetery@dpor.virginia.gov.

**Basis:** Section 2.2-4007.02 of the Code of Virginia mandates each agency develop, adopt, and use public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations. The Cemetery Board is authorized under § 54.1-201 of the Code of Virginia to promulgate regulations necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the board.

**Purpose:** The change to 18VAC47-11-50 conforms the agency's Public Participation Guidelines to the change in the Administrative Process Act pursuant to Chapter 795 of the 2012 Acts of Assembly. Participation by the public in the regulatory process is essential to assist the board in the promulgation of regulations that will protect the public health and safety.

**Rationale for Using Fast-Track Rulemaking Process:** As the change merely conforms the regulation to the underlying statute, the rulemaking is not expected to be controversial and, therefore, appropriate for the fast-track rulemaking process.

**Substance:** The change to 18VAC47-11-50 provides that interested persons may be accompanied by and represented by counsel or other representative when presenting their views in the promulgation of any regulatory action.

**Issues:** As the change merely conforms the regulation to § 2.2-4007.02 of the Code of Virginia, the primary advantage is to ensure consistency between the law and regulation, which should reduce the chance of any confusion. There are no anticipated disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 795 of the 2012 Acts of Assembly,<sup>1</sup> the Cemetery Board (Board) proposes to specify in this regulation that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative when submitting data, views, and arguments, either orally or in writing, to the agency.

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

**Estimated Economic Impact.** The current Public Participation Guidelines state that: "In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency." The Board proposes to append "and (ii) be accompanied by and represented by counsel or other representative."

Chapter 795 of the 2012 Acts of Assembly added to § 2.2-4007.02. "Public participation guidelines" of the Code of Virginia that interested persons also be afforded an opportunity to be accompanied by and represented by counsel or other representative. Since the Code of Virginia already specifies that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative, the Board's proposal to add this language to the regulation will not change the law in effect, but will be beneficial in that it will inform interested parties who read this regulation but not the statute of their legal rights concerning representation.

**Businesses and Entities Affected.** The proposed amendment potentially affects all individuals who comment on pending regulatory changes.

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

**Projected Impact on Employment.** The proposed amendment does not significantly affect employment.

**Effects on the Use and Value of Private Property.** The proposed amendment does not affect the use and value of private property.

**Real Estate Development Costs.** The proposed amendment does not affect real estate development costs.

**Small Businesses:**

**Definition.** Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

**Costs and Other Effects.** The proposed amendment does not affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendment does not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendment does not adversely affect businesses.

Localities. The proposed amendment does not adversely affect localities.

Other Entities. The proposed amendment does not adversely affect other entities.

<sup>1</sup> See <http://leg1.state.va.us/cgi-bin/legp504.exe?121+ful+CHAP0795+hil>

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

Summary:

*Pursuant to § 2.2-4007.02 of the Code of Virginia, the amendment provides that interested persons submitting data, views, and arguments on a regulatory action may be accompanied by and represented by counsel or another representative.*

Part III

Public Participation Procedures

**18VAC47-11-50. Public comment.**

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency; and (ii) be accompanied by and represented by counsel or other representative. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with § 2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to § 2.2-4012 E of the Code of Virginia.

V.A.R. Doc. No. R17-4930; Filed November 28, 2016, 12:07 p.m.

**BOARD OF DENTISTRY**

**Fast-Track Regulation**

Title of Regulation: **18VAC60-21. Regulations Governing the Practice of Dentistry (amending 18VAC60-21-10, 18VAC60-21-260, 18VAC60-21-280; adding 18VAC60-21-279).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 25, 2017.

Effective Date: February 10, 2017.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4437, FAX (804) 527-4428, or email [sandra.reen@dhp.virginia.gov](mailto:sandra.reen@dhp.virginia.gov).

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system.

Purpose: The purpose of the amended regulation is to eliminate some requirements that are not necessary for patient safety with the administration of only nitrous oxide but to retain those that are essential to protect patients, especially pediatric patients. For example, dentists report that they have had to stop procedures on children because current rules require continuous monitoring of vital signs, and the child refused to keep a blood pressure cuff on his arm. The intent is to maintain the recommended procedures, equipment, and monitoring requirements for inhalation analgesia but eliminate requirements that are not necessary for that level of sedation and represent a deterrent to provision of dental services in some situations.

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# Regulations

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Rationale for Using Fast-Track Rulemaking Process: The amendments represent a reduction in the regulatory burden and have been requested by the regulated dental community. The amendments need to be expedited to allow dentists to continue providing nitrous oxide in their practices without incurring some of the current requirements associated with minimal sedation. There should not be any controversy since the amendments will result in are less cost and less burdensome regulations.

Substance: A new section is being promulgated for the administration of only inhalation analgesia (nitrous oxide), and minimal sedation is redefined as inhalation analgesia when used in combination with any anxiolytic agent administered prior to or during a procedure. Requirements for administration of only inhalation analgesia differ from those for minimal sedation as follows:

1. The dentist does not have to have education and training in the medications used, including dosages, complications, and interventions.
2. A dental hygienist can be delegated administration of nitrous oxide under indirect supervision.
3. No pulse oximeter is required for continuous monitoring.
4. Baseline vital signs do not need to include respiratory rate and may be omitted if there are extenuating circumstances documented in the patient record (such as a child who refuses to keep a blood pressure cuff on his arm).
5. Continual clinical observation is required but not continuous monitoring of vital signs.

In addition, the general provisions for administration of sedation or anesthesia are amended to specify that the "current conditions" of a patient includes his weight and height, and if appropriate the body mass index.

Issues: The advantage to the public is less burdensome regulations that will facilitate the use of nitrous oxide for all patients, especially pediatric patients for whom some of the current requirements are burdensome and unnecessary. There are no disadvantages.

There are no advantages or disadvantages to the agency or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. Under the current regulation minimal sedation encompasses both antianxiety medication and inhalation analgesia.<sup>1</sup> The Board of Dentistry (Board) proposes to establish a set of requirements for when only inhalation analgesia is administered. The proposed regulation would be less restrictive for administration of only inhalation analgesia. Additionally, the Board proposes to clarify that information in the patient record should include the patient's height and weight, and, if appropriate, the Body Mass Index.

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

Estimated Economic Impact. Under the proposed regulation versus the current regulation, the effective changes for administration of only inhalation analgesia include: 1) no pulse oximeter is required for continuous monitoring; 2) baseline vital signs do not need to include the respiratory rate and may be omitted if there are extenuating circumstances documented in the patient record (such as a child who refuses to keep a blood pressure cuff on his arm); and 3) continual clinical observation is required but not continuous monitoring of vital signs. The Board believes that the proposed less restrictive requirements for administration of only inhalation analgesia will have no impact on health risks.<sup>2</sup> Inhalation analgesia is considered the safest form of sedation.<sup>3</sup>

All of these proposed changes will reduce costs, in dollars or staff time, for dental practices that only administer inhalation analgesia. The cost of a pulse oximeter could be saved. Different models of pulse oximeters vary greatly in price. A basic pulse oximeter can be purchased for approximately \$30. No longer requiring that the respiratory rate be included in baseline vital signs, and no longer requiring continuous monitoring of vital signs would save staff time. Given the cost savings and apparent lack of significant increase in health risk, the proposed less restrictive requirements for administration of only nitrous oxide should produce a net benefit.

The proposal to clarify that information in the patient record should include the patient's height and weight, and, if appropriate, the Body Mass Index would not affect requirements, but would be beneficial in that the actual requirements will be more easily understood by both practitioners and the public.

Businesses and Entities Affected. The proposed amendments potentially affect the 7,292 dentists and 5,722 dental hygienists licensed in the Commonwealth, as well as their practices.<sup>4</sup> As of 2012 there were 3,049 dental offices in Virginia, all of which qualified as small businesses.<sup>5</sup>

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

Projected Impact on Employment. The proposed amendments will not likely have a significant impact on employment.

Effects on the Use and Value of Private Property. The proposed amendments may moderately increase the likelihood that some dental practices will use inhalation analgesia.

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and

(ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. The proposed less restrictive requirements for administration of only nitrous oxide will reduce costs for dental practices that administer only nitrous oxide.

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments do not adversely affect other entities.

<sup>1</sup> Inhalation analgesia: the inhalation of nitrous oxide and oxygen to produce a state of reduced sensation of pain with minimal alteration of consciousness

<sup>2</sup> Source: Department of Health Professions

<sup>3</sup> Ibid

<sup>4</sup> Data source: Department of Health Professions

<sup>5</sup> Data source: Virginia Employment Commission

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

Summary:

*The amendments (i) establish a set of requirements for when only inhalation analgesia (nitrous oxide) is administered and (ii) clarify that information in the patient record should include the patient's height and weight, and, if appropriate, the body mass index.*

Part I  
General Provisions

**18VAC60-21-10. Definitions.**

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2700 of the Code of Virginia:

"Board"

"Dental hygiene"

"Dental hygienist"

"Dentist"

"Dentistry"

"License"

"Maxillofacial"

"Oral and maxillofacial surgeon"

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

"AAOMS" means the American Association of Oral and Maxillofacial Surgeons.

"ADA" means the American Dental Association.

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale, or use of dental methods, services, treatments, operations, procedures, or products, or to promote continued or increased use of such dental methods, treatments, operations, procedures, or products.

"CODA" means the Commission on Dental Accreditation of the American Dental Association.

"Code" means the Code of Virginia.

"Dental assistant I" means any unlicensed person under the direction of a dentist or a dental hygienist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely an administrative, secretarial, or clerical capacity.

"Dental assistant II" means a person under the direction and direct supervision of a dentist who is registered by the board to perform reversible, intraoral procedures as specified in 18VAC60-21-150 and 18VAC60-21-160.

"Mobile dental facility" means a self-contained unit in which dentistry is practiced that is not confined to a single building and can be transported from one location to another.

"Nonsurgical laser" means a laser that is not capable of cutting or removing hard tissue, soft tissue, or tooth structure.

"Portable dental operation" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and utilized on a temporary basis at an out-of-office location, including patients' homes, schools, nursing homes, or other institutions.

"Radiographs" means intraoral and extraoral radiographic images of hard and soft tissues used for purposes of diagnosis.

C. The following words and terms relating to supervision as used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Direct supervision" means that the dentist examines the patient and records diagnostic findings prior to delegating restorative or prosthetic treatment and related services to a dental assistant II for completion the same day or at a later date. The dentist prepares the tooth or teeth to be restored and remains immediately available in the office to the dental assistant II for guidance or assistance during the delivery of treatment and related services. The dentist

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examines the patient to evaluate the treatment and services before the patient is dismissed.

"Direction" means the level of supervision (i.e., immediate, direct, indirect, or general) that a dentist is required to exercise with a dental hygienist, a dental assistant I, or a dental assistant II or that a dental hygienist is required to exercise with a dental assistant to direct and oversee the delivery of treatment and related services.

"General supervision" means that a dentist completes a periodic comprehensive examination of the patient and issues a written order for hygiene treatment that states the specific services to be provided by a dental hygienist during one or more subsequent appointments when the dentist may or may not be present. Issuance of the order authorizes the dental hygienist to supervise a dental assistant performing duties delegable to dental assistants I.

"Immediate supervision" means the dentist is in the operatory to supervise the administration of sedation or provision of treatment.

"Indirect supervision" means the dentist examines the patient at some point during the appointment and is continuously present in the office to advise and assist a dental hygienist or a dental assistant who is (i) delivering hygiene treatment, (ii) preparing the patient for examination or treatment by the dentist, or (iii) preparing the patient for dismissal following treatment.

"Remote supervision" means that a dentist is accessible and available for communication and consultation with a dental hygienist employed by such dentist during the delivery of dental hygiene services but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided. For the purpose of practice by a public health dental hygienist, "remote supervision" means that a public health dentist has regular, periodic communications with a public health dental hygienist regarding patient treatment, but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided.

D. The following words and terms relating to sedation or anesthesia as used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Analgesia" means the diminution or elimination of pain.

"Conscious/moderate sedation" or "moderate sedation" means a drug-induced depression of consciousness, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Reflex withdrawal from a painful stimulus is not considered a purposeful response. No interventions are required to maintain a patent airway, and spontaneous

ventilation is adequate. Cardiovascular function is usually maintained.

"Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. Reflex withdrawal from a painful stimulus is not considered a purposeful response. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

"Enteral" means any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa (i.e., oral, rectal, sublingual).

"General anesthesia" means a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilator function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"Inhalation" means a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Inhalation analgesia" means the inhalation of nitrous oxide and oxygen to produce a state of reduced sensation of pain with minimal alteration of consciousness.

"Local anesthesia" means the elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug.

"Minimal sedation" means a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and physical coordination may be impaired, airway reflexes, and ventilator and cardiovascular functions are unaffected. Minimal sedation includes "anxiolysis" (the diminution or elimination of anxiety through the use of pharmacological agents in a dosage that does not cause depression of consciousness) and includes "inhalation analgesia" ~~(the inhalation of nitrous oxide and oxygen to produce a state of reduced sensibility to pain without the loss of consciousness)~~ when used in combination with any anxiolytic agent administered prior to or during a procedure.

"Moderate sedation" (see the definition of conscious/moderate sedation).

"Monitoring" means to observe, interpret, assess, and record appropriate physiologic functions of the body during sedative procedures and general anesthesia appropriate to the level of sedation as provided in Part VI (18VAC60-21-260 et seq.) of this chapter.

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraocular).

"Titration" means the incremental increase in drug dosage to a level that provides the optimal therapeutic effect of sedation.

"Topical oral anesthetic" means any drug, available in creams, ointments, aerosols, sprays, lotions, or jellies, that can be used orally for the purpose of rendering the oral cavity insensitive to pain without affecting consciousness.

#### Part VI

#### Controlled Substances, Sedation, and Anesthesia

#### 18VAC60-21-260. General provisions.

A. Application of Part VI. This part applies to prescribing, dispensing, and administering controlled substances in dental offices, mobile dental facilities, and portable dental operations and shall not apply to administration by a dentist practicing in (i) a licensed hospital as defined in § 32.1-123 of the Code, (ii) a state-operated hospital, or (iii) a facility directly maintained or operated by the federal government.

B. Registration required. Any dentist who prescribes, administers, or dispenses Schedules II through V controlled drugs must hold a current registration with the federal Drug Enforcement Administration.

C. Patient evaluation required.

1. The decision to administer controlled drugs for dental treatment must be based on a documented evaluation of the health history and current medical condition of the patient in accordance with the Class I through V risk category classifications of the American Society of Anesthesiologists (ASA) in effect at the time of treatment. The findings of the evaluation, the ASA risk assessment class assigned, and any special considerations must be recorded in the patient's record.

2. Any level of sedation and general anesthesia may be provided for a patient who is ASA Class I and Class II.

3. A patient in ASA Class III shall only be provided minimal sedation, conscious/moderate sedation, deep sedation, or general anesthesia by:

a. A dentist after he has documented a consultation with the patient's primary care physician or other medical specialist regarding potential risks and special monitoring requirements that may be necessary;

b. An oral and maxillofacial surgeon who has performed a physical evaluation and documented the findings and the ASA risk assessment category of the patient and any special monitoring requirements that may be necessary; or

c. A person licensed under Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code who has a specialty in anesthesia.

4. Minimal sedation may only be provided for a patient who is in ASA Class IV by:

a. A dentist after he has documented a consultation with the patient's primary care physician or other medical specialist regarding potential risks and special monitoring requirements that may be necessary; or

b. An oral and maxillofacial surgeon who has performed a physical evaluation and documented the findings and the ASA risk assessment category of the patient and any special monitoring requirements that may be necessary.

5. Conscious/moderate sedation, deep sedation, or general anesthesia shall not be provided in a dental office for patients in ASA Class IV and Class V.

D. Additional requirements for patient information and records. In addition to the record requirements in 18VAC60-21-90, when conscious/moderate sedation, deep sedation, or general anesthesia is administered, the patient record shall also include:

1. Notation of the patient's American Society of Anesthesiologists classification;

2. Review of medical history and current conditions, including the patient's weight and height or, if appropriate, the body mass index;

3. Written informed consent for administration of sedation and anesthesia and for the dental procedure to be performed;

4. Preoperative vital signs;

5. A record of the name, dose, and strength of drugs and route of administration including the administration of local anesthetics with notations of the time sedation and anesthesia were administered;

6. Monitoring records of all required vital signs and physiological measures recorded every five minutes; and

7. A list of staff participating in the administration, treatment, and monitoring including name, position, and assigned duties.

E. Pediatric patients. No sedating medication shall be prescribed for or administered to a patient 12 years of age or younger prior to his arrival at the dentist office or treatment facility.

F. Informed written consent. Prior to administration of any level of sedation or general anesthesia, the dentist shall discuss the nature and objectives of the planned level of sedation or general anesthesia along with the risks, benefits, and alternatives and shall obtain informed, written consent from the patient or other responsible party for the administration and for the treatment to be provided. The written consent must be maintained in the patient record.

G. Level of sedation. The determinant for the application of the rules for any level of sedation or for general anesthesia shall be the degree of sedation or consciousness level of a patient that should reasonably be expected to result from the

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type, strength, and dosage of medication, the method of administration, and the individual characteristics of the patient as documented in the patient's record. The drugs and techniques used must carry a margin of safety wide enough to render the unintended reduction of or loss of consciousness unlikely, factoring in titration and the patient's age, weight, and ability to metabolize drugs.

## H. Emergency management.

1. If a patient enters a deeper level of sedation than the dentist is qualified and prepared to provide, the dentist shall stop the dental procedure until the patient returns to and is stable at the intended level of sedation.

2. A dentist in whose office sedation or anesthesia is administered shall have written basic emergency procedures established and staff trained to carry out such procedures.

I. Ancillary personnel. Dentists who employ unlicensed, ancillary personnel to assist in the administration and monitoring of any form of minimal sedation, conscious/moderate sedation, deep sedation, or general anesthesia shall maintain documentation that such personnel have:

1. Training and hold current certification in basic resuscitation techniques with hands-on airway training for health care providers, such as Basic Cardiac Life Support for Health Professionals or a clinically oriented course devoted primarily to responding to clinical emergencies offered by an approved provider of continuing education as set forth in 18VAC60-21-250 C; or

2. Current certification as a certified anesthesia assistant (CAA) by the American Association of Oral and Maxillofacial Surgeons or the American Dental Society of Anesthesiology (ADSA).

J. Assisting in administration. A dentist, consistent with the planned level of administration (i.e., local anesthesia, minimal sedation, conscious/moderate sedation, deep sedation, or general anesthesia) and appropriate to his education, training, and experience, may utilize the services of a dentist, anesthesiologist, certified registered nurse anesthetist, dental hygienist, dental assistant, or nurse to perform functions appropriate to such practitioner's education, training, and experience and consistent with that practitioner's respective scope of practice.

## K. Patient monitoring.

1. A dentist may delegate monitoring of a patient to a dental hygienist, dental assistant, or nurse who is under his direction or to another dentist, anesthesiologist, or certified registered nurse anesthetist. The person assigned to monitor the patient shall be continuously in the presence of the patient in the office, operatory, and recovery area (i) before administration is initiated or immediately upon arrival if the patient self-administered a sedative agent, (ii) throughout the administration of drugs, (iii) throughout the

treatment of the patient, and (iv) throughout recovery until the patient is discharged by the dentist.

2. The person monitoring the patient shall:

a. Have the patient's entire body in sight;

b. Be in close proximity so as to speak with the patient;

c. Converse with the patient to assess the patient's ability to respond in order to determine the patient's level of sedation;

d. Closely observe the patient for coloring, breathing, level of physical activity, facial expressions, eye movement, and bodily gestures in order to immediately recognize and bring any changes in the patient's condition to the attention of the treating dentist; and

e. Read, report, and record the patient's vital signs and physiological measures.

L. A dentist who allows the administration of general anesthesia, deep sedation, or conscious/moderate sedation in his dental office is responsible for assuring that:

1. The equipment for administration and monitoring, as required in subsection B of 18VAC60-21-291 or subsection C of 18VAC60-21-301, is readily available and in good working order prior to performing dental treatment with anesthesia or sedation. The equipment shall either be maintained by the dentist in his office or provided by the anesthesia or sedation provider; and

2. The person administering the anesthesia or sedation is appropriately licensed and the staff monitoring the patient is qualified.

## **18VAC60-21-279. Administration of only inhalation analgesia (nitrous oxide).**

**A. Education and training requirements.** A dentist who utilizes nitrous oxide shall have training in and knowledge of:

**1. The appropriate use and physiological effects of nitrous oxide, the potential complications of administration, the indicators for complications, and the interventions to address the complications.**

**2. The use and maintenance of the equipment required in subsection D of this section.**

**B. No sedating medication shall be prescribed for or administered to a patient 12 years of age or younger prior to his arrival at the dental office or treatment facility.**

**C. Delegation of administration.**

**1. A qualified dentist may administer or use the services of the following personnel to administer nitrous oxide:**

**a. A dentist;**

**b. An anesthesiologist;**

**c. A certified registered nurse anesthetist under his medical direction and indirect supervision;**

**d. A dental hygienist with the training required by 18VAC60-25-100 B and under indirect supervision; or**

e. A registered nurse upon his direct instruction and under immediate supervision.

2. Preceding the administration of nitrous oxide, a dentist may use the services of the following personnel working under indirect supervision to administer local anesthesia to numb an injection or treatment site:

a. A dental hygienist with the training required by 18VAC60-25-100 C to parenterally administer Schedule VI local anesthesia to persons 18 years of age or older; or

b. A dental hygienist, dental assistant, registered nurse, or licensed practical nurse to administer Schedule VI topical oral anesthetics.

D. Equipment requirements. A dentist who utilizes nitrous oxide only or who directs the administration by another licensed health professional as permitted in subsection C of this section shall maintain the following equipment in working order and immediately available to the areas where patients will be sedated and treated and will recover:

1. Blood pressure monitoring equipment;
2. Source of delivery of oxygen under controlled positive pressure;
3. Mechanical (hand) respiratory bag; and
4. Suction apparatus.

E. Required staffing. When only nitrous oxide/oxygen is administered, a second person in the operatory is not required. Either the dentist or qualified dental hygienist under the indirect supervision of a dentist may administer the nitrous oxide/oxygen and treat and monitor the patient.

F. Monitoring requirements.

1. Baseline vital signs, to include blood pressure and heart rate, shall be taken and recorded prior to administration of nitrous oxide analgesia and prior to discharge, unless extenuating circumstances exist and are documented in the patient's record.

2. Continual clinical observation of the patient's responsiveness, color, respiratory rate, and depth of ventilation shall be performed.

3. Once the administration of nitrous oxide has begun, the dentist shall ensure that a licensed health care professional or a person qualified in accordance with 18VAC60-21-260 I monitors the patient at all times until discharged as required in subsection G of this section.

4. Monitoring shall include making the proper adjustments of nitrous oxide/oxygen machines at the request of or by the dentist or by another qualified licensed health professional identified in subsection C of this section. Only the dentist or another qualified licensed health professional identified in subsection C of this section may turn the nitrous oxide/oxygen machines on or off.

5. Upon completion of nitrous oxide administration, the patient shall be administered 100% oxygen for a minimum of five minutes to minimize the risk of diffusion hypoxia.

G. Discharge requirements.

1. The dentist shall not discharge a patient until he exhibits baseline responses in a post-operative evaluation of the level of consciousness. Vital signs, to include blood pressure and heart rate, shall be taken and recorded prior to discharge.

2. Post-operative instructions shall be given verbally and in writing. The written instructions shall include a 24-hour emergency telephone number.

3. Pediatric patients shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

**18VAC60-21-280. Administration of minimal sedation (~~anxiolysis or inhalation analgesia~~).**

A. Education and training requirements. A dentist who utilizes minimal sedation shall have training in and knowledge of:

1. Medications ~~The medications~~ used, the appropriate dosages, the potential complications of administration, the indicators for complications, and the interventions to address the complications.

2. Physiological ~~The physiological~~ effects of ~~nitrous oxide minimal sedation,~~ the potential complications of administration, the indicators for complications, and the interventions to address the complications.

3. The use and maintenance of the equipment required in subsection D of this section.

B. No sedating medication shall be prescribed for or administered to a patient 12 years of age or younger prior to his arrival at the dental office or treatment facility.

C. Delegation of administration.

1. A qualified dentist may administer or use the services of the following personnel to administer minimal sedation:

- a. A dentist;
- b. An anesthesiologist;
- c. A certified registered nurse anesthetist under his medical direction and indirect supervision;
- d. A dental hygienist with the training required by ~~18VAC60-25-90 B~~ ~~or~~ 18VAC60-25-100 C only for administration of nitrous oxide/oxygen ~~and under indirect supervision with the dentist present in the operatory;~~ or
- e. A registered nurse upon his direct instruction and under immediate supervision.

2. Preceding the administration of minimal sedation, a dentist may use the services of the following personnel working under indirect supervision to administer local anesthesia to numb an injection or treatment site:

- a. A dental hygienist with the training required by ~~18VAC60-25-90~~ 18VAC60-25-100 C to parenterally administer Schedule VI local anesthesia to persons 18 years of age or older; or

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b. A dental hygienist, dental assistant, registered nurse, or licensed practical nurse to administer Schedule VI topical oral anesthetics.

3. If minimal sedation is self-administered by or to a patient 13 years of age or older before arrival at the dental office or treatment facility, the dentist may only use the personnel listed in subdivision 1 of this subsection to administer local anesthesia.

D. Equipment requirements. A dentist who utilizes minimal sedation or who directs the administration by another licensed health professional as permitted in subsection C of this section shall maintain the following equipment in working order and immediately available to the areas where patients will be sedated and treated and will recover:

1. Blood pressure monitoring equipment;
2. Source of delivery of oxygen under controlled positive pressure;
3. Mechanical (hand) respiratory bag;
4. Suction apparatus; and
5. Pulse oximeter.

E. Required staffing. ~~4.~~ The treatment team for minimal sedation ~~other than just inhalation of nitrous oxide/oxygen~~ shall consist of the dentist and a second person in the operatory with the patient to assist the dentist and monitor the patient. The second person shall be a licensed health care professional or a person qualified in accordance with 18VAC60-21-260 I-~~or~~.

~~2. When only nitrous oxide/oxygen is administered for minimal sedation, a second person is not required. Either the dentist or qualified dental hygienist under the indirect supervision of a dentist may administer the nitrous oxide/oxygen and treat and monitor the patient.~~

F. Monitoring requirements.

1. Baseline vital signs to include blood pressure, respiratory rate, and heart rate shall be taken and recorded prior to administration of sedation and prior to discharge.
2. Blood pressure, oxygen saturation, respiratory rate, and pulse shall be monitored intraoperatively continuously during the procedure.
3. Once the administration of minimal sedation has begun by any route of administration, the dentist shall ensure that a licensed health care professional or a person qualified in accordance with 18VAC60-21-260 I monitors the patient at all times until discharged as required in subsection G of this section.
4. If nitrous oxide/oxygen is used in addition to any other pharmacological agent, monitoring shall include making the proper adjustments of nitrous oxide/oxygen machines at the request of or by the dentist or by another qualified licensed health professional identified in subsection C of this section. Only the dentist or another qualified licensed health professional identified in subsection C of this

section may turn the nitrous oxide/oxygen machines on or off.

5. If any other pharmacological agent is used in addition to nitrous oxide/oxygen and a local anesthetic, requirements for the induced level of sedation must be met.

G. Discharge requirements.

1. The dentist shall not discharge a patient until he exhibits baseline responses in a post-operative evaluation of the level of consciousness. Vital signs, to include blood pressure, respiratory rate, and heart rate shall be taken and recorded prior to discharge.

2. Post-operative instructions shall be given verbally and in writing. The written instructions shall include a 24-hour emergency telephone number.

3. Pediatric patients shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

VA.R. Doc. No. R17-4690; Filed December 7, 2016, 10:43 a.m.

## Fast-Track Regulation

Titles of Regulations: **18VAC60-21. Regulations Governing the Practice of Dentistry (amending 18VAC60-21-240, 18VAC60-21-250).**

**18VAC60-25. Regulations Governing the Practice of Dental Hygiene (amending 18VAC60-25-190).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 25, 2017.

Effective Date: February 10, 2017.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4437, FAX (804) 527-4428, or email [sandra.reen@dhp.virginia.gov](mailto:sandra.reen@dhp.virginia.gov).

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system with a specific mandate enacted by Chapter 82 of the 2016 Acts of Assembly to include provisions for the satisfaction of board-required continuing education for individuals registered, certified, licensed, or issued a multistate licensure privilege by a health regulatory board through delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services.

Sections 54.1-2709 and 54.1-2729 of the Code of Virginia require the board to promulgate regulations requiring continuing education for any dental or dental hygienist license renewal or reinstatement. The board may grant exceptions or exemptions from these continuing education requirements.

**Purpose:** The purpose of the amended regulation is to comply with the mandate of the General Assembly and to provide an incentive for licensees to volunteer professional services to free clinics or public health centers. While a licensee can satisfy up to two hours of continuing education with six hours of volunteer service, the licensee is still required to have 13 hours of approved continuing education necessary to acquire new knowledge and skills. Therefore, public health is served by a potential increase in badly needed volunteer service for dental care, but public safety is not sacrificed by eliminating most or all of the continuing education hours required for renewal.

**Rationale for Using Fast-Track Rulemaking Process:** The allowance of hours for volunteer service to be counted towards the continuing education requirement is a mandate of the General Assembly. A licensee is not required to provide volunteer service but may be credited with continuing education hours for doing so. The provision for an extension of hours benefits licensees who may have reasons for needing additional time for completion of the requirement. Both provisions are permissive and neither is controversial.

**Substance:** To comply with the mandate of Chapter 82 of the 2016 Acts of Assembly, the board has adopted a regulation to allow dentists and dental hygienists to count up to two hours of the 15 hours required for annual renewal to be satisfied through delivery of dental services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

In addition, the board is including provisions for granting an extension of the continuing education requirement for up to one year for good cause and upon written request received prior to the renewal deadline.

**Issues:** The advantage to the public is the incentive given for dentists and dental hygienists to volunteer their services in exchange for credit towards meeting continuing education requirements. There are no disadvantages to the public.

There are no advantages or disadvantages to the agency or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 82 of the 2016 General Assembly,<sup>1</sup> the Board of Dentistry (Board) proposes to allow six hours of volunteer work to be substituted for up to two hours of continuing education annually. The Board also proposes to clarify that it can grant an extension for up to one year to fulfill the continuing education requirements.

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

Estimated Economic Impact. Chapter 82 of the 2016 Acts of Assembly requires all health boards to promulgate regulations to accept volunteer work provided to low-income individuals through local health departments or free clinics in lieu of the required continuing education. Pursuant to the legislative mandate, the Board proposes to accept three hours of volunteer work in satisfaction of one hour of continuing education from dentists and dental hygienists. The limit on the continuing education hours that can be satisfied by volunteer work is two hours per year. Currently, dentists and dental hygienists are required to take 15 hours of continuing education per year for annual renewal of their licenses.

The proposed change will allow dentists and dental hygienists to substitute volunteer work for continuing education. The educational value of volunteer services may vary depending on each person's experience. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the annually required 15 hours.

Also, it is not clear whether the ratio of required three hours per continuing education hour is sufficient by itself to provide enough incentives to offer volunteer service. It appears easier for practitioners to spend one hour acquiring continuing education than to spend three hours providing free services. However, the Department of Health Professions notes that dentists and dental hygienists generally provide a significant amount of volunteer work which is indicative of the existence of other reasons in this profession to provide it. Thus, it is reasonable to expect that the additional incentive provided by the proposed regulation would lead to increased volunteer hours by convincing practitioners who are indecisive at the margin about providing such services. The proposed regulation will also help those practitioners who have already been providing volunteer services at the qualified locations by allowing them to earn continuing education credit for their charity work.

In any event, the proposed regulation allows substitution of volunteer work for continuing education, but does not mandate it. A practitioner choosing to do volunteer work in lieu of the continuing education reveals that he or she benefits more from doing so.

Finally, the proposed regulation clarifies that the Board can grant an extension for up to one year to fulfill the continuing education requirements. The Board already has this authority and can exercise it without this change. Thus, this change is not expected to create any significant economic impact other than improving the clarity in the regulation regarding the Board's existing authority.

Businesses and Entities Affected. Currently, there are 7,292 dentists and 5,722 dental hygienists licensed in Virginia. According to data provided by the Virginia Employment Commission, there are 3,049 dental offices in the Commonwealth, all of which satisfy small business criteria.

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The number of dental continuing education providers is not known.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. The proposed regulation may lead to a decrease in demand for continuing education services. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the annually required 15 hours. In addition, the substitution of voluntary work for continuing education hours is voluntary and may not be exercised by all practitioners. Thus, the potential decrease in demand for continuing education services appears to be small.

Effects on the Use and Value of Private Property. The potential impact on the asset value of continuing education providers is not known with certainty, but appears to be small.

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

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. All of the dental offices are small businesses. The proposed amendments do not impose costs on them. Most providers of dental continuing education services are probably small businesses as well. The proposed regulation may decrease the demand for their services by a small amount.

Alternative Method that Minimizes Adverse Impact. There is no known alternative that minimizes the potential small adverse impact on providers of dental continuing education services while achieving the same goals.

Adverse Impacts:

Businesses. The proposed amendments do not have an adverse impact on non-small businesses.

Localities. The proposed amendments will not adversely affect localities.

Other Entities. The proposed amendments will not adversely affect other entities.

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<sup>1</sup> <http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0082>

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

**Summary:**

*Pursuant to Chapter 82 of the 2016 Acts of Assembly, the amendments allow dentists and dental hygienists to substitute six hours of volunteer work for up to two hours*

*of continuing education annually. In addition, the amendments clarify that the Board of Dentistry can grant an extension for up to one year to fulfill the continuing education requirements.*

## Part V

### Licensure Renewal

#### **18VAC60-21-240. License renewal and reinstatement.**

A. The license or permit of any person who does not return the completed renewal form and fees by the deadline shall automatically expire and become invalid, and his practice of dentistry shall be illegal. With the exception of practice with a current, restricted volunteer license as provided in § 54.1-2712.1 of the Code practicing in Virginia with an expired license or permit may subject the licensee to disciplinary action by the board.

B. Every person holding an active or inactive license and those holding a permit to administer conscious/moderate sedation, deep sedation, or general anesthesia shall annually, on or before March 31, renew his license or permit. Every person holding a faculty license, temporary resident's license, a restricted volunteer license, or a temporary permit shall, on or before June 30, request renewal of his license.

C. Any person who does not return the completed form and fee by the deadline required in subsection B of this section shall be required to pay an additional late fee.

D. The board shall renew a license or permit if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection B of this section provided that no grounds exist to deny said renewal pursuant to § 54.1-2706 of the Code and Part II (18VAC60-21-50 et seq.) of this chapter.

E. Reinstatement procedures.

1. Any person whose license or permit has expired for more than one year or whose license or permit has been revoked or suspended and who wishes to reinstate such license or permit shall submit a reinstatement application and the reinstatement fee. The application must include evidence of continuing competence.

2. To evaluate continuing competence, the board shall consider (i) hours of continuing education that meet the requirements of subsection ~~G~~ H of 18VAC60-21-250; (ii) evidence of active practice in another state or in federal service; (iii) current specialty board certification; (iv) recent passage of a clinical competency examination accepted by the board; or (v) a refresher program offered by a program accredited by the Commission on Dental Accreditation of the American Dental Association.

3. The executive director may reinstate such expired license or permit provided that the applicant can demonstrate continuing competence, the applicant has paid the reinstatement fee and any fines or assessments, and no grounds exist to deny said reinstatement pursuant to

§ 54.1-2706 of the Code and Part II (18VAC60-21-50 et seq.) of this chapter.

**18VAC60-21-250. Requirements for continuing education.**

A. A dentist shall complete a minimum of 15 hours of continuing education, which meets the requirements for content, sponsorship, and documentation set out in this section, for each annual renewal of licensure except for the first renewal following initial licensure and for any renewal of a restricted volunteer license.

1. All renewal applicants shall attest that they have read and understand and will remain current with the laws and regulations governing the practice of dentistry and dental hygiene in Virginia.

2. A dentist shall maintain current training certification in basic cardiopulmonary resuscitation with hands-on airway training for health care providers or basic life support unless he is required by 18VAC60-21-290 or 18VAC60-21-300 to hold current certification in advanced life support with hands-on simulated airway and megacode training for health care providers.

3. A dentist who administers or monitors patients under general anesthesia, deep sedation, or conscious/moderate sedation shall complete four hours every two years of approved continuing education directly related to administration and monitoring of such anesthesia or sedation as part of the hours required for licensure renewal.

4. Continuing education hours in excess of the number required for renewal may be transferred or credited to the next renewal year for a total of not more than 15 hours.

5. Up to two hours of the 15 hours required for annual renewal may be satisfied through delivery of dental services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

B. To be accepted for license renewal, continuing education programs shall be directly relevant to the treatment and care of patients and shall be:

1. Clinical courses in dentistry and dental hygiene; or
2. Nonclinical subjects that relate to the skills necessary to provide dental or dental hygiene services and are supportive of clinical services (i.e., patient management, legal and ethical responsibilities, and stress management). Courses not acceptable for the purpose of this subsection include, but are not limited to, estate planning, financial planning, investments, business management, marketing, and personal health.

C. Continuing education credit may be earned for verifiable attendance at or participation in any course, to include audio and video presentations, that meets the requirements in

subsection B of this section and is given by one of the following sponsors:

1. The American Dental Association and the National Dental Association, their constituent and component/branch associations, and approved continuing education providers;
2. The American Dental Hygienists' Association and the National Dental Hygienists Association, and their constituent and component/branch associations;
3. The American Dental Assisting Association and its constituent and component/branch associations;
4. The American Dental Association specialty organizations and their constituent and component/branch associations;
5. A provider accredited by the Accreditation Council for Continuing Medical Education for Category 1 credits;
6. The Academy of General Dentistry, its constituent and component/branch associations, and approved continuing education providers;
7. A college or university that is accredited by an accrediting agency approved by the U.S. Department of Education or a hospital or health care institution accredited by the Joint Commission on Accreditation of Healthcare Organizations;
8. The American Heart Association, the American Red Cross, the American Safety and Health Institute, and the American Cancer Society;
9. A medical school accredited by the American Medical Association's Liaison Committee for Medical Education;
10. A dental, dental hygiene, or dental assisting program or advanced dental education program accredited by the Commission on Dental Accreditation of the American Dental Association;
11. State or federal government agencies (i.e., military dental division, Veteran's Administration, etc.);
12. The Commonwealth Dental Hygienists' Society;
13. The MCV Orthodontic Education and Research Foundation;
14. The Dental Assisting National Board and its affiliate, the Dental Auxiliary Learning and Education Foundation; or
15. A regional testing agency (i.e., Central Regional Dental Testing Service, Northeast Regional Board of Dental Examiners, Southern Regional Testing Agency, Council of Interstate Testing Agencies, or Western Regional Examining Board) when serving as an examiner.

D. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared

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disasters. A written request with supporting documents must be submitted prior to renewal of the license.

E. The board may grant an extension for up to one year for completion of continuing education upon written request with an explanation to the board prior to the renewal date.

~~E. F.~~ A licensee is required to verify compliance with the continuing education requirements in his annual license renewal. Following the renewal period, the board may conduct an audit of licensees to verify compliance. Licensees selected for audit must provide original documents certifying that they have fulfilled their continuing education requirements by the deadline date as specified by the board.

~~F. G.~~ All licensees are required to maintain original documents verifying the date and subject of the program or activity, the sponsor, and the amount of time earned. Documentation shall be maintained for a period of four years following renewal.

~~G. H.~~ A licensee who has allowed his license to lapse, or who has had his license suspended or revoked, shall submit evidence of completion of continuing education equal to the requirements for the number of years in which his license has not been active, not to exceed a total of 45 hours. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months preceding an application for reinstatement.

~~H. I.~~ Continuing education hours required by board order shall not be used to satisfy the continuing education requirement for license renewal or reinstatement.

~~I. J.~~ Failure to comply with continuing education requirements may subject the licensee to disciplinary action by the board.

## **18VAC60-25-190. Requirements for continuing education.**

A. In order to renew an active license, a dental hygienist shall complete a minimum of 15 hours of approved continuing education. Continuing education hours in excess of the number required for renewal may be transferred or credited to the next renewal year for a total of not more than 15 hours.

1. A dental hygienist shall be required to maintain evidence of successful completion of a current hands-on course in basic cardiopulmonary resuscitation for health care providers.

2. A dental hygienist who monitors patients under general anesthesia, deep sedation, or conscious/moderate sedation shall complete four hours every two years of approved continuing education directly related to monitoring of such anesthesia or sedation as part of the hours required for licensure renewal.

3. Up to two hours of the 15 hours required for annual renewal may be satisfied through delivery of dental hygiene services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily

for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

B. An approved continuing education program shall be relevant to the treatment and care of patients and shall be:

1. Clinical courses in dental or dental hygiene practice; or
2. Nonclinical subjects that relate to the skills necessary to provide dental hygiene services and are supportive of clinical services (i.e., patient management, legal and ethical responsibilities, risk management, and recordkeeping). Courses not acceptable for the purpose of this subsection include, but are not limited to, estate planning, financial planning, investments, and personal health.

C. Continuing education credit may be earned for verifiable attendance at or participation in any course, to include audio and video presentations, that meets the requirements in subdivision B 1 of this section and is given by one of the following sponsors:

1. The American Dental Association and the National Dental Association and their constituent and component/branch associations;
2. The American Dental Hygienists' Association and the National Dental Hygienists Association and their constituent and component/branch associations;
3. The American Dental Assisting Association and its constituent and component/branch associations;
4. The American Dental Association specialty organizations and their constituent and component/branch associations;
5. A provider accredited by the Accreditation Council for Continuing Medical Education for Category 1 credits;
6. The Academy of General Dentistry and its constituent and component/branch associations;
7. Community colleges with an accredited dental hygiene program if offered under the auspices of the dental hygienist program;
8. A college or university that is accredited by an accrediting agency approved by the U.S. Department of Education or a hospital or health care institution accredited by the Joint Commission on Accreditation of Healthcare Organizations;
9. The American Heart Association, the American Red Cross, the American Safety and Health Institute, and the American Cancer Society;
10. A medical school accredited by the American Medical Association's Liaison Committee for Medical Education or a dental school or dental specialty residency program accredited by the Commission on Dental Accreditation of the American Dental Association;

11. State or federal government agencies (i.e., military dental division, Veteran's Administration, etc.);
12. The Commonwealth Dental Hygienists' Society;
13. The MCV Orthodontic Education and Research Foundation;
14. The Dental Assisting National Board and its affiliate, the Dental Auxiliary Learning and Education Foundation;
15. The American Academy of Dental Hygiene, its constituent and component/branch associations; or
16. A regional testing agency (i.e., Central Regional Dental Testing Service, Northeast Regional Board of Dental Examiners, Southern Regional Testing Agency, Council of Interstate Testing Agencies, or Western Regional Examining Board) when serving as an examiner.

D. Verification of compliance.

1. All licensees are required to verify compliance with continuing education requirements at the time of annual license renewal.
2. Following the renewal period, the board may conduct an audit of licensees to verify compliance.
3. Licensees selected for audit shall provide original documents certifying that they have fulfilled their continuing education requirements by the deadline date as specified by the board.
4. Licensees are required to maintain original documents verifying the date and the subject of the program or activity, the sponsor, and the amount of time earned. Documentation shall be maintained for a period of four years following renewal.
5. Failure to comply with continuing education requirements may subject the licensee to disciplinary action by the board.

E. Exemptions.

1. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following the licensee's initial licensure.
2. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters. A written request with supporting documents must be submitted at least 30 days prior to the deadline for renewal.

F. The board may grant an extension for up to one year for completion of continuing education upon written request with an explanation to the board prior to the renewal date.

~~F.~~ G. Continuing education hours required by board order shall not be used to satisfy the continuing education requirement for license renewal or reinstatement.

VA.R. Doc. No. R17-4716; Filed December 7, 2016, 10:43 a.m.

## DEPARTMENT OF HEALTH PROFESSIONS

### Final Regulation

**Title of Regulation: 18VAC76-20. Regulations Governing the Prescription Monitoring Program (amending 18VAC76-20-40).**

**Statutory Authority:** § 54.1-2520 of the Code of Virginia.

**Effective Date:** January 25, 2017.

**Agency Contact:** Ralph Orr, Program Manager, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4523, FAX (804) 527-4470, or email ralph.orr@dhp.virginia.gov.

**Summary:**

*The amendments update the required version for reporting data electronically to the Prescription Monitoring Program, require several new data elements in the report, and allow dispensers at least 90 days from notification by the director to comply when a new file layout with new data elements is prescribed.*

**Summary of Public Comments and Agency's Response:** No public comments were received by the promulgating agency.

**18VAC76-20-40. Standards for the manner and format of reports and a schedule for reporting.**

A. Data shall be transmitted to the department or its agent within seven days of dispensing as provided in the Electronic Reporting Standard for Prescription Monitoring Programs, Version ~~4.1 (November 2009)~~ 4.2 (September 2011) of the American Society of Automation in Pharmacy (ASAP), which are hereby incorporated by reference into this chapter.

B. Data shall be transmitted in a file layout provided by the department and shall be transmitted by a media acceptable to the vendor contracted by the director for the program. Such transmission shall begin on a date specified by the director, no less than ~~30~~ 90 days from notification by the director to dispensers required to report.

C. Under extraordinary circumstances, an alternative means of reporting may be approved by the director.

D. Data not accepted by the vendor due to a substantial number of errors or omissions shall be corrected and resubmitted to the vendor within five business days of receiving notification that the submitted data had an unacceptable number of errors or problems.

E. Required data elements shall include those listed in subsection B of § 54.1-2521 of the Code of Virginia and the following:

1. The Drug Enforcement Administration (DEA) registration number of the dispenser;
2. The National Provider Identifier of the prescriber;
3. The total number of refills ordered;
- ~~3.~~ 4. Whether the prescription is a new prescription or a refill; ~~and~~

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5. Whether the prescription is a partial fill;
  6. The gender code;
  7. The species code;
  8. The Electronic Prescription Reference Number, and the Electronic Prescription Order Number if it is an electronic prescription; and
4. 9. The date the prescription was written by the prescriber.

## DOCUMENTS INCORPORATED BY REFERENCE (18VAC76-20)

Implementation Guide ASAP Standard (Electronic Reporting Standard) for Prescription Monitoring Programs, Version 4, Release 4 ~~2, November 2009~~ September 2011, American Society for Automation in Pharmacy, 492 Norristown Road, Suite 160, Blue Bell, PA 19422 (<http://www.asapnet.org>).

VA.R. Doc. No. R16-4370; Filed December 6, 2016, 2:46 p.m.

## BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

### Final Regulation

Title of Regulation: **18VAC80-20. Board for Hearing Aid Specialists Regulations (amending 18VAC80-20-10, 18VAC80-20-30, 18VAC80-20-40, 18VAC80-20-70, 18VAC80-20-220, 18VAC80-20-230, 18VAC80-20-250, 18VAC80-20-270; repealing 18VAC80-20-280).**

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

Effective Date: February 1, 2017.

Agency Contact: Demetrios J. Melis, Executive Director, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email [hearingaidspec@dpor.virginia.gov](mailto:hearingaidspec@dpor.virginia.gov).

### Summary:

*The amendments (i) modify the definitions of "hearing aid specialist" and "licensee" and other provisions to align them with statutory definitions found in § 54.1-1500 of the Code of Virginia, (ii) exempt correspondence protected by law from the requirement that correspondence be sent to both the permit holder and sponsor, (iii) eliminate the examination fee cap and authorize examination fees to be set by agreement between the Department of Professional and Occupational Regulation and the examination vendor provided that the vendor is chosen in accordance with Virginia Procurement Act, (iv) eliminate fees for wall certificates and consolidate the licensure fee for reciprocity with the initial license fee, (v) require a hearing aid specialist to disclose nonrefundable fees and prohibit the fees from being a percentage of the purchase price of the hearing aid, (vi) expand the standard testing frequencies to include 6000 – 8000 hertz, (vii) expand the grounds for disciplinary action to include probation and*

*refusal to renew, (viii) clarify that temporary permit holders are subject to discipline by the board, and (ix) make other clarifying changes.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

## CHAPTER 20 ~~BOARD FOR~~ HEARING AID SPECIALISTS REGULATIONS

### Part I Definitions

#### **18VAC80-20-10. Definitions.**

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

"Audiologist" means any person who engages in the practice of audiology as defined by § 54.1-2600 of the Code of Virginia.

"Board" means Board for Hearing Aid Specialists and Opticians.

"Department" means Department of Professional and Occupational Regulation.

"Hearing aid specialist" means a person who engages in the practice of fitting ~~and~~ or dealing in hearing aids or who advertises or displays a sign or represents himself as a person who practices the fitting ~~and~~ or dealing ~~of~~ in hearing aids.

"Licensed sponsor" means a licensed hearing aid specialist who is responsible for training one or more individuals holding a temporary permit.

"Licensee" means any person holding a valid license issued by the Board for Hearing Aid Specialists and Opticians for the practice of fitting ~~and~~ or dealing in hearing aids, as defined in § 54.1-1500 of the Code of Virginia.

"Otolaryngologist" means a licensed physician specializing in ear, nose, and throat disorders.

"Reciprocity" means an agreement between two or more states to recognize and accept one another's regulations and laws.

"Reinstatement" means having a license restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Temporary permit holder" means any person who holds a valid temporary permit under this chapter.

### Part II Entry Requirements

#### **18VAC80-20-30. Basic qualifications for licensure.**

A. Every applicant for a license shall provide information on his application establishing that:

1. The applicant is at least 18 years of age.

2. The applicant has successfully completed high school or a high school equivalency course.
3. The applicant has training and experience that covers the following subjects as they pertain to hearing aid fitting and the sale of hearing aids, accessories, and services:
  - a. Basic physics of sound;
  - b. Basic maintenance and repair of hearing aids;
  - c. The anatomy and physiology of the ear;
  - d. Introduction to psychological aspects of hearing loss;
  - e. The function of hearing aids and amplification;
  - f. Visible disorders of the ear requiring medical referrals;
  - g. Practical tests utilized for selection or modification of hearing aids;
  - h. Pure tone audiometry, including air conduction, bone conduction, and related tests;
  - i. Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;
  - j. Masking when indicated;
  - k. Recording and evaluating audiograms and speech audiometry to determine the proper selection and adaptation of hearing aids;
  - l. Taking earmold impressions;
  - m. Proper earmold selection;
  - n. Adequate instruction in proper hearing aid orientation;
  - o. Necessity of proper procedures in after-fitting checkup; and
  - p. Availability of social service resources and other special resources for the hearing impaired.
4. The applicant has provided one of the following as verification of completion of training and experience as described in subdivision 3 of this subsection:
  - a. A statement on a form provided by the board signed by the licensed sponsor certifying that the requirements have been met; or
  - b. A certified true copy of a transcript of courses completed at an accredited college or university, or other notarized documentation of completion of the required experience and training.
5. The applicant ~~shall~~ has not ~~have~~ been convicted or found guilty of any crime directly related to the practice of fitting ~~and~~ or dealing in hearing aids, regardless of the manner of adjudication, in any jurisdiction of the United States. Except for misdemeanor convictions that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each applicant. The applicant review of prior convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be

considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.

6. The applicant is in good standing as a licensed hearing aid specialist in every jurisdiction where licensed. The applicant must disclose if he has had a license as a hearing aid specialist that was suspended, revoked, or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application for licensure, the applicant must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a hearing aid specialist. The applicant must also disclose whether he has been previously licensed in Virginia as a hearing aid specialist.

7. The applicant has disclosed his physical address. A post office box is not acceptable.

8. The nonresident applicant for a license has filed and maintained with the department an irrevocable consent for the department to serve as service agent for all actions filed in any court in Virginia.

9. The applicant has submitted the required application with the proper fee as referenced in 18VAC80-20-70 and signed, as part of the application, a statement that the applicant has read and understands Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and ~~the regulations of the board~~ this chapter.

B. The board may make further inquiries and investigations with respect to the qualifications of the applicant or require a personal interview or both. The board may refuse initial licensure due to the applicant's failure to comply with entry requirements. The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

**18VAC80-20-40. ~~Qualifications for a temporary~~ Temporary permit.**

A. Any individual may apply for a temporary permit, which is to be used solely for the purpose of gaining the training and experience required to become a licensed hearing aid specialist in Virginia. The licensed sponsor shall be identified on the application for a temporary permit and the licensed sponsor shall comply strictly with the provisions of ~~subdivision 2 of this~~ [ ~~subsection B~~ subdivisions B 1 and B 2 ] of this section.

1. A temporary permit shall be issued for a period of 12 months and may be extended once for not longer than six months. After a period of 18 months an extension is no longer possible and the former temporary permit holder shall sit for the examination in accordance with this section.

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2. The board may, at its discretion, extend the temporary permit for a temporary permit holder who suffers serious personal illness or injury, or death in his immediate family, or obligation of military service or service in the Peace Corps, or for other good cause of similar magnitude approved by the board. Documentation of these circumstances must be received by the board no later than 12 months after the date of the expiration of the temporary permit or within six months of the completion of military or Peace Corps service, whichever is later.

~~2.~~ B. Every applicant for a temporary permit shall provide information ~~on~~ upon application establishing that:

~~a.~~ 1. The applicant for a temporary permit is at least 18 years of age.

~~b.~~ 2. The applicant for a temporary permit has successfully completed high school or a high school equivalency course.

3. The applicant ~~shall~~ has not ~~have~~ been convicted or found guilty of any crime directly related to the practice of fitting ~~and~~ or dealing in hearing aids, regardless of the manner of adjudication, in any jurisdiction of the United States. Except for misdemeanor convictions that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each applicant. Review of prior convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.

4. The applicant for a temporary permit is in good standing as a licensed hearing aid specialist in every jurisdiction where licensed. The applicant for a temporary permit must disclose if he has had a license as a hearing aid specialist that was suspended, revoked, or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application, the applicant for a temporary permit must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a hearing aid specialist. The applicant for a temporary permit must also disclose whether he has been licensed previously in Virginia as a hearing aid specialist.

5. The applicant for a temporary permit has disclosed his physical address. A post office box is not acceptable.

6. The applicant for a temporary permit has submitted the required application with the proper fee referenced in 18VAC80-20-70 and has signed, as part of the application, a statement that the applicant has read and understands

Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and ~~the regulations of the board~~ this chapter.

~~B.~~ C. The licensed hearing aid specialist who agrees to sponsor the applicant for a temporary permit shall certify on the application that as sponsor, he:

1. Assumes full responsibility for the competence and proper conduct of the temporary permit holder with regard to all acts performed pursuant to the acquisition of training and experience in the fitting ~~and~~ or dealing of hearing aids;

2. Will not assign the temporary permit holder to carry out independent field work without on-site direct supervision by the sponsor until the temporary permit holder is adequately trained for such activity;

3. Will personally provide and make available documentation, upon request by the board or its representative, showing the number of hours that direct supervision has occurred throughout the period of the temporary permit; and

4. Will return the temporary permit to the department should the training program be discontinued for any reason.

~~C.~~ D. The licensed sponsor shall provide training and shall ensure that the temporary permit holder under his supervision gains experience that covers the following subjects as they pertain to hearing aid fitting and the sale of hearing aids, accessories, and services:

1. Basic physics of sound;

2. Basic maintenance and repair of hearing aids;

3. The anatomy and physiology of the ear;

4. Introduction to psychological aspects of hearing loss;

5. The function of hearing aids and amplification;

6. Visible disorders of the ear requiring medical referrals;

7. Practical tests utilized for selection or modification of hearing aids;

8. Pure tone audiometry, including air conduction, bone conduction, and related tests;

9. Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;

10. Masking when indicated;

11. Recording and evaluating audiograms and speech audiometry to determine the proper selection and adaptation of hearing aids;

12. Taking earmold impressions;

13. Proper earmold selection;

14. Adequate instruction in proper hearing aid orientation;

15. Necessity of proper procedures in after-fitting checkup; and

16. Availability of social service resources and other special resources for the hearing impaired.

~~D.~~ E. The board may make further inquiries and investigations with respect to the qualifications of the applicant for a temporary permit or require a personal interview, or both.

~~E.~~ F. All correspondence from the board to the temporary permit holder not otherwise exempt from disclosure, shall be addressed to both the temporary permit holder and the licensed sponsor and shall be sent to the business address of the licensed sponsor.

**18VAC80-20-70. Fees.**

A. All fees are nonrefundable and shall not be prorated. The date of receipt by the board or its agent is the date ~~which~~ that will be used to determine whether or not it is on time.

B. Application and examination fees must be submitted with the application for licensure.

C. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus the additional processing charge established by the department.

The following fees apply:

Application Fee	\$30	to be paid by all applicants for initial licensure <del>except</del> <u>reciprocal applicants</u>
Examination Fee	\$110	
Licensure Fee for Reciprocity	\$140	<del>includes exam fee</del>
Temporary Permit Fee	\$30	
<del>Re-examination Fee</del>	<del>\$95</del>	<del>per written or practical part</del>
Renewal	\$20	
Reinstatement	\$50	
Duplicate Wall Certificate	\$25	

D. The written examination fee shall be established in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). The practical examination fee shall be established by the department that is sufficient to cover expenses for the administration of the examination in compliance with subdivision A 4 of § 54.1-201 of the Code of Virginia.

**18VAC80-20-220. Purchase agreement.**

A. Each hearing aid shall be sold through a purchase agreement ~~which~~ that shall:

1. Show the licensee's business address, license number ~~and~~, business telephone number, and signature;
2. Comply with federal and Virginia laws and regulations, ~~United States~~ U.S. Food and Drug Administration (FDA) regulations, the Virginia Home Solicitation Sales Act (Chapter 2.1 (§ 59.1-21.1 et seq.) of Title 59.1 of the Code of Virginia), and the Virginia Consumer Protection Act (Chapter 17 (§ 59.1-196 et seq.) of Title 59.1 of the Code of Virginia);
3. Clearly state, if the hearing aid is not new and is sold or rented, that it is "used" or "reconditioned," whichever is applicable, including the terms of warranty, if any. The hearing aid container shall be clearly marked with the same information contained in the purchase agreement.
4. Identify the brand names and model of the hearing aid being sold, and the serial number of the hearing aid shall be provided, in writing, to the purchaser or prospective purchaser at the time of delivery of the hearing aid;
5. Disclose the full purchase price;
6. Disclose the down payment and periodic payment terms in cases where the purchase price is not paid in full at delivery;
7. Disclose any nonrefundable fees established in accordance with § 54.1-1505 of the Code of Virginia. Nonrefundable fees shall not be a percentage of the purchase price of the hearing aid;
8. Disclose any warranty;
9. Explain the provisions of § 54.1-1505 of the Code of Virginia, which entitles the purchaser to return the hearing aid, in ~~the~~ 10-point bold face type that is bolder than the type in the remainder of the purchase agreement; and
10. Disclose that the licensee or temporary permit holder is not a physician licensed to practice medicine in Virginia and that no examination or representation made shall be regarded as a medical examination, opinion or advice;

B. Subdivision A 10 of this section shall not apply to sales made by a licensed hearing aid specialist who is a physician licensed to practice medicine in Virginia.

**18VAC80-20-230. Fitting ~~and~~ or sale of hearing aids for children.**

1. Any person engaging in the fitting ~~and~~ or sale of hearing aids for a child under 18 years of age shall ascertain whether such child has been examined by an otolaryngologist or licensed physician within six months prior to fitting.
2. No child under 18 years of age shall be initially fitted with a hearing aid or hearing aids unless the licensed hearing aid specialist has been presented with a written statement signed by an otolaryngologist stating the child's hearing loss has been medically evaluated and the child may be considered a candidate for a hearing aid. The medical evaluation must have taken place within the preceding six months.

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3. No child under 18 years of age shall be subsequently fitted with a hearing aid or hearing aids unless the licensed hearing aid specialist has been presented with a written statement signed by a licensed physician stating the child's hearing loss has been medically evaluated and the child may be considered a candidate for a hearing aid. The medical evaluation must have taken place within the preceding six months.

## **18VAC80-20-250. Testing procedures.**

It shall be the duty of each licensee and holder of a temporary permit engaged in the fitting and sale of hearing aids to use appropriate testing procedures for each hearing aid fitting. All tests and case history information must be retained in the records of the specialist. The established requirements shall be:

1. Air Conduction Tests A.N.S.I. standard frequencies of 500-1000-2000-4000-~~6000~~-8000 Hertz. Intermediate frequencies shall be tested if the threshold difference between octaves exceeds 15dB. Appropriate masking must be used if the difference between the two ears is 40 dB or more at any one frequency.
2. Bone Conduction Tests are to be made on every client--A.N.S.I. standards at 500-1000-2000-4000 Hertz. Proper masking is to be applied if the air conduction and bone conduction readings for the test ear at any one frequency differ by 15 dB or if lateralization occurs.
3. Speech testings shall be made before fittings and shall be recorded with type of test, method of presentation and the test results.
4. The specialist shall check for the following conditions and, if they are found to exist, shall refer the client to a licensed physician unless the client can show that his present condition is under treatment or has been treated:
  - a. Visible congenital or traumatic deformity of the ear.
  - b. History of active drainage from the ear within the previous 90 days.
  - c. History of sudden or rapidly progressive hearing loss within the previous 90 days.
  - d. Acute or chronic dizziness.
  - e. Unilateral hearing loss.
  - f. Audiometric air bone gap equal to or greater than 15 dB at 500 Hertz, 1000 Hertz, and 2000 Hertz.
  - g. Visible evidence or significant cerumen accumulation or a foreign body in the ear canal.
  - h. Tinnitus as a primary symptom.
  - i. Pain or discomfort in the ear.
5. All tests shall have been conducted no more than six months prior to the fitting.
6. Post-fitting testing shall be made and recorded with type of test, method of presentation and the test results.

## **18VAC80-20-270. Grounds for discipline.**

The board may, in considering the totality of the circumstances, fine any temporary permit holder or licensee ~~or~~, and suspend, place on probation, or revoke, or refuse to renew any temporary permit or license or deny any ~~license application~~ issued under the provisions of Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and ~~the regulations of the board~~ this chapter. Disciplinary procedures are governed by the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia. In exercising its disciplinary function, the board will consider the totality of the circumstances of each case. Any licensee is subject to board discipline for any of the following:

1. Improper conduct, including but not limited to:
  - a. Obtaining ~~or~~, renewing, or attempting to obtain a license by false or fraudulent representation;
  - b. Obtaining any fee or making any sale by fraud or misrepresentation;
  - c. Employing to fit ~~and~~ or sell hearing aids a person who does not hold a valid license or a temporary permit, or whose license or temporary permit is suspended;
  - d. Using, causing, or promoting the use of any misleading, deceptive, or untruthful advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, whether disseminated orally or published;
  - e. Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type;
  - f. Representing that the service or advice of a person licensed to practice medicine or audiology will be used in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true; ~~or~~ using the words "physician," "audiologist," "clinic," "hearing service," "hearing center," or similar description of the services and products provided when such use is not accurate;
  - g. Directly or indirectly giving, ~~or~~ offering to give, favors, paid referrals, or anything of value to any person who in his professional capacity uses his position to influence third parties to purchase products offered for sale by a hearing aid specialist; or
  - h. Failing to provide expedient, reliable ~~and~~, or dependable services when requested by a client or client's guardian.
2. Failure to include on the purchase agreement a statement regarding home solicitation when required by federal and state law.
3. Incompetence or negligence, as those terms are generally understood in the profession, in fitting or selling hearing aids.

4. Failure to provide required or appropriate training resulting in incompetence or negligence, as those terms are generally understood in the profession, by a temporary permit holder under the licensee's sponsorship.

5. Violating or cooperating with others in violating any provisions of Chapters 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), and 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia or ~~any regulation of the board this chapter.~~

6. The ~~licensee, temporary permit holder, or applicant shall not have~~ has been convicted or found guilty of any crime directly related to the practice of fitting ~~and or~~ dealing in hearing aids, regardless of the manner of adjudication, in any jurisdiction of the United States. Except for misdemeanor convictions that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each applicant. Review of prior convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any pleas of nolo contendere shall be considered a conviction for the purpose of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence of the law of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.

**18VAC80-20-280. Accountability of licensee. (Repealed.)**

~~A licensee shall be responsible for the acts or omissions of his staff in the performance of the fitting and dispensing of hearing aid services.~~

**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 (18VAC80-20)

~~License Application, 21LIC (rev. 10/03).~~

~~Temporary Permit Application, 21TPER (eff. 10/03).~~

~~Reinstatement Application, 21REI (rev. 10/03).~~

~~Reexamination Application, 21REEX (rev. 12/00).~~

~~[ [Hearing Aid Specialist License Application, A440-2101LIC v3 \(rev. 3/2016\)](#)~~

~~[Hearing Aid Specialist Temporary Permit Application, A440-2102TP PKG v4 \(rev. 3/2016\)](#)~~

~~[Hearing Aid Specialist License Reinstatement Application, A440-2101REI v3 \(rev. 3/2016\)](#)~~

[Hearing Aid Specialist License Application, A440-2101LIC-v3 \(rev. 2/2017\)](#)

[Hearing Aid Specialist Temporary Permit Application, A440-2102TP PKG-v4 \(rev. 2/2017\)](#)

[Hearing Aid Specialist License Reinstatement Application, A440-2101REI-v3 \(rev. 2/2017\)](#) ]

[Hearing Aid Specialist Re-examination Application, A440-2101REEX-v2 \(rev. 9/2013\)](#)

[Hearing Aid Specialist Training & Experience Form, A440-21TREXP-v2 \(eff. 9/2013\)](#)

VA.R. Doc. No. R14-3984; Filed December 2, 2016, 3:41 p.m.

**BOARD OF NURSING**

**Fast-Track Regulation**

**Title of Regulation: 18VAC90-20. Regulations Governing the Practice of Nursing (amending 18VAC90-20-225, 18VAC90-20-230).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 25, 2017.

Effective Date: February 10, 2017.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to (i) promulgate regulations that are reasonable and necessary to administer effectively the regulatory system; (ii) establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege in accordance with the applicable law that are necessary to ensure competence and integrity to engage in the regulated professions; and (iii) issue inactive licenses or certificates and promulgate regulations to carry out such purpose, which shall include the qualifications, renewal fees, and conditions for reactivation of licenses or certificates.

Purpose: On April 13, 2016, a petition for rulemaking was received requesting that the Board of Nursing consider amending the sections on reactivation and reinstatement because requirements in those sections appear to allow a person to let his license lapse and then pay the reinstatement fee without meeting the requirements for continued competency for renewal of licensure.

The board concurred with the petitioner and voted to amend its regulations using the fast-track rulemaking process. While the board currently expects nurses reactivating or reinstating within one renewal cycle to meet the continuing competency requirements, the regulations do not specifically include that provision. As such, regulations may not adequately ensure the current competency of a person seeking reactivation or reinstatement. To protect the health and safety of patients, the

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board must require some evidence that the nurse is competent to resume active practice.

Rationale for Using Fast-Track Rulemaking Process: There was only one comment on the petition for rulemaking; a comment in support was received from the petitioner. Therefore, the board is confident that the rulemaking is noncontroversial and should be promulgated as a fast-track rulemaking action.

Substance: The amendments clarify that when a nurse reactivates an inactive license or reinstates a lapsed license with one renewal period of going inactive or allowing the license to lapse, he must provide evidence of completion of at least one of the learning activities or courses specified in 18VAC90-20-221 during the two years immediately preceding reactivation or reinstatement.

Issues: The primary advantage to the public of the amendment is better assurance that nurses returning to active practice have minimal competency to provide services to patients in Virginia. There are no disadvantages to the public. There are no advantages or disadvantages to the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The proposed regulation will clarify that compliance with continuing education requirements is required to reactivate an inactive license and to reinstate a lapsed license.

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

Estimated Economic Impact. The Board of Nursing (Board) currently expects nurses reactivating or reinstating their licenses within one renewal cycle to meet the continuing education requirements for nurses renewing their active licenses. That is a nurse who has not kept his or her knowledge and skills up-to-date is expected to obtain 30 hours of continuing education and a nurse who actively practiced in another state and is returning to Virginia is expected to obtain 15 hours of continuing education. However, the current regulation does not specify these requirements. The proposed language clarifies that nurses reactivating or reinstating their licenses are subject to the same continuing education requirements established in subdivisions 8 and 9 of 18VAC90-20-221. Since compliance with the proposed requirements is already expected by the Board and enforced, no significant economic effect is expected other than improving the clarity of the regulation.

Businesses and Entities Affected. In June 2016, there were 217,195 registered nurses and 29,718 licensed practical nurses in Virginia. Of this population, 1,013 registered nurses and 631 licensed practical nurses had their licenses go inactive or lapse and, later, in fiscal year 2016, applied for reactivation or reinstatement.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. No impact on employment is expected.

Effects on the Use and Value of Private Property. No impact on the use and value of private property is expected.

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

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. No costs or other effects on small businesses are expected.

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not have an adverse impact on small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not have an adverse impact on non-small businesses.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments do not adversely affect other entities.

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

Summary:

*The amendments clarify that compliance with continuing education requirements is required to reactivate an inactive license and to reinstate a lapsed license.*

## **18VAC90-20-225. Inactive licensure.**

A. A registered nurse or licensed practical nurse who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be entitled to practice nursing in Virginia or practice on a multistate licensure privilege but may use the title "registered nurse" or "licensed practical nurse."

B. Reactivation of an inactive license.

1. A nurse whose license is inactive may reactivate within one renewal period by payment:

a. Payment of the difference between the inactive renewal and the active renewal fee; and

b. Providing attestation of completion of at least one of the learning activities or courses specified in 18VAC90-20-221 during the two years immediately preceding reactivation.

2. A nurse whose license has been inactive for more than one renewal period may reactivate by:

- a. Submitting an application;
- b. Paying the difference between the inactive renewal and the active renewal fee; and
- c. Providing evidence of completion of at least one of the learning activities or courses specified in 18VAC90-20-221 during the two years immediately preceding application for reactivation.

3. The board may waive all or part of the continuing education requirement for a nurse who holds a current, unrestricted license in another state and who has engaged in active practice during the period the Virginia license was inactive.

4. The board may request additional evidence that the nurse is prepared to resume practice in a competent manner.

5. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of § 54.1-3007 of the Code of Virginia or any provision of this chapter.

**18VAC90-20-230. Reinstatement of lapsed licenses or license suspended or revoked.**

A. A nurse whose license has lapsed may be reinstated within one renewal period by ~~payment~~:

- 1. Payment of the current renewal fee and the late renewal fee; and
- 2. Providing attestation of completion of at least one of the learning activities or courses specified in 18VAC90-20-221 during the two years immediately preceding reinstatement.

B. A nurse whose license has lapsed for more than one renewal period shall:

- 1. File a reinstatement application and pay the reinstatement fee;
- 2. Provide evidence of completing at least one of the learning activities or courses specified in 18VAC90-20-221 during the two years immediately preceding application for reinstatement; and
- 3. Submit a criminal history background check as required by § 54.1-3005.1 of the Code of Virginia.

C. The board may waive all or part of the continuing education requirement for a nurse who holds a current, unrestricted license in another state and who has engaged in active practice during the period the Virginia license was lapsed.

D. A nurse whose license has been suspended or revoked by the board may apply for reinstatement by filing a reinstatement application, fulfilling requirements for continuing competency as required in subsection B of this section, and paying the fee for reinstatement after suspension

or revocation. A nurse whose license has been revoked may not apply for reinstatement sooner than three years from entry of the order of revocation.

E. The board may request additional evidence that the nurse is prepared to resume practice in a competent manner.

VA.R. Doc. No. R16-22; Filed December 7, 2016, 10:44 a.m.

**BOARD OF PHYSICAL THERAPY**

**Proposed Regulation**

Title of Regulation: **18VAC112-20. Regulations Governing the Practice of Physical Therapy (adding 18VAC112-20-121).**

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

Public Hearing Information:

February 7, 2017 - 9:30 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor Conference Center, Board Room 4, Henrico, VA 23233

Public Comment Deadline: February 24, 2017.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4674, FAX (804) 527-4413, or email ptboard@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Physical Therapy the authority to promulgate regulations to administer the regulatory system. In the statutory definition of physical therapy, the practice of dry needling is not addressed, but treatment may be interpreted to include such practice.

Purpose: The purpose of the proposed action is to specify the qualifications for and limitations of the practice of dry needling as performed by physical therapists. For physical therapists, dry needling is not an entry level skill for which competency has been assured through an accredited educational program and national examination. It is an advanced procedure that requires additional training, referral and direction, and informed consent. Without a regulatory standard, the board cannot hold a physical therapist accountable for requirements specific to dry needling. Therefore, the board has determined that regulations are necessary to protect the health and safety of patients who may receive dry needling in the course of a physical therapy treatment.

Substance: The proposed action adds a new section on the performance of dry needling that includes reference to the statutory requirement for referral and direction from a medical practitioner, requirements for additional training and the content of such training, a requirement of informed consent, and the disclosure to patients on the difference between acupuncture and dry needling.

Issues: The board believes the proposed regulation offers protection for patients who receive a dry needling procedure

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during the course of physical therapy treatment. Regulatory requirements for referral, training, and informed consent provide greater assurance of competency and accountability than the guidance document that currently exists. The board does not believe there are disadvantages to the public as the procedure is limited in scope and relatively safe to perform.

There are no advantages or disadvantages to the agency or the Commonwealth.

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

**Summary of the Proposed Amendments to Regulation.** The Board of Physical Therapy (the board) proposes to add to its main regulation provisions regarding the practice of dry needling including referral, training, informed consent, and disclosure requirements.

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

**Estimated Economic Impact.** Dry needling is a technique used in the practice of physical therapy to treat muscle tension and pain by inserting a special type of needle into areas of the muscle known as trigger points. According to the board, dry needling has been performed by physical therapists in Virginia for more than a decade. Currently, physical therapists performing the procedure are subject to the board's guidance document 112-9 which sets out referral, training, informed consent, and disclosure requirements for practice of dry needling.<sup>1</sup> The board proposes to add to this regulation provisions that are substantially similar to those in the guidance document. Adding these provisions to the regulation should not create any significant economic effects as there will be no change in practice. One notable exception is that 54 hours of post professional training is required under the guidance while the proposed regulation does not state a specific number of training hours. This provision is not being added because it is understood that all physical therapy educational programs now cover the practice of dry needling.

According to the board, if a physical therapist who has not received education and training in dry needling chooses to add it as a modality for his/her patients, there are a variety of courses offered. Most involve multi-day seminars with hands-on training and cost approximately \$1,000. Thus, under the regulations some physical therapists may be able to obtain sufficient training at less than the current cost while some others may have to incur a larger cost. In any event, practice of dry needling is voluntary and by choosing to offer it as a modality, a therapist reveals that expected benefits to him or her are greater than the expected costs.

The board also notes that without a regulatory standard, a physical therapist cannot be held accountable for requirements specific to dry needling. Thus, having the requirements in regulations could improve enforcement should there be a violation.<sup>2</sup>

**Businesses and Entities Affected.** Currently, there are 7,786 physical therapists licensed in Virginia. Not all of the physical therapists perform dry needling.

**Localities Particularly Affected.** The proposed changes apply statewide.

**Projected Impact on Employment.** No impact on employment is expected.

**Effects on the Use and Value of Private Property.** No impact on the use and value of private property is expected.

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

**Small Businesses:**

**Definition.** Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

**Costs and Other Effects.** Most if not all of the physical therapists work in offices that are small business.

**Alternative Method that Minimizes Adverse Impact.** No adverse impact on small businesses is expected.

**Adverse Impacts:**

**Businesses.** The proposed amendments do not have an adverse impact on businesses.

**Localities.** The proposed amendments will not adversely affect localities.

**Other Entities.** The proposed amendments will not adversely affect other entities.

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<sup>1</sup> This guidance document posted on the Regulatory Town Hall on August 2010 can be found at: [http://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\223\GDoc\\_DHP\\_3650\\_v2.pdf](http://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\223\GDoc_DHP_3650_v2.pdf).

<sup>2</sup> DHP is unaware of any complaints regarding the practice of dry needling by physical therapists at least since 2010 when the guidance was adopted.

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

## **Summary:**

*This action establishes the qualifications for and limitations of the performance of dry needling by physical therapists, including referral and direction from a medical practitioner, training, informed consent, and disclosure to patients regarding the difference between acupuncture and dry needling.*

## **18VAC112-20-121. Practice of dry needling.**

**A. Dry needling is an invasive procedure that requires referral and direction in accordance with § 54.1-3482 of the Code of Virginia. Referral should be in writing; if the initial referral is received orally, it shall be followed up with a written referral.**

B. Dry needling is not an entry level skill but an advanced procedure that requires additional training. The training shall be specific to dry needling and shall include emergency preparedness and response, contraindications and precautions, secondary effects or complications, palpation and needle techniques, and physiological responses.

C. Prior to the performance of dry needling, the physical therapist shall obtain informed consent from the patient or his representative. The informed consent shall include the risks and benefits of the technique and shall clearly state that the patient is not receiving an acupuncture treatment. The informed consent form shall be maintained in the patient record.

VA.R. Doc. No. R16-4433; Filed December 6, 2016, 3:28 p.m.

## REAL ESTATE APPRAISER BOARD

### Fast-Track Regulation

Title of Regulation: **18VAC130-11. Public Participation Guidelines (amending 18VAC130-11-50).**

Statutory Authority: §§ 2.2-4007.02, 54.1-201, and 54.1-2013 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 25, 2017.

Effective Date: February 13, 2017.

Agency Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 826-8863, or email reappraisers@dpor.virginia.gov.

Basis: Section 2.2-4007.02 of the Code of Virginia mandates each agency develop, adopt, and use public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations. The Real Estate Appraiser Board is authorized under § 54.1-201 of the Code of Virginia to promulgate regulations necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the board.

Purpose: The change to 18VAC130-11-50 conforms the agency's Public Participation Guidelines to the change in the Administrative Process Act pursuant to Chapter 795 of the 2012 Acts of Assembly. Participation by the public in the regulatory process is essential to assist the board in the promulgation of regulations that will protect the public health and safety.

Rationale for Using Fast-Track Rulemaking Process: As the change merely conforms the regulation to the underlying statute, the rulemaking is not expected to be controversial and, therefore, appropriate for the fast-track rulemaking process.

Substance: The change to 18VAC130-11-50 provides that interested persons may be accompanied by and represented

by counsel or other representative when presenting their views in the promulgation of any regulatory action.

Issues: As the change merely conforms the regulation to § 2.2-4007.02 of the Code of Virginia, the primary advantage is to ensure consistency between the law and regulation, which should reduce the chance of confusion. There are no anticipated disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 795 of the 2012 Acts of Assembly,<sup>1</sup> the Real Estate Appraiser Board (Board) proposes to specify in this regulation that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative when submitting data, views, and arguments, either orally or in writing, to the agency.

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

Estimated Economic Impact. The current Public Participation Guidelines state that: "In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency." The Board proposes to append "and (ii) be accompanied by and represented by counsel or other representative."

Chapter 795 of the 2012 Acts of Assembly added to § 2.2-4007.02. "Public participation guidelines" of the Code of Virginia that interested persons also be afforded an opportunity to be accompanied by and represented by counsel or other representative. Since the Code of Virginia already specifies that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative, the Board's proposal to add this language to the regulation will not change the law in effect, but will be beneficial in that it will inform interested parties who read this regulation but not the statute of their legal rights concerning representation.

Businesses and Entities Affected. The proposed amendment potentially affects all individuals who comment on pending regulatory changes.

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

Projected Impact on Employment. The proposed amendment does not significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendment does not affect the use and value of private property.

Real Estate Development Costs. The proposed amendment does not affect real estate development costs.

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## Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. The proposed amendment does not affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendment does not adversely affect small businesses.

## Adverse Impacts:

Businesses. The proposed amendment does not adversely affect businesses.

Localities. The proposed amendment does not adversely affect localities.

Other Entities. The proposed amendment does not adversely affect other entities.

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<sup>1</sup> See <http://leg1.state.va.us/cgi-bin/legp504.exe?121+ful+CHAP0795+hil>

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

## Summary:

*Pursuant to § 2.2-4007.02 of the Code of Virginia, the amendment provides that interested persons submitting data, views, and arguments on a regulatory action may be accompanied by and represented by counsel or another representative.*

## Part III Public Participation Procedures

### 18VAC130-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency; and (ii) be accompanied by and represented by counsel or other representative. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).
2. For a minimum of 60 calendar days following the publication of a proposed regulation.
3. For a minimum of 30 calendar days following the publication of a repropoed regulation.
4. For a minimum of 30 calendar days following the publication of a final adopted regulation.
5. For a minimum of 30 calendar days following the publication of a fast-track regulation.
6. For a minimum of 21 calendar days following the publication of a notice of periodic review.
7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with § 2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to § 2.2-4012 E of the Code of Virginia.

VA.R. Doc. No. R17-4932; Filed November 28, 2016, 12:12 p.m.

## BOARD OF VETERINARY MEDICINE

### Proposed Regulation

Title of Regulation: **18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (amending 18VAC150-20-10, 18VAC150-20-30 through 18VAC150-20-140, 18VAC150-20-172 through 18VAC150-20-220; adding 18VAC150-20-201).**

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

### Public Hearing Information:

February 8, 2017 - 9 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor Conference Center, Board Room 1, Henrico, VA 23233

Public Comment Deadline: February 24, 2017.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4468, FAX (804) 527-4471, or email [leslie.knachel@dhp.virginia.gov](mailto:leslie.knachel@dhp.virginia.gov).

**Basis:** Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards, including the Board of Veterinary Medicine, and includes the responsibility to promulgate regulations.

The specific authority of the board relating to practical training for students of veterinary medicine is found in § 54.1-3804 of the Code of Virginia.

**Purpose:** Issues relating to informed consent, practice by preceptees and the accountability of supervising veterinarians, drug security, responsibilities of a veterinarian-in-charge, and standards for veterinary establishments have been addressed during the periodic review and in the proposed amendments in this action. Concerns about patient health and safety in veterinary care and about the lack of security for prescription drugs were the major foci of the review. The goal of the planned action is to update and clarify rules in such a manner to address the concerns expressed by members of the public and the issues identified by the department inspectors and board members through the inspection and the disciplinary process.

**Substance:** Proposed amendments include:

18VAC150-10. Definitions are added, deleted, or modified to update terminology used in regulation.

18VAC150-70. Requirements for licensure renewal are amended to clarify that falsification of compliance with continuing education requirements may subject the licensee to disciplinary action.

18VAC150-110. Requirements for licensure by examination are reorganized; there are no new requirements proposed.

18VAC150-115: Specifying the examination acceptable to the board and clarifying the board's authority to deny licensure for acts that constitute unprofessional conduct.

18VAC150-120: Requirements for licensure by endorsement for a veterinarian are amended to eliminate the need for an applicant to meet all the requirements for licensure by examination, so the endorsement process will be less onerous. Provisions for attestation of reading the laws and regulations and having committed no acts that would constitute unprofessional conduct are added for consistency with licensure by examination and for public safety. Other amendments are clarifying.

18VAC150-121. Requirements for licensure by endorsement for veterinary technicians are amended similarly to provisions for veterinarians.

18VAC150-130. Requirements for practical training in a preceptorship or externship are amended to (i) specify that the supervising veterinarian must be in the operatory when a preceptee is performing or assisting in surgery; (ii) that a veterinarian must disclose to owners when there is a preceptee working in the establishment; and (iii) that the supervising veterinarian remains responsible for the care and treatment of the patient.

18VAC150-140. Regulations stating causes for unprofessional conduct are amended for clarification of certain provisions and to add a cause for action in the failure to submit evidence of correction resulting from a violation noted in an inspection within 14 days unless an extension has been granted.

18VAC150-172. The delegation of duties to an unlicensed assistant is amended to specify that an assistant cannot be delegated the induction of sedation or anesthesia, and to restrict monitoring of a sedated patient, unless a licensee remains on premises. Other amendments clarify current provisions.

18VAC150-173. The text ", preceptee, or extern" is added.

18VAC150-180. Regulations for veterinary establishments are amended to change the categories from full service or restricted service to stationery or ambulatory to be more descriptive and consistent with current practice.

18VAC150-181. Requirements for the veterinarian-in-charge (VIC) of an establishment are amended to clarify that the VIC must be regularly on-site as often as necessary to provide oversight for patient safety and compliance with law and regulation. A new subsection is proposed to incorporate current language about patient records upon sale or closure of a practice (in 18VAC150-20-195) and to add a notification to the board about the location of records and disposition of scheduled drugs.

18VAC150-185. The requirements for renewal of an establishment permit are amended to clarify that practicing on an expired permit may subject the permit holder or licensee to disciplinary action.

18VAC150-190: Requirements for drug storage, dispensing, destruction, and records are amended to incorporate recommendations for strengthening the security and integrity of prescription drugs. Amendments are proposed for veterinary establishments consistent with other types of establishments in which prescription drugs are stored and dispensed. Those amendments include (i) clarification that only the veterinarian or licensed veterinary technician has access to Schedule II through V drugs; (ii) specification about the storage in a securely locked cabinet or safe that is not easily movable; (iii) provision to allow Schedule II through V drugs that are in direct possession of licensed personnel and necessary for use during business hours to be maintained outside of a locked container; (iv) provision that all general and working stock and prescriptions dispensed but not delivered are securely stored after business hours; (v) allowance for prescriptions that have been dispensed to be maintained in a place not accessible to the public and deliverable to an owner by an unlicensed person; (vi) more specificity about the process to follow when a loss or theft of drugs occurs; (vii) more specificity about refrigerated drugs and their security; (viii) requirements for inventories and maintenance of records, including drug invoices; and (ix) provisions for records of drug distribution if a limited or

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ambulatory practice uses the facilities of another veterinary establishment.

18VAC150-195. Amendments to the recordkeeping requirements incorporate provisions related to records that are currently found in other sections and a more specific requirement for the content of the record.

18VAC150-20-200. The current terminology for "full-service" establishments is changed to "stationary" establishments to distinguish them from those that are mobile. Requirements are reorganized for ease of understanding and compliance, and the specific listing of laboratory services is eliminated. A subsection is added with requirements to ensure that patients receive appropriate care at establishments that are open to the public 24 hours a day; a disclosure is required if an establishment is not open 24 hours a day and the establishment does not have continuous staffing. All stationary establishments must provide continuity of care when transferring a patient to another facility.

18VAC150-20-201. The current terminology for "large animal" and "small animal" establishments is changed to "ambulatory" in the categories of "agricultural or equine" and "house call or proceduralist." Requirements for such establishments are consistent with current requirements and with the services provided.

18VAC-150-220: Requirements for continuing education for equine dental technicians are amended for consistency with other regulants of the board in the conditions for granting exemptions or exceptions and the timeframe for provision of continuing education documentation.

The board may propose other amendments as a result of public comment or in the review of its draft language resulting from the periodic review of regulations.

Issues: The primary advantages to the public are more security for drug stocks and more specificity about patient records. There are no disadvantages to the public. There are no advantages and disadvantages to the agency or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. As a result of a periodic review of this regulation,<sup>1</sup> the Board of Veterinary Medicine (the Board) proposes to 1) make licensure by endorsement less burdensome, 2) strengthen the security and integrity of prescription drugs, and 3) clarify a number of existing practices and requirements.

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

Estimated Economic Impact. One of the proposed changes will make licensure by endorsement less burdensome for both veterinarians and technicians. Currently, transcripts and national exam scores must be submitted for licensure by endorsement. The Board proposes to eliminate the requirement to submit those documents. The Board contends

that the consistency of licensure requirements among all states makes it virtually certain that the applicant has met those qualifications. Additionally, the minimal competency is assured by the requirement that the license is unrestricted, that the applicant has been in active practice, and that he or she has completed hours of continuing education. In addition, provisions for attestation of reading the laws and regulations and having committed no acts that would constitute unprofessional conduct are proposed for consistency with licensure by examination and for public safety.

The Board also proposes requirements to strengthen the security and integrity of prescription drugs. The proposed amendments include adding specificity about the storage in a securely locked cabinet or safe that is not easily movable, a provision to allow working stock of drugs during business hours to be maintained outside of a locked container, a provision that all general and working stock and prescriptions dispensed but not delivered are securely stored after business hours, an allowance for prescriptions that have been dispensed to be maintained in a place not accessible to the public and deliverable to an owner by an unlicensed person, more specificity about the process to follow if there is a loss or theft of drugs; more specificity about refrigerated drugs and their security, new requirements for inventories and maintenance of records, including drug invoices; and provisions for records of drug distribution if a limited or ambulatory practice uses the facilities of another veterinary establishment. While some of these requirements are more restrictive and some may introduce small administrative costs, some of the other changes are less restrictive and would benefit veterinary establishments.

The remaining changes include updating the regulation to reflect changes in stationary and ambulatory veterinary establishments, clarifying the delegation of duties; clarifying the responsibilities of the veterinarian in charge, and updating a number of definitions. None of these amendments represent a change in practice and consequently are not expected to create any significant economic effects other than improving the clarity of the regulation.

Businesses and Entities Affected. There are 4,042 veterinarians and 1,930 veterinary technicians currently licensed and 22 equine dental technicians registered in Virginia. There are 329 veterinary establishments with restricted licenses and 770 establishments with full licenses.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. No impact on employment is expected.

Effects on the Use and Value of Private Property. No impact on the use and value of private property is expected.

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

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. Almost all of the veterinary establishments would be considered small businesses. The effects on affected small businesses are the same as discussed above.

Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Adverse Impacts:

Businesses. The proposed amendments do not have an adverse impact on non-small businesses.

Localities. The proposed amendments will not adversely affect localities.

Other Entities. The proposed amendments will not adversely affect other entities.

<sup>1</sup> <http://townhall.virginia.gov/L/ViewPReview.cfm?PRid=1372>.

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

Summary:

*As a result of a periodic review, the proposed amendments (i) organize requirements for greater clarity, (ii) update the descriptions and requirements for veterinary establishments consistent with current practices, (iii) specify rules in accordance with board interpretation for ease of compliance, (iv) adjust requirements for licensure by endorsement, and (v) increase accountability and security for prescription drugs.*

Part I  
General Provisions

**18VAC150-20-10. Definitions.**

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

"AAVSB" means the American Association of Veterinary State Boards.

~~"Animal shelter" means a facility, other than a private residential dwelling and its surrounding grounds, that is used to house or contain animals and that is owned, operated, or maintained by a nongovernmental entity including, but not limited to, a humane society, animal welfare organization, society for the prevention of cruelty to animals, or any other organization operating for the purpose of finding permanent adoptive homes for animals.~~

"Automatic emergency lighting" is lighting that is powered by battery, generator, or alternate power source other than

electrical power, is activated automatically by electrical power failure, and provides sufficient light to complete surgery or to stabilize the animal until surgery can be continued or the animal moved to another establishment.

"AVMA" means the American Veterinary Medical Association.

"Board" means the Virginia Board of Veterinary Medicine.

"Companion animal" means any dog, cat, horse, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or animal under the care, custody or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purposes of this chapter.

"CVMA" means the Canadian Veterinary Medical Association.

"DEA" means the U.S. Drug Enforcement Administration.

~~"Full service establishment" means a stationary or ambulatory facility that provides surgery and encompasses all aspects of health care for small or large animals, or both.~~

"Immediate and direct supervision" means that the licensed veterinarian is immediately available to the licensed veterinary technician or assistant, either electronically or in person, and provides a specific order based on observation and diagnosis of the patient within the last 36 hours.

"NBVME" means the National Board of Veterinary Medical Examiners.

"Owner" means any person who (i) has a right of property in an animal; (ii) keeps or harbors an animal; (iii) has an animal in his care; or (iv) acts as a custodian of an animal.

~~"Pound" means a facility operated by the state or a locality for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals; or a facility operated for the same purpose under a contract with a locality or an incorporated society for the prevention of cruelty to animals.~~

"Preceptee" or "extern" means a student who is enrolled and in good standing in an AVMA accredited college of veterinary medicine or AVMA accredited veterinary technology program and who is receiving practical experience under the supervision of a licensed veterinarian or licensed veterinary technician.

"Preceptorship" or "externship" means a formal arrangement between an AVMA accredited college of veterinary medicine or an AVMA accredited veterinary technology program and a veterinarian who is licensed by the board and responsible for the practice of the preceptee. A preceptorship or externship shall be overseen by faculty of the college or program.

"Private animal shelter" means a facility that is used to house or contain animals and that is owned or operated by an

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incorporated, nonprofit, and nongovernmental entity, including a humane society, animal welfare organization, society for the prevention of cruelty to animals, or any other organization operating for the purpose of finding permanent adoptive homes for animals.

"Professional judgment" includes any decision or conduct in the practice of veterinary medicine, as defined by § 54.1-3800 of the Code of Virginia.

"Public animal shelter" means a facility operated by the Commonwealth, or any locality, for the purpose of impounding or sheltering seized, stray, homeless, abandoned, unwanted, or surrendered animals, or a facility operated for the same purpose under a contract with any locality.

~~"Restricted service establishment" means a stationary or ambulatory facility which does not meet the requirements of a full service establishment.~~

"Specialist" means a veterinarian who has been awarded and has maintained the status of diplomate of a specialty organization recognized by the American Board of Veterinary Specialties of the American Veterinary Medical Association, or any other organization approved by the board.

"Surgery" means treatment through revision, destruction, incision or other structural alteration of animal tissue. Surgery does not include dental extractions of single-rooted teeth or skin closures performed by a licensed veterinary technician upon a diagnosis and pursuant to direct orders from a veterinarian.

"Veterinarian in charge" means a veterinarian who holds an active license in Virginia and who is responsible for maintaining a veterinary establishment within the standards set by this chapter, for complying with federal and state laws and regulations, and for notifying the board of the establishment's closure.

"Veterinary establishment" means any ~~fixed~~ stationary or ~~mobile~~ ambulatory practice, veterinary hospital, animal hospital, or premises wherein or out of which veterinary medicine is being conducted.

"Veterinary technician" means a person licensed by the board as required by § 54.1-3805 of the Code of Virginia.

## **18VAC150-20-30. Posting of licenses; accuracy of address.**

A. All licenses, and registrations ~~and permits~~ issued by the board shall be posted in a place conspicuous to the public at the establishment where veterinary services are being provided or available for inspection at the location where an equine dental technician is working. Licensees who do relief or temporary work in an establishment shall carry a license with them or post it at the establishment. Ambulatory veterinary practices that do not have an office accessible to the public shall carry their licenses and ~~permits~~ registrations in their vehicles.

B. It shall be the duty and responsibility of each licensee, registrant, and holder of a registration ~~permit~~ to operate a veterinary establishment to keep the board apprised at all

times of his current address of record and the public address, if different from the address of record. All notices required by law or by this chapter to be mailed to any veterinarian, veterinary technician, registered equine dental technician, or holder of a ~~permit~~ registration to operate a veterinary establishment, shall be validly given when mailed to the address of record furnished to the board pursuant to this regulation. All address changes shall be furnished to the board within 30 days of such change.

## **18VAC150-20-70. Licensure renewal requirements.**

A. Every person licensed by the board shall, by January 1 of every year, submit to the board a completed renewal application and pay to the board a renewal fee as prescribed in 18VAC150-20-100. Failure to renew shall cause the license to lapse and become invalid, and practice with a lapsed license may subject the ~~licensees~~ licensee to disciplinary action by the board. Failure to receive a renewal notice does not relieve the licensee of his responsibility to renew and maintain a current license.

B. Veterinarians shall be required to have completed a minimum of 15 hours, and veterinary technicians shall be required to have completed a minimum of eight hours, of approved continuing education for each annual renewal of licensure. Continuing education credits or hours may not be transferred or credited to another year.

1. Approved continuing education credit shall be given for courses or programs related to the treatment and care of patients and shall be clinical courses in veterinary medicine or veterinary technology or courses that enhance patient safety, such as medical recordkeeping or compliance with requirements of the Occupational Health and Safety Administration (OSHA).
2. An approved continuing education course or program shall be sponsored by one of the following:
  - a. The AVMA or its constituent and component/branch associations, specialty organizations, and board certified specialists in good standing within their specialty board;
  - b. Colleges of veterinary medicine approved by the AVMA Council on Education;
  - c. International, national, or regional conferences of veterinary medicine;
  - d. Academies or species-specific interest groups of veterinary medicine;
  - e. State associations of veterinary technicians;
  - f. North American Veterinary Technicians Association;
  - g. Community colleges with an approved program in veterinary technology;
  - h. State or federal government agencies;
  - i. American Animal Hospital Association (AAHA) or its constituent and component/branch associations;

j. Journals or veterinary information networks recognized by the board as providing education in veterinary medicine or veterinary technology; or

k. An organization or entity approved by the Registry of Approved Continuing Education of the ~~American Association of Veterinary State Boards~~ AAVSB.

3. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following his initial licensure by examination.

4. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

5. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such an extension shall not relieve the licensee of the continuing education requirement.

6. Licensees are required to attest to compliance with continuing education requirements on their annual license renewal and are required to maintain original documents verifying the date and subject of the program or course, the number of continuing education hours or credits, and certification from an approved sponsor. Original documents must be maintained for a period of two years following renewal. The board shall periodically conduct a random audit to determine compliance. Practitioners selected for the audit shall provide all supporting documentation within ~~10~~ 14 days of receiving notification of the audit unless an extension is granted by the board.

7. Continuing education hours required by disciplinary order shall not be used to satisfy renewal requirements.

8. Falsifying the attestation of compliance with continuing education on a renewal form or failure to comply with continuing education requirements may subject a licensee to disciplinary action by the board, consistent with § 54.1-3807 of the Code of Virginia.

C. A licensee who has requested that his license be placed on inactive status is not authorized to perform acts that are considered the practice of veterinary medicine or veterinary technology and, therefore, shall not be required to have continuing education for annual renewal. To reactivate a license, the licensee is required to submit evidence of completion of continuing education hours as required by § 54.1-3805.2 of the Code of Virginia and this section equal to the number of years in which the license has not been active for a maximum of two years.

**18VAC150-20-75. Expired license; reinstatement; practice with an expired or lapsed license not permitted.**

A. A license may be renewed up to one year after the expiration date, provided a late fee as prescribed in

18VAC150-20-100 is paid in addition to the required renewal fee. A license shall automatically lapse if the licensee fails to renew by the expiration date. The practice of veterinary medicine without a current, active license is unlawful and may subject the licensee to disciplinary action by the board.

B. Reinstatement of licenses expired for more than one year shall be at the discretion of the board. To reinstate a license, the licensee shall pay the reinstatement fee as prescribed in 18VAC150-20-100 and submit evidence of completion of continuing education hours as required by § 54.1-3805.2 of the Code of Virginia and 18VAC150-20-70 equal to the number of years in which the license has been expired, for a maximum of two years. The board may require additional documentation of clinical competency and professional activities.

**18VAC150-20-100. Fees.**

The following fees shall be in effect:

Veterinary application for licensure	\$200
Veterinary license renewal (active)	\$175
Veterinary license renewal (inactive)	\$85
Veterinary reinstatement of expired license	\$255
Veterinary license late renewal	\$60
Veterinarian reinstatement after disciplinary action	\$450
Veterinary technician application for licensure	\$65
Veterinary technician license renewal	\$50
Veterinary technician license renewal (inactive)	\$25
Veterinary technician license late renewal	\$20
Veterinary technician reinstatement of expired license	\$95
Veterinary technician reinstatement after disciplinary action	\$125
Equine dental technician initial registration	\$100
Equine dental technician registration renewal	\$70
Equine dental technician late renewal	\$25
Equine dental technician reinstatement	\$120
Initial veterinary establishment <del>permit</del> registration	\$300
Veterinary establishment renewal	\$200

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Veterinary establishment late renewal	\$75
Veterinary establishment reinstatement	\$75
Veterinary establishment reinspection	\$300
Veterinary establishment -- change of location	\$300
Veterinary establishment -- change of veterinarian-in-charge	\$40
Duplicate license	\$15
Duplicate wall certificate	\$25
Returned check	\$35
Licensure verification to another jurisdiction	\$25

## Part II

### Licensure for Veterinarians and Veterinary Technicians

#### **18VAC150-20-110. Requirements for licensure by examination as a veterinarian.**

A. The applicant, in order to be licensed by the board to practice veterinary medicine, shall:

1. Have received a degree in veterinary medicine from a college or school of veterinary medicine accredited by the AVMA ~~or have fulfilled the requirements of the Educational Commission of Foreign Veterinary Graduates (ECFVG) of the AVMA or any other substantially equivalent credentialing body as determined by the board,~~ as verified by an official transcript from the applicant's college or school, indicating completion of the veterinary degree; and

2. Have passed the North American Veterinary License Examination (since the fall of 2000) or the National Board Examination and the Clinical Competency Test (prior to the fall of 2000) of the NBVME or any other substantially equivalent national examination as approved by the board with a score acceptable to the board.

3. In lieu of a degree from an accredited college or school, an applicant may submit verification that he has fulfilled the requirements of the Educational Commission of Foreign Veterinary Graduates (ECFVG) of the AVMA or the Program for the Assessment of Veterinary Education Equivalence (PAVE) of the AAVSB or any other substantially equivalent credentialing body as determined by the board.

2. ~~File the following documents with the board:~~ B. All applicants shall also:

~~a. A~~ 1. Submit the application fee specified in 18VAC150-20-100 and a complete and notarized application on a form obtained from the board;

~~b. An official copy, indicating veterinary degree, of the applicant's college or school transcript;~~

~~e. Certification of a full and unrestricted~~ 2. Provide verification that any license to practice veterinary medicine by each board from which the applicant holds a license issued by a board of veterinary medicine in another state or United States jurisdiction is in good standing;

3. ~~Pass the North American Veterinary License Examination or the National Board Examination and the Clinical Competency Test approved by the American Association of Veterinary State Boards or any other substantially equivalent national examination as approved by the board with a score acceptable to the board.~~

4. 3. Sign a statement attesting that the applicant has read, understands, and will abide by the statutes and regulations governing veterinary practice in Virginia; and

~~5. 4. Have committed no acts which that would constitute a violation of § 54.1-3807 of the Code of Virginia.~~

B. C. If the application for licensure has not been successfully completed within one year from the date of initial submission, a new application and fee shall be required.

#### **18VAC150-20-115. Requirements for licensure by examination as a veterinary technician.**

A. The applicant, in order to be licensed by the board as a veterinary technician, shall:

1. Have received a degree in veterinary technology from a college or school accredited by the AVMA or the CVMA.

2. Have filed with the board the following documents:

a. A complete and notarized application on a form obtained from the board;

b. An official copy, indicating a veterinary technology degree, of the applicant's college or school transcript; and

c. ~~Certification~~ Verification that the applicant is in good standing by each board in another state or United States jurisdiction from which the applicant holds a license, certification, or registration to practice veterinary technology.

3. ~~Pass a~~ Have passed the Veterinary Technician National Examination approved by the AAVSB or any other board-approved, national board examination for veterinary technology with a score acceptable to the board.

4. Sign a statement attesting that the applicant has read, understands, and will abide by the statutes and regulations governing veterinary practice in Virginia.

5. Have committed no acts that would constitute a violation of § 54.1-3807 of the Code of Virginia.

B. The application for licensure shall be valid for a period of one year after the date of initial submission, after which time a new application and fee shall be required.

**18VAC150-20-120. Requirements for licensure by endorsement as a veterinarian.**

~~A. The board may, in its discretion, grant a license by endorsement to an applicant who is licensed to practice veterinary medicine in another state, the District of Columbia, or possessions or territories of the United States, provided that the applicant:~~

- ~~1. All licenses are in good standing. Holds at least one current, unrestricted license in another jurisdiction of the United States and is not a respondent in any pending or unresolved board action in any jurisdiction;~~
- ~~2. The applicant has been~~ Provides documentation of having been regularly engaged in clinical practice for at least two of the past four years immediately preceding application; ~~and~~
- ~~3. The applicant has met all applicable requirements of 18VAC150-20-110, except foreign trained veterinarians who have attained specialty recognition by a board recognized by the AVMA are exempt from the requirements of ECFVG or any other substantially equivalent credentialing body as determined by the board. Provides documentation of completion of at least 30 hours of continuing education requirements during the preceding four years;~~
- ~~4. Signs a statement attesting that the applicant has read, understands, and will abide by the statutes and regulations governing veterinary practice in Virginia; and~~
- ~~5. Has committed no acts that would constitute a violation of § 54.1-3807 of the Code of Virginia.~~

~~B. Provided that the applicant has met the requirements of subsection A of this section, the board may, in its discretion, waive the requirement that the applicant pass the national board exam or the clinical competency test, or both.~~

**18VAC150-20-121. Requirements for licensure by endorsement for veterinary technicians.**

In its discretion, the board may grant a license by endorsement to an applicant who is licensed, certified or registered to practice as a veterinary technician in another state, the District of Columbia, or possessions or territories of the United States, provided that the applicant:

- ~~1. All licenses, certificates or registrations are in good standing~~ Holds at least one current and unrestricted license, certification, or registration in another jurisdiction of the United States and that he is not a respondent in any pending or unresolved board action in any jurisdiction;
- ~~2. The applicant has been~~ Provides documentation of having been regularly engaged in clinical practice as a licensed, certified, or registered veterinary technician for at least two of the past four years immediately preceding application; ~~and~~
- ~~3. The applicant has~~ Has received a degree in veterinary technology from a college or school accredited by the

AVMA or the CVMA or has passed ~~a the~~ Veterinary Technician National Examination approved by the AAVSB or any other board-approved national board examination for veterinary technology with a score acceptable to the board;

- ~~4. Provides documentation of completion of at least 12 hours of continuing education requirements during the preceding four years;~~
- ~~5. Signs a statement attesting that the applicant has read, understands, and will abide by the statutes and regulations governing veterinary practice in Virginia; and~~
- ~~6. Has committed no acts that would constitute a violation of § 54.1-3807 of the Code of Virginia.~~

**18VAC150-20-130. Requirements for practical training in a preceptorship or externship.**

A. The practical training and employment of qualified students of veterinary medicine or veterinary technology shall be governed and controlled as follows:

1. A veterinary student who is ~~duly~~ duly enrolled and in good standing in a veterinary college or school accredited or approved by the AVMA may be engaged in a preceptorship or externship. A veterinary preceptee or extern may perform duties that constitute the practice of veterinary medicine for which he has received adequate instruction by the college or school and only under the on-premises supervision of a licensed veterinarian.
2. A veterinary technician student who is ~~duly~~ duly enrolled and in good standing in a veterinary technology program accredited or approved by the AVMA may be engaged in a preceptorship or externship. A veterinary technician preceptee or extern may perform duties that constitute the practice of veterinary technology for which he has received adequate instruction by the program and only under the on-premises supervision of a licensed veterinarian or licensed veterinary technician.

B. Whenever a veterinary preceptee or extern is performing surgery on a patient, either assisted or unassisted, the supervising veterinarian shall be in the operatory during the procedure. Prior to allowing a preceptee or extern in veterinary medicine to perform surgery on a patient unassisted by a licensed veterinarian, a licensed veterinarian shall receive written approval from the owner.

C. When there is a preceptee or extern practicing in the establishment, the supervising veterinarian shall disclose such practice to owners. The disclosure shall be by signage clearly visible to the public or by inclusion on an informed consent form.

D. A veterinarian or veterinary technician who supervises a preceptee or extern remains responsible for the care and treatment of the patient.

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## **18VAC150-20-135. Voluntary practice by out-of-state practitioners.**

Any veterinarian who seeks registration to practice on a voluntary basis under the auspices of a publicly supported all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

1. File a complete application for registration on a form provided by the board at least five business days prior to engaging in such practice. An incomplete application will not be considered;
2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of every current license;
3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;
4. Pay a registration fee of \$10; and
5. Provide a ~~notarized~~ statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 4 of § 54.1-3801 of the Code of Virginia.

### Part III Unprofessional Conduct

## **18VAC150-20-140. Unprofessional conduct.**

Unprofessional conduct as referenced in subdivision 5 of § 54.1-3807 of the Code of Virginia shall include the following:

1. Representing conflicting interests except by express consent of all concerned given after a full disclosure of the facts. Acceptance of a fee from both the buyer and the seller is prima facie evidence of a conflict of interest.
2. Practicing veterinary medicine or equine dentistry where an unlicensed person has the authority to control the professional judgment of the licensed veterinarian or the equine dental technician.
3. Issuing a certificate of health unless he shall know of his own knowledge by actual inspection and appropriate tests of the animals that the animals meet the requirements for the issuance of such certificate on the day issued.
4. Revealing confidences gained in the course of providing veterinary services to a client, unless required by law or necessary to protect the health, safety, or welfare of other persons or animals.
5. Advertising in a manner ~~which that~~ is false, deceptive, or misleading or ~~which that~~ makes subjective claims of superiority.
6. Violating any state law, federal law, or board regulation pertaining to the practice of veterinary medicine, veterinary technology or equine dentistry.
7. Practicing veterinary medicine or as an equine dental technician in such a manner as to endanger the health and welfare of his patients or the public, or being unable to

practice veterinary medicine or as an equine dental technician with reasonable skill and safety.

8. Performing surgery on animals in an unregistered veterinary establishment or not in accordance with the establishment ~~permit~~ registration or with accepted standards of practice.

9. Refusing the board or its agent the right to inspect an establishment at reasonable hours.

10. Allowing unlicensed persons to perform acts restricted to the practice of veterinary medicine, veterinary technology, or an equine dental technician including any invasive procedure on a patient or delegation of tasks to persons who are not properly trained or authorized to perform such tasks.

11. Failing to provide immediate ~~and direct~~ supervision to a licensed veterinary technician or an assistant in his employ.

12. Refusing to release a copy of a valid prescription upon request from ~~a client~~ an owner, unless there are medical reasons documented in the patient record and the veterinarian would not dispense the medication from his own practice.

13. Misrepresenting or falsifying information on an application or renewal form.

14. Failing to report suspected animal cruelty to the appropriate authorities.

15. Failing to release a copy of patient records when requested by the owner; a law-enforcement entity; or a federal, state, or local health regulatory agency.

16. Committing an act constituting fraud, deceit, or misrepresentation in dealing with the board or in the ~~veterinarian-client-patient~~ veterinarian-owner-patient relationship, or with the public.

17. Representing oneself as a "specialist" without meeting the definition set forth in 18VAC150-20-10 or using the words "specialist" or "specialty" in the name of a veterinary establishment unless there is a veterinarian on staff who meets the definition of a "specialist."

18. Failure to submit evidence of correction resulting from a violation noted in an inspection or reported by another agency within 14 days, unless an extension is granted by the board.

## **18VAC150-20-172. Delegation of duties.**

A. A licensed veterinarian may delegate the administration (including by injection) of Schedule VI drugs to a properly trained assistant under his immediate ~~and direct~~ supervision. The prescribing veterinarian has a specific duty and responsibility to determine that the assistant has had adequate training to safely administer the drug in a manner prescribed.

B. Injections involving ~~anesthetic~~ or chemotherapy drugs, subgingival scaling, or the placement of intravenous catheters shall not be delegated to an assistant. An assistant shall also

not be delegated the induction of sedation or anesthesia by any means. The monitoring of a sedated or anesthetized patient may be delegated to an assistant, provided the patient is no longer intubated and provided a veterinarian or licensed veterinary technician remains on premises until the patient is fully recovered.

~~B. Additional~~ C. The following tasks that may be delegated by a licensed veterinarian to a properly trained assistant ~~include but are not limited to the following:~~

1. Grooming;
2. Feeding;
3. Cleaning;
4. Restraining;
5. Assisting in radiology;
6. Setting up diagnostic tests;
7. ~~Prepping for surgery~~ Clipping and scrubbing in preparation for surgery;
8. Dental polishing and scaling of teeth above the gum line (supragingival);
9. Drawing blood samples; or
10. Filling of Schedule VI prescriptions under the direction of a veterinarian licensed in Virginia.

~~C. D.~~ A licensed veterinarian may delegate duties electronically, verbally, or in writing to appropriate veterinary personnel provided the veterinarian has physically examined the patient within the previous 36 hours.

~~D. E.~~ Massage therapy ~~or~~ physical therapy, or laser therapy may be delegated by a veterinarian to persons qualified by training and experience by an order from the veterinarian.

~~E. F.~~ The veterinarian remains responsible for the duties being delegated and remains responsible for the health and safety of the animal.

**18VAC150-20-173. Informed consent for surgery.**

A. Before surgery is performed, informed consent shall be obtained from the owner and documented in the patient record. Veterinarians shall inform an owner of the risks, benefits, and alternatives of the recommended surgery that a reasonably prudent practitioner in similar practice in Virginia would tell an owner.

B. An exception to the requirement for consent prior to performance of surgery may be made in an emergency situation when a delay in obtaining consent would likely result in imminent harm to the patient.

C. If a veterinary student, preceptee, or extern is to perform the surgery, the informed consent shall include that information.

Part V

Veterinary Establishments

**18VAC150-20-180. Requirements to be registered as a veterinary establishment.**

A. Every veterinary establishment shall apply for registration on a form provided by the board and may be issued a permit registration as a ~~full service or restricted service~~ stationary or ambulatory establishment. Every veterinary establishment shall have a veterinarian-in-charge registered with the board in order to operate.

1. Veterinary medicine may only be practiced out of a registered establishment except in emergency situations or in limited specialized practices as provided in 18VAC150-20-171. The injection of a microchip for identification purposes shall only be performed in a veterinary establishment, except personnel of public or private animal shelters ~~or pounds~~ may inject animals while in their possession.

2. Applications for permits registration must be made to the board 45 days in advance of opening or changing the location of the establishment or requesting a change in the establishment category ~~to a full service establishment listed on the registration.~~

3. Any addition or renovation of a stationary establishment or an ambulatory establishment that involves changes to the structure or composition of a surgery room shall require reinspection by the board and payment of the required fee prior to use.

B. A veterinary establishment will be registered by the board when:

1. It is inspected by the board and is found to meet the standards set forth by 18VAC150-20-190 and 18VAC150-20-200 or 18VAC150-20-201 where applicable. If, during a new or routine inspection, violations or deficiencies are found necessitating a reinspection, the prescribed reinspection fee will be levied. Failure to pay the fee shall be deemed unprofessional conduct and, until paid, the establishment shall be deemed to be unregistered.

2. A veterinarian currently licensed by and in good standing with the board is registered with the board in writing as veterinarian-in-charge and ~~has paid~~ ensures that the establishment registration fee has been paid.

**18VAC150-20-181. Requirements for veterinarian-in-charge.**

A. The veterinarian-in-charge of a veterinary establishment is responsible for:

1. Regularly being on site ~~on a schedule of no less than monthly and providing as necessary to provide~~ routine oversight to the veterinary establishment for patient safety and compliance with law and regulation.

2. Maintaining the facility within the standards set forth by this chapter.

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3. Performing the biennial controlled substance inventory and ensuring compliance at the facility with any federal or state law relating to controlled substances as defined in § 54.1-3404 of the Code of Virginia. The performance of the biennial inventory may be delegated to another licensee, provided the veterinarian-in-charge signs the inventory and remains responsible for its content and accuracy.

4. Notifying the board in writing of the closure of the ~~permitted~~ registered facility 10 days prior to closure.

5. Notifying the board immediately if no longer acting as the veterinarian-in-charge.

6. Ensuring the establishment maintains a current and valid permit registration issued by the board.

B. Upon any change in veterinarian-in-charge, these procedures shall be followed:

1. The veterinarian-in-charge registered with the board remains responsible for the establishment and the stock of controlled substances until a new veterinarian-in-charge is registered or for five days, whichever occurs sooner.

2. An application for a new permit registration, naming the new veterinarian-in-charge, shall be made five days prior to the change of the veterinarian-in-charge. If no prior notice was given by the previous veterinarian-in-charge, an application for a new permit registration naming a new veterinarian-in-charge shall be filed as soon as possible, but no more than 10 days, after the change.

3. The previous establishment permit registration is void on the date of the change of veterinarian-in-charge and shall be returned by the former veterinarian-in-charge to the board five days following the date of change.

4. Prior to the opening of the business, on the date of the change of veterinarian-in-charge, the new veterinarian-in-charge shall take a complete inventory of all Schedule ~~II-V~~ II through V drugs on hand. He shall date and sign the inventory and maintain it on premises for ~~two~~ three years. That inventory may be designated as the official biennial controlled substance inventory.

C. Prior to the sale or closure of a veterinary establishment involving the transfer of patient records to another location, the veterinarian-in-charge shall:

1. Follow the requirements for transfer of patient records in accordance with § 54.1-2405 of the Code of Virginia; and

2. Provide to the board information about the location of patient records and the disposition of all scheduled drugs.

## **18VAC150-20-185. Renewal of veterinary establishment permits registrations.**

A. Every veterinary establishment shall be required to renew the registration ~~permit~~ by January 1 of each year and pay to the board a registration fee as prescribed in 18VAC150-20-100.

B. Failure to renew the establishment permit registration by January 1 of each year shall cause the permit registration to

expire and become invalid. Practicing veterinary medicine in an establishment with an expired registration may subject a licensee or registration holder to disciplinary action by the board. The ~~permit registration~~ may be reinstated without reinspection within 30 days of expiration, provided the board receives a properly executed renewal application, renewal fee, and a late fee as prescribed in 18VAC150-20-100.

C. Reinstatement of an expired permit registration after 30 days shall be at the discretion of the board and contingent upon a reinspection and payment of the late fee, the reinspection fee, the renewal fee and the veterinary establishment permit registration reinstatement fee.

## **18VAC150-20-190. Requirements for drug storage, dispensing, destruction, and records for all establishments, full service and restricted.**

A. All drugs shall be maintained, administered, dispensed, prescribed and destroyed in compliance with state and federal laws, which include § 54.1-3303 of the Code of Virginia, the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia), applicable parts of the federal Food, Drug, and Cosmetic Control Act (21 USC § 301 et seq.), the Prescription Drug Marketing Act (21 USC § 301 et seq.), and the Controlled Substances Act (21 USC § 801 et seq.), as well as applicable portions of Title 21 of the Code of Federal Regulations.

B. All repackaged tablets and capsules dispensed for companion animals shall be in approved safety closure containers, except safety caps shall not be required when any person who requests that the medication not have a safety cap, or in such cases in which the medication is of such form or size that it cannot be reasonably dispensed in such containers (e.g., topical medications, ophthalmic, or otic). ~~A~~ An owner request for nonsafety packaging shall be documented in the patient record.

C. All drugs dispensed for companion animals shall be labeled with the following:

1. Name and address of the facility;

2. ~~Name~~ First and last name of client owner;

3. Animal identification and species;

4. Date dispensed;

5. Directions for use;

6. Name, strength (if more than one dosage form exists), and quantity of the drug; and

7. Name of the prescribing veterinarian.

~~D. All drugs shall be maintained~~ veterinary establishments shall maintain drugs in a secured secure manner with precaution taken to prevent theft or diversion. Only the veterinarian or licensed veterinary technician shall have access to Schedule II through V drugs.

1. All Schedule II through V drugs shall be maintained under lock at all times, with access to the veterinarian or veterinary technician only, but not to any unlicensed

~~personnel~~ In a stationary establishment, the general stock of Schedule II through V drugs shall be stored in a securely locked cabinet or safe that is not easily movable.

2. The establishment may also have a working stock of Schedule II through V drugs that shall be kept in (i) a securely locked container, cabinet, or safe when not in use or (ii) direct possession of a veterinarian or veterinary technician. A working stock shall consist of only those drugs that are necessary for use during a normal business day or 24 hours, whichever is less.

3. Whenever the establishment is closed, all general and working stock of Schedule II through V drugs and any dispensed prescriptions that were not delivered during normal business hours shall be securely stored as required for the general stock.

4. Prescriptions that have been dispensed and prepared for delivery shall be maintained under lock or in an area that is not readily accessible to the public and may be delivered to an owner by an unlicensed person, as designated by the veterinarian.

~~2.~~ 5. Whenever a veterinarian discovers a theft or any unusual loss of Schedule II, ~~III, IV, or~~ through V drugs is discovered, he the veterinarian-in-charge, or in his absence, his designee, shall immediately report such theft or loss to the Board of Veterinary Medicine and the Board of Pharmacy and to the U.S. Drug Enforcement Administration DEA. The report to the boards shall be in writing and sent electronically or by regular mail. The report to the DEA shall be in accordance with 21 CFR 1301.76(b). If the veterinarian-in-charge is unable to determine the exact kind and quantity of the drug loss, he shall immediately take a complete inventory of all Schedule II through V drugs.

E. Schedule II, ~~III, IV and~~ through V drugs shall be destroyed by (i) transferring the drugs to another entity authorized to possess or provide for proper disposal of such drugs or (ii) destroying the drugs by burning in an incinerator that is in compliance with applicable local, state, and federal laws and regulations. If Schedule II through V drugs are to be destroyed, a DEA drug destruction form shall be fully completed and used as the record of all drugs to be destroyed. A copy of the destruction form shall be retained at the veterinarian practice site with other inventory records.

F. The drug storage area shall have appropriate provision for temperature control for all drugs and biologics, including. If drugs requiring refrigeration are maintained at the facility, they shall be kept in a refrigerator with the interior thermometer maintained between 36°F and 46°F. If a refrigerated drug is in Schedule II through V, the drug shall be kept in a locked container secured to the refrigerator, or the refrigerator shall be locked. Drugs stored at room temperature shall be maintained between 59°F and 86°F.

G. The stock of drugs shall be reviewed frequently, and expired drugs shall be removed from the working stock of

drugs at the expiration date and shall not be administered or dispensed.

~~G.~~ H. A distribution record shall be maintained in addition to the patient's record, in chronological order, for the administration and dispensing of all Schedule ~~II through~~ V drugs.

This record is to be maintained for a period of ~~two~~ three years from the date of transaction. This record shall include the following:

1. Date of transaction;
2. Drug name, strength, and the amount dispensed, administered, and wasted;
3. ~~Client~~ Owner and animal identification; and
4. Identification of the veterinarian authorizing the administration or dispensing of the drug.

~~H.~~ I. Original invoices for all Schedule II, ~~III, IV and~~ through V drugs received shall be maintained in chronological order on the premises where the stock of drugs is held, and the actual date of receipt is shall be noted. Invoices for Schedule II drugs shall be maintained separately from other records. All drug records shall be maintained for a period of ~~two~~ three years from the date of transaction.

~~I.~~ J. A complete and accurate inventory of all Schedule II, ~~III, IV and~~ through V drugs shall be taken, dated, and signed on any date that is within two years of the previous biennial inventory. Drug strength must be specified. This inventory shall indicate if it was made at the opening or closing of business and shall be maintained on the premises where the drugs are held for ~~two~~ three years from the date of taking the inventory.

K. Inventories and records, including original invoices, of Schedule II drugs shall be maintained separately from all other records, and the establishment shall maintain a continuous inventory of all Schedule II drugs received, administered, or dispensed, with reconciliation at least monthly. Reconciliation requires an explanation noted on the inventory for any difference between the actual physical count and the theoretical count indicated by the distribution record. A continuous inventory shall accurately indicate the physical count of each Schedule II drug in the general and working stocks at the time of performing the inventory.

~~J.~~ L. Veterinary establishments in which bulk reconstitution of injectable, bulk compounding, or the prepackaging of drugs is performed shall maintain adequate control records for a period of one year or until the expiration, whichever is greater. The records shall show the name of the drug(s) drugs used; strength, if any; date repackaged; quantity prepared; initials of the veterinarian verifying the process; the assigned lot or control number; the manufacturer's or distributor's name and lot or control number; and an expiration date.

M. If a limited stationary or ambulatory practice uses the facilities of another veterinary establishment, the drug distribution log shall clearly reveal whose Schedule II

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through V drugs were used. If the establishment's drug stock is used, the distribution record shall show that the procedure was performed by a visiting veterinarian who has the patient record. If the visiting veterinarian uses his own stock of drugs, he shall make entries in his own distribution record and in the patient record and shall leave a copy of the patient record at the other establishment.

## **18VAC150-20-195. Recordkeeping.**

A. A legible, daily record of each patient treated shall be maintained by the veterinarian at the permitted veterinary establishment and shall include pertinent medical data such as drugs administered, dispensed or prescribed, and all relevant medical and surgical procedures performed. Records should contain at a minimum:

1. Name of the patient and the owner;
2. Identification of the treating veterinarian and of the person making the entry (Initials may be used if a master list that identifies the initials is maintained.);
- ~~4.~~ 3. Presenting complaint/reason for contact;
4. Date of contact;
- ~~2.~~ 5. Physical examination findings, if appropriate;
- ~~3.~~ 6. Tests and diagnostics performed and results;
- ~~4.~~ 7. Procedures performed/treatment given and results; and
- ~~5.~~ 8. Drugs (and their dosages) administered, dispensed, or prescribed, including quantity, strength and dosage, and route of administration. For vaccines, identification of the lot and manufacturer shall be maintained;
9. Radiographs or digital images clearly labeled with identification of the establishment, the patient name, date taken, and anatomic specificity. If an original radiograph or digital image is transferred to another establishment or released to the owner, a record of this transfer or release shall be maintained on or with the patient's records; and
10. Any specific instructions for discharge or referrals to other practitioners.

B. ~~Individual records~~ An individual record shall be maintained on each patient, except that records for economic animals or litters of companion animals under the age of four months may be maintained on a per client owner basis. ~~Client~~ Patient records, including radiographs or digital images, shall be kept for a period of three years following the last office visit or discharge of such animal from a veterinary establishment.

~~C. An animal identification system must be used by the establishment.~~

~~D. Upon the sale or closure of a veterinary establishment involving the transfer of patient records to another location, the veterinarian shall follow the requirements for transfer of patient records in accordance with § 54.1-2405 of the Code of Virginia.~~

~~E. C.~~ An initial rabies certification for an animal receiving a primary rabies vaccination shall clearly display the following information: "An animal is not considered immunized for at least 28 days after the initial or primary vaccination is administered."

## **18VAC150-20-200. Standards for stationary veterinary establishments.**

A. ~~Full-service~~ Stationary establishments. A ~~full-service~~ stationary establishment shall provide surgery and encompass all aspects of health care for small or large animals, or both. All ~~full-service~~ stationary establishments shall meet the requirements set forth ~~below~~ in this subsection:

1. Buildings and grounds must be maintained to provide sanitary facilities for the care and medical well-being of patients.

a. Temperature, ventilation, and lighting must be consistent with the medical well-being of the patients.

b. ~~Water and waste.~~ There shall be on-premises:

(1) Hot and cold running water of drinking quality, as defined by the Virginia Department of Health;

(2) An acceptable method of disposal of deceased animals, in accordance with any local ordinance or state and federal regulations; and

(3) Refrigeration exclusively for carcasses of companion animals that require storage for 24 hours or more.

c. Sanitary toilet and lavatory shall be available for personnel and ~~clients~~ owners.

2. Areas within building. The areas within the facility shall include the following:

a. A reception area separate from other designated rooms;

b. Examination room or rooms containing a table or tables with nonporous surfaces;

c. ~~Surgery room. There shall be a~~ A room which that is reserved only for surgery and used for no other purpose. The walls of the surgery room must be constructed of nonporous material and extend from the floor to the ceiling. In order that surgery can be performed in a manner compatible with current veterinary medical practice with regard to anesthesia, asepsis, life support, and monitoring procedures, the surgery room shall:

(1) Have walls constructed of nonporous material and extending from the floor to the ceiling;

(2) Be of a size adequate to accommodate a surgical table, anesthesia support equipment, surgical supplies, ~~the veterinarian, an assistant, and the patient and all personnel necessary for safe performance of the surgery~~;

(~~2~~) (3) Be kept so that storage in the surgery room shall be limited to items and equipment normally related to surgery and surgical procedures;

(4) Have a surgical table made of nonporous material;

(5) Have surgical supplies, instruments, and equipment commensurate with the kind of services provided;

(6) Have surgical and automatic emergency lighting to facilitate performance of procedures; and

(3) (7) For ~~small animal facilities~~ establishments that perform surgery on small animals, have a door to close off the surgery room from other areas of the practice.

~~d. Laboratory.~~ 3. The veterinary establishment shall have, as at a minimum, proof of use of either in-house laboratory service or outside laboratory services for performing the following lab tests, consistent with appropriate professional care for the species being treated:

- (1) Urinalysis, including microscopic examination of sediment;
- (2) Complete blood count, including differential;
- (3) Flotation test for ova of internal parasites;
- (4) Skin scrapings for diagnosing external parasites;
- (5) Blood chemistries;
- (6) Cultures and sensitivities;
- (7) Biopsy;
- (8) Complete necropses, including histopathology; and
- (9) Serology.

~~e. Animal housing areas. These shall be provided with~~ 4. For housing animals, the establishment shall provide:

a. An animal identification system at all times when housing an animal;

b. Accommodations of appropriate size and construction to prevent residual contamination or injury;

(1) Separate compartments constructed in such a way as to prevent residual contamination;

(2) c. Accommodations allowing for the effective separation of contagious and noncontagious patients; and

(3) d. Exercise runs which areas that provide and allow effective separation of animals or walking the animals at medically appropriate intervals.

~~3. Radiology.~~ 5. A veterinary establishment shall: ~~a. Either~~ either have radiology service in-house or documentation of outside services for obtaining diagnostic-quality radiographs. ~~b. If radiology is in-house:~~

(1) Each radiograph shall be permanently imprinted with the identity of the facility or veterinarian, patient and the date of exposure. Each radiograph shall also be clearly labeled by permanent imprinting to reflect anatomic specificity.

(2) Document, the establishment shall:

a. Document that radiographic equipment complies with Part VI (12VAC5-481-1580 (12VAC5-481-1581 et seq.), Use of Diagnostic X-Rays in the Healing Arts, of the Virginia Radiation Protection Regulations of the Virginia Department of Health, which requirements are adopted

by this board and incorporated herewith by reference in this chapter.

~~e. Maintain radiographs as a part of the patient's record. If a radiograph is transferred to another establishment or released to the client, a record of this transfer must be maintained on or with the patient's records.~~

b. Maintain and utilize lead aprons and gloves and individual radiation exposure badges for each employee exposed to radiographs.

~~4. Equipment; minimum requirements.~~ 6. Minimum equipment in the establishment shall include:

a. Examination room containing a table with nonporous surface.

b. Surgery suite.

(1) Surgical table with nonporous surface;

(2) Surgical supplies, instruments and equipment commensurate with the kind of surgical services provided;

(3) Automatic emergency lighting;

(4) Surgical lighting;

(5) Instrument table, stand, or tray; and

(6) Waste receptacle.

e. Radiology (if in house).

(1) Lead aprons and gloves;

(2) Radiation exposure badges; and

(3) X ray machine.

d. General equipment.

(1) Steam pressure sterilizer or an a. An appropriate method of sterilizing instruments;

(2) b. Internal and external sterilization monitors, if steam pressure sterilizers are used;

(3) c. Stethoscope;

(4) Thermometer;

(5) d. Equipment for delivery of assisted ventilation appropriate to the species being treated, including but not necessarily limited to: (a) A resuscitation bag; and (b) Endotracheal endotracheal tubes;

(6) Scales e. Adequate means of determining patient's weight; and

(7) f. Storage for records.

B. Additional requirements for stationary establishments.

1. A stationary establishment that is open to the public 24 hours a day shall have licensed personnel on premises at all times and shall be equipped to handle emergency critical care and hospitalization. The establishment shall have radiology/imaging and laboratory services available on site.

2. A stationary establishment that is not open to the public 24 hours a day shall have licensed personnel available

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during its advertised hours of operation and shall disclose to the public that the establishment does not have continuous staffing in compliance with § 54.1-3806.1 of the Code of Virginia.

3. All stationary establishments shall provide for continuity of care when a patient is transferred to another establishment.

~~Restricted~~ C. Limited stationary establishments. When the scope of practice is less than full service, a specifically ~~restricted~~ limited establishment permit registration shall be required. Upon submission of a completed application, satisfactory inspection, and payment of the permit registration fee, a ~~restricted~~ limited establishment permit registration may be issued. Such ~~restricted~~ establishments shall have posted in a conspicuous manner the specific limitations on the scope of practice on a form provided by the board.

~~1. Large animal establishment, ambulatory practice. A large animal ambulatory establishment is a mobile practice in which health care of large animals is performed at the location of the animal. Surgery on large animals may be performed as part of a large animal ambulatory practice provided the facility has surgical supplies, instruments and equipment commensurate with the kind of surgical services provided. All large animal ambulatory establishments shall meet the requirements of a full service establishment in subsection A of this section with the exception of those set forth below:~~

- ~~a. All requirements for buildings and grounds.~~
- ~~b. All requirements for an examination room and surgery suite.~~
- ~~c. Equipment for assisted ventilation.~~
- ~~d. Scales.~~

~~2. Small animal establishment, house call practice. A small animal house call establishment is a mobile practice in which health care of small animals is performed at the residence of the owner of the small animal. Surgery may be performed only in a surgical suite that has passed inspection. Small animal house call facilities shall meet the requirements of a full service establishment in subsection A of this section with the exception of those set forth below:~~

- ~~a. All requirements for buildings and grounds.~~
- ~~b. All requirements for an examination room or surgery suite.~~
- ~~c. Steam pressure sterilizer.~~
- ~~d. Internal or external sterilization monitor.~~

~~3. Small animal establishment, outpatient practice. A small animal outpatient establishment is a stationary facility or ambulatory practice where health care of small animals is performed. This practice may include surgery, provided the facility is equipped with a surgery suite as required by subdivision A 2 c of this section. Overnight hospitalization~~

~~shall not be required. All other requirements of a full service establishment shall be met.~~

~~C. D.~~ A separate facility permit registration is required for separate practices that share the same location.

## **18VAC150-20-201. Standards for ambulatory veterinary establishments.**

A. Agricultural or equine ambulatory practice. An agricultural or equine ambulatory establishment is a mobile practice in which health care is performed at the location of the animal. Surgery on large animals may be performed as part of an agricultural or equine ambulatory practice provided the establishment has surgical supplies, instruments, and equipment commensurate with the kind of surgical procedures performed. All agricultural or equine ambulatory establishments shall meet the requirements of a stationary establishment for laboratory, radiology, and minimum equipment, with the exception of equipment for assisted ventilation.

B. House call or proceduralist establishment. A house call or proceduralist establishment is an ambulatory practice in which health care of small animals is performed at the residence of the owner of the small animal or another establishment registered by the board. A veterinarian who has established a veterinarian-owner-patient relationship with an animal at the owner's residence or at another registered veterinary establishment may also provide care for that animal at the location of the patient.

- 1. Surgery may be performed only in a surgical suite at a registered establishment that has passed inspection.
- 2. House call or proceduralist establishments shall meet the requirements of a stationary establishment for laboratory, radiology, and minimum equipment, with the exception of equipment for assisted ventilation.

C. Mobile service establishment. A mobile service establishment is a veterinary clinic or hospital that can be moved from one location to another and from which veterinary services are provided. A mobile service establishment shall meet all the requirements of a stationary establishment appropriate for the services provided.

D. A separate establishment registration is required for separate practices that share the same location.

## **18VAC150-20-210. Revocation or suspension of a veterinary establishment permit registration.**

~~A.~~ The board may revoke or suspend or take other disciplinary action deemed appropriate against the registration ~~permit~~ of a veterinary establishment if it finds the establishment to be in violation of any ~~provisions~~ provision of laws or regulations governing veterinary medicine or if:

- 1. The board or its agents are denied access to the establishment to conduct an inspection or investigation;
- 2. The ~~licensee~~ holder of a registration does not pay any and all prescribed fees or monetary penalties;

3. The establishment is performing procedures beyond the scope of a ~~restricted~~ limited establishment ~~permit registration~~; or
4. The establishment has no veterinarian-in-charge registered with the board.

~~B. The Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall apply to any determination under this section.~~

Part VI  
Equine Dental Technicians

**18VAC150-20-220. Requirements for registration as an equine dental technician.**

A. A person applying for registration as an equine dental technician shall provide a recommendation from at least two veterinarians licensed in Virginia who attest that at least 50% of their practice is equine, and that they have observed the applicant within the past five years immediately preceding the attestation and can attest to his competency to be registered as an equine dental technician.

B. The qualifications for registration shall include documentation of one of the following:

1. Current certification from the International Association of Equine Dentistry;
2. Completion of a board-approved certification program or training program;
3. Completion of a veterinary technician program that includes equine dentistry in the curriculum; or
4. Evidence of equine dental practice for at least five years and proof of 16 hours of continuing education in equine dentistry completed within the five years immediately preceding application for registration.

C. In order to maintain an equine dental technician registration, a person shall renew such registration by January 1 of each year by payment of the renewal fee specified in 18VAC150-20-100 and attestation of obtaining 16 hours of continuing education relating to equine dentistry within the past three years.

1. Equine dental technicians shall be required to maintain original documents verifying the date and subject of the continuing education program or course, the number of continuing education hours, and certification of completion from a sponsor. Original documents shall be maintained for a period of two years following renewal. The board shall periodically conduct a random audit to determine compliance. Practitioners selected for the audit shall provide all supporting documentation within ~~40~~ 14 days of receiving notification of the audit, unless granted an extension by the board.

a. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the technician, such as temporary

disability, mandatory military service, or officially declared disasters.

b. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the technician prior to the renewal date. Such an extension shall not relieve the technician of the continuing education requirement.

2. Registration may be renewed up to one year after the expiration date, provided a late fee as prescribed in 18VAC150-20-100 is paid in addition to the required renewal fee.

3. Reinstatement of registration expired for more than one year shall be at the discretion of the board. To reinstate a registration, the applicant shall pay the reinstatement fee as prescribed in 18VAC150-20-100 and submit evidence of completion of continuing education hours equal to the number of years in which the registration has been expired, for a maximum of two years. The board may require additional documentation of clinical competency and professional activities.

VA.R. Doc. No. R16-4496; Filed December 7, 2016, 8:35 a.m.

**BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS**

**Final Regulation**

Title of Regulation: **18VAC155-20. Waste Management Facility Operators Regulations (amending 18VAC155-20-10, 18VAC155-20-110).**

Statutory Authority: §§ 54.1-201 and 54.1-2211 of the Code of Virginia.

Effective Date: February 1, 2017.

Agency Contact: Eric L. Olson, Executive Director, Board for Waste Management Facility Operators, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8511, FAX (866) 430-1033, or email wastemgt@dpor.virginia.gov.

Summary:

*The amendments consolidate all composting requirements of Class I and Class II licenses into the Class I license.*

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

Part I  
General

**18VAC155-20-10. Definitions.**

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

"Board" means the Board for Waste Management Facility Operators.

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"Class I license" means the authorization from the board to act as a waste management facility operator of a transfer station, a material recovery facility receiving mixed waste, an experimental facility, or a composting facility ~~receiving yard waste~~.

"Class II license" means the authorization from the board to act as a waste management facility operator of ~~a facility that composts municipal solid waste~~, a sanitary landfill, an industrial landfill, a construction landfill, or a debris landfill.

"Class III license" means the authorization from the board to act as a waste management facility operator of an infectious waste incinerator or autoclave.

"Class IV license" means the authorization from the board to act as a waste management facility operator of a municipal waste combustor.

"Contact hour" means 50 minutes of participation in a group program or 60 minutes of completion time for a project.

"Department" means the Department of Professional and Occupational Regulation.

"Full-time employment" means 1,760 hours per year or 220 work days per year.

"License" means an authorization issued by the board to an individual to practice as a waste management facility operator who meets the provisions of this chapter.

"Municipal solid waste" means that waste that is defined as "municipal solid waste" in 9VAC20-81-10.

"Municipal waste combustor" means a mass burn or a refuse derived fuel incinerator or facility designed or modified for the purpose of noninfectious solid waste combustion.

"Operation" means any waste management facility that is under construction, treating, processing, storing, or disposing of solid waste, or in the act of securing a facility for closure as defined in 9VAC20-81-10.

"Organized program" means a formal learning process designed to permit a participant to learn a given subject or subjects through interaction with an instructor in a formal course, seminar or conference as approved by the board.

"Owner" means the person who owns a solid waste management facility or part of a solid waste management facility.

"Solid waste" means any of those materials identified as nonhazardous solid waste in 9VAC20-81-95.

## **18VAC155-20-110. License classification.**

A. The applicant shall apply for at least one classification of license as outlined in this subsection:

1. An individual operating a facility that is defined in 9VAC20-81-10 as a transfer station, a materials recovery facility receiving mixed waste, an experimental facility, or a composting facility ~~receiving yard waste~~ shall hold a Class I license. An individual who has obtained a Class II,

III or IV license may also operate a facility listed under Class I.

2. An individual operating a facility that ~~composts municipal solid waste~~, or is defined in 9VAC20-81-10 as a sanitary landfill, industrial waste landfill, construction/demolition/debris (CDD) landfill, shall hold a Class II license.

3. An individual operating a facility regulated under 9VAC20-120, Regulated Medical Waste Management Regulations, shall hold a Class III license.

4. An individual operating a facility defined in 9VAC5-40-6560 as a municipal waste combustion unit shall hold a Class IV license.

B. A licensee may not operate a facility outside of his classification other than that defined by subdivision A 1 of this section.

C. An individual operating a solid waste management facility that has been issued a permit by the Department of Environmental Quality but for which the board has not established training and licensure requirements shall hold a Class I license until the board establishes the training and licensing requirements by regulation.

VA.R. Doc. No. R14-3909; Filed December 1, 2016; 5:27 p.m.

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## **TITLE 22. SOCIAL SERVICES**

### **STATE BOARD OF SOCIAL SERVICES**

#### **Proposed Regulation**

Title of Regulation: **22VAC40-111. Standards for Licensed Family Day Homes (amending 22VAC40-111-10, 22VAC40-111-30, 22VAC40-111-50, 22VAC40-111-60, 22VAC40-111-90, 22VAC40-111-100, 22VAC40-111-130, 22VAC40-111-140, 22VAC40-111-150, 22VAC40-111-200, 22VAC40-111-210, 22VAC40-111-230, 22VAC40-111-650, 22VAC40-111-760, 22VAC40-111-800, 22VAC40-111-810, 22VAC40-111-820, 22VAC40-111-830, 22VAC40-111-850, 22VAC40-111-870, 22VAC40-111-990).**

Statutory Authority: §§ 63.2-217 and 63.2-1734 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 24, 2017.

Agency Contact: Sharon Smith-Basey, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7037, FAX (804) 726-7132, or email sharon.basey@dss.virginia.gov.

Basis: Sections 63.2-100, 63.2-203, 63.2-217, and 63.2-1734 of the Code of Virginia provide the legal authority for the State Board of Social Services to adopt regulations and requirements for licensed family day homes. The Code of

Virginia mandates "promulgation of regulations for the activities, services, and facilities to be employed by persons and agencies required to be licensed...which shall be designed to ensure that such activities, services and facilities are conducive to the welfare of the children under the custody or control of such persons or agencies." Section 63.2-1734 further mandates that: "Such regulations shall be developed in consultation with representatives of the affected entities and shall include, but need not be limited to, matters relating to the sex, age, and number of children and other persons to be maintained, cared for, or placed out as the case may be, and to the buildings and premises to be used, and reasonable standards for the activities, services and facilities to be employed. Such regulations shall not require the adopting of a specific teaching approach or doctrine or require the membership, affiliation, or accreditation services of any single private accreditation or certification agency."

Purpose: The proposed amendments update the regulation and align it with new federal requirements described in the Child Care and Development Block Grant Act of 2014. Adding these federal health and safety requirements is essential to protect the health, safety, or welfare of citizens.

The goals of this proposed action are to (i) update regulations to comply with new federal requirements for child care providers; (ii) update current licensing regulations to ensure consistency with requirements for Child Care and Development Fund recipients; and (iii) present a clearly written regulation that reflects current federal guidelines and practices in child care. Amendment of the existing regulation was determined by the State Board of Social Services as the most efficient and effective way to make the necessary changes to achieve clarity and consistency and to protect children.

Substance: Provisions included in the amended standards to be considered include revisions to address federal law changes that necessitate the development of new standards in current areas as well as areas not previously considered to address ever-changing national health and safety guidelines and practices. Substantive proposed amendments to the regulations include the following areas:

1. Grace period for immunization requirements for homeless children or foster care children.
2. Prevention of and response to emergencies due to food and allergic reactions.
3. Prevention of shaken baby syndrome and abusive head trauma.
4. Revised emergency preparedness plan requirements.
5. Orientation training for all caregivers with content including health and safety requirements.
6. Updated annual training requirements to include health and safety topics.
7. Revised cardiopulmonary resuscitation and first aid training requirements.

Issues: The primary advantages of the proposed regulatory action are to ensure that parents have sufficient information to make informed decisions when choosing to place their child in licensed family day homes that incorporate new standards that reflect federal health and safety requirements. The new regulations ensure consistent requirements for Child Care and Development Fund recipients.

The proposed regulatory action requires all child care providers to have current certification in cardiopulmonary resuscitation and first aid, which increases the health and safety of all children in care. The total number of orientation and annual training hours will increase for all providers to strengthen their professional development.

The advantage to the Commonwealth is that the proposed action increases protections of the health, safety, and welfare of children receiving care in licensed family day homes. Additionally, the proposed changes promote consistency with other child care regulations. There are no disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Social Services (Board) proposes several amendments to the Standards for Licensed Family Day Homes in order to align the regulation with federal requirements and the Code of Virginia, and to improve clarity.

Result of Analysis. Some proposed amendments do increase costs for licensed family day homes. Given the likely benefits for the health and safety of children, and the necessity of the amendments to maintain federal funding, the benefits of the proposed changes likely exceed the costs.

Estimated Economic Impact. The federal Child Care and Development Block Grant Act of 2014 requires specific health and safety topics to be addressed for providers receiving Child Care and Development Funds. Currently Virginia receives about \$110 million from this program per fiscal year. In order to continue to receive federal funding under the Child Care and Development Fund, the federal requirements must be adopted under Virginia rules. Licensed family day homes (FDHs) are eligible to apply for subsidies under the program. According to the Virginia Department of Social Services (DSS), 37% of licensed family day homes in the Commonwealth are approved subsidy vendors.

Consequently the Board proposes amendments such as adding: 1) a requirement for FDH licensees to post with parental approval a current list of allergies, sensitivities and dietary restriction, 2) a new requirement that while transporting children, the driver will have the allergy care plan and emergency contact information to prevent an allergic reaction, be aware of food allergies and sensitivities when preparing food and not serve prohibited food to a child, 3) a new provision allowing providers to keep attendance records as hard copy or electronically, 4) a new requirement for FDH

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licensees to keep a written record of a child in attendance as arrival and departure occurs, 5) exceptions for homeless children without documentation of immunizations or physical examination to attend FDHs during a grace period of 90 days, 6) 4 additional required hours of annual training for caregivers, 7) a new requirement for all caregivers to have current certification in CPR and first aid, and 8) a requirement that caregivers complete a DSS-sponsored orientation course within 90 days of employment.

**Allergies:** The proposals to add requirements for providers to post with parental approval a current list of allergies, sensitivities and dietary restriction, and for drivers transporting children to have the allergy care plan and emergency contact information to prevent an allergic reaction and be aware of food allergies, etc., would require a small additional amount of staff time and materials for licensed FDHs. The proposed requirements would likely increase awareness of health risks for children under care and decrease the probability that children's health is put at risk due to ignorance or carelessness.

**Attendance Records:** Under the current regulation FDHs must keep a written record of children in attendance each day. The proposal to allow providers to keep attendance records as hard copy or electronically reduces storage and potentially time costs for those FDHs that prefer to keep records electronically. The proposal to require licensees to keep the written record of each child in attendance as arrival and departure occurs would produce a small cost in that staff will have less flexibility as to when to record attendance. It would also be beneficial in that emergency responders will be better equipped in the event of an emergency to identify children in attendance.

**Homeless Children:** Under the current regulation before any child may attend an FDH, the licensee must obtain documentation that the child has been immunized according to the requirements of § 32.1-46 A of the Code of Virginia and applicable State Board of Health regulations. Additionally, the provider must have documentation of a physical examination by or under direction of a physician within 30 days after the first day of attendance of the child.

The proposal to permit providers to accept homeless children without immunization or physical examination documentation for up to 90 days would be beneficial in that it would reduce barriers for homeless children to attend licensed child care while their families are taking necessary actions to comply with health and safety requirements. Enabling children's attendance at FDHs helps enable parents and guardians in homeless families to work or seek work and potentially gain homes.

**Training:** Under the current regulation FDH caregivers must have 16 clock hours of annual training. The Board proposes to increase the annual requirement to 20 clock hours. Childcare workers earn on average \$10.79 per hour in Virginia.<sup>1</sup> Assuming the value of a childcare workers' time is

their wage, the time cost of requiring 4 additional hours of training is \$43.16<sup>2</sup> annually per FDH caregiver. DSS offers online child care courses as part of an agreement with Virginia's Community College Workforce; these classes currently cost \$20 for 4 clock hours of training.<sup>3</sup> Thus the total cost for 4 additional hours of required training per year can be estimated to be about \$63 annually per FDH caregiver.

The current regulation requires the person issued the FDH license and assistants who are left alone with the children in care to have current certification in first aid and CPR appropriate to the age of children in care. The proposed regulation requires that all caregivers have such certification. The American Red Cross website lists the fee for a class that includes pediatric first aid and CPR as \$110. The course takes approximately 7 hours of caregivers' time.<sup>4</sup> Childcare workers earn on average \$10.79 per hour in Virginia.<sup>5</sup> Assuming the value of a childcare workers' time is their wage, the time cost of the requirement is \$75.53.<sup>6</sup> Thus the cost of the proposed CPR and first aid requirement for each child care worker in a licensed FDH would be \$185.53 per two year certification, or \$92.77 per year. Caregivers, such as the licensee, who already have current certification in CPR and first aid and would have continued to have done so without the new requirement would not incur this cost. Additionally, the CPR and first aid class can count toward the required 20 hours of training a year.

According to DSS, the proposed required DSS-sponsored orientation course takes 10 hours and is provided without a fee. Assuming the value of a childcare workers' time is their wage, the time cost of the requirement is \$107.90. The 10 hours can count toward the required 20 hours of training during the first year of employment.

**Overall:** Several of the proposed amendments introduce some additional costs in terms of time, materials and/or fees. All of the proposed changes likely will have some positive impact on health and safety. The extent of the impact on health and safety is not known. Thus a definitive comparison of the likely benefits with the more easily estimated costs cannot be made. Taking into consideration the need to make these amendments in order to maintain federal funding, which contributes to FDH subsidies, the benefits of the proposed regulation likely exceed the costs.

**Businesses and Entities Affected.** The proposed amendments affect the 1,279 licensed family day homes in the Commonwealth, their staff, and their clients.<sup>7</sup> All licensed family day homes are small businesses.

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

**Projected Impact on Employment.** The proposed amendments are unlikely to have a large impact on employment. The proposal to require that all caregivers have current certification in first aid and CPR appropriate to the age of children in care may moderately increase employment for providers of such certification.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to have a large impact on the use and value of private property.

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. As described in the Estimated Economic Impact section, the proposals to add 1) a requirement for FDH licensees to post with parental approval a current list of allergies, sensitivities and dietary restriction, 2) a new requirement that while transporting children, the driver will have the allergy care plan and emergency contact information to prevent an allergic reaction, be aware of food allergies and sensitivities when preparing food and not serve prohibited food to a child, 3) a new requirement for FDH licensees to keep a written record of a child in attendance as arrival and departure occurs, 4) 4 additional required hours of annual training for caregivers, 5) a new requirement for all caregivers to have current certification in CPR and first aid, and 6) a requirement that caregivers complete a DSS-sponsored orientation course within 90 days of employment, all increase costs for licensed family day homes. The proposal to allow providers to keep attendance records as hard copy or electronically reduces costs for some FDH licensees.

Alternative Method that Minimizes Adverse Impact. In order to comply with the federal Child Care and Development Block Grant Act, the Board is proposing amendments that will increase costs for some family day homes, all of which are small businesses. There is no clear alternative that will both satisfy federal law and reduce the adverse impact on these small businesses.

Adverse Impacts:

Businesses. As discussed above, some proposed amendments will increase costs for businesses.

Localities. The proposed amendments are unlikely to adversely affect localities.

Other Entities. The proposed amendments are unlikely to adversely affect other entities.

<sup>1</sup> Source: U.S. Bureau of Labor Statistics' May 2015 State Occupational Employment and Wage Estimates (the most recent available data). See: [http://www.bls.gov/oes/current/oes\\_va.htm](http://www.bls.gov/oes/current/oes_va.htm)

<sup>2</sup>  $\$10.79 \times 4 = \$43.16$

<sup>3</sup> Source: Department of Social Services

<sup>4</sup> The American Red Cross class is listed as taking six hours and twenty minutes. Assuming 40 minutes roundtrip travel time, the caregiver would spend 7 hours to satisfy this requirement.

<sup>5</sup> See note 1, supra

<sup>6</sup>  $\$10.79 \times 7 = \$75.53$

<sup>7</sup> Data source: Department of Social Services

Agency's Response to Economic Impact Analysis: The Department of Social Services reviewed the economic impact analysis prepared by the Department of Planning and Budget and concurs.

Summary:

*The proposed amendments align requirements of licensed programs with specific federal health and safety standards for providers receiving funds from the Child Care and Development Fund under the federal Child Care and Development Block Grant Act of 2014. Proposed amendments include (i) a requirement for family day home licensees to post with parental approval a current list of allergies, sensitivities, and dietary restrictions; (ii) requirements that while transporting children a driver will have the allergy care plan and emergency contact information and that the family day home be aware of food allergies and sensitivities when preparing food and not serve prohibited food to a child; (iii) a provision allowing providers to keep attendance records as hard copy or electronically; (iv) a requirement for family day home licensees to keep a written record of a child in attendance as arrival and departure occurs; (v) exceptions for homeless children without documentation of immunizations or physical examination to attend family day homes during a grace period of 90 days; (vi) four additional required hours of annual training for caregivers and a requirement that prevention of shaken baby syndrome and abusive head trauma be part of initial orientation; (vii) a requirement for all caregivers to have current certification in CPR and first aid; (viii) a requirement that caregivers complete a Department of Social Services-sponsored orientation course within 90 days of employment; and (ix) provisions adding lockdown to the family day home's emergency preparedness plan.*

**22VAC40-111-10. Definitions.**

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

"Accessible" means capable of being entered, reached, or used.

"Adult" means any individual 18 years of age or older.

"Age-appropriate" means suitable to the chronological age and individual needs of a child.

"Assistant" means an individual who helps the provider or substitute provider in the care, protection, supervision, and guidance to children in the home.

"Body fluids" means urine, feces, vomit, blood, saliva, nasal discharge, and tissue discharge.

"Caregiver" means an individual who provides care, protection, supervision, and guidance to children in the home and includes the provider, substitute provider, and assistant.

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"Child" means an individual under 18 years of age.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

"Child with special needs" means a child with developmental disabilities, intellectual disabilities, emotional disturbance, sensory or motor impairment, or significant chronic illness who requires special health surveillance or specialized programs, interventions, technologies, or facilities.

"Cleaned" means treated in such a way as to remove dirt and debris by scrubbing and washing with soap and water or detergent solution and rinsing with water.

"Commissioner" means the Commissioner of the Virginia Department of Social Services.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services, acting as the authorized agent of the commissioner.

"Evacuation" means movement of occupants out of the building to a safe area near the building.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. A family day home serving five through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. A family day home caring for more than four children under the age of two years, including the provider's own children and any children who reside in the home, shall be licensed or voluntarily registered. A family day home where the children in care are all related to the provider by blood or marriage shall not be required to be licensed.

"Good character and reputation" means knowledgeable and objective people agree that the individual (i) maintains business, professional, family, and community relationships that are characterized by honesty, fairness, and truthfulness; and (ii) demonstrates a concern for the well-being of others to the extent that the individual is considered suitable to be entrusted with the care, guidance, and protection of children. Relatives by blood or marriage, and people who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

"High school program completion or the equivalent" means an individual has earned a high school diploma ~~or General Education Development (G.E.D.) certificate~~, passed a high school equivalency examination approved by the Board of

Education in accordance with §§ 22.1-223, 22.1-224, and 22.1-225 of the Code of Virginia, or has completed a program of home instruction in accordance with § 22.1-254.1 of the Code of Virginia equivalent to high school completion.

"Homeless child" means a child who lacks a fixed, regular, and adequate nighttime residence and who is:

1. Living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar setting;
2. Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; sometimes referred to as doubled-up;
3. Living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations;
4. Living in congregate, temporary, emergency, or transitional shelters;
5. Awaiting or in foster care placement;
6. A migratory child who qualifies as homeless because he is living in circumstances described in the federal Elementary and Secondary Education Act of 1965, P.L. 89-10 (20 USC § 6399); and
7. Living in a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

"Inaccessible" means not capable of being entered, reached, or used.

"Infant" means a child from birth up to 16 months of age.

"Lockdown" means a situation where children are isolated from a security threat and access within and to the home is restricted.

"Nighttime care" means care provided between 7 p.m. and 6 a.m.

"Parent" means the biological, foster or adoptive parent, legal guardian, or any individual with responsibility for, or custody of a child enrolled in or in the process of being enrolled in a family day home.

"Physician" means an individual licensed to practice medicine in any of the 50 states or the District of Columbia.

"Preschool" means children from two years up to the age of eligibility to attend public school, age five by September 30 of that same year.

"Programmatic experience" means time spent working directly with children in a group that is located away from the child's home. Work time shall be computed on the basis of full-time work experience during the period prescribed or equivalent work time over a longer period. Experience settings may include [ ~~, but not be limited to,~~ ] a child day program, family day home, child day center, boys and girls club, field placement, elementary school, or a faith-based organization.

"Provider" means an individual who is issued the family day home license by the Department of Social Services and who has primary responsibility in providing care, protection, supervision, and guidance of children in the family home.

"Relocation" means movement of occupants of the building to a safe location away from the vicinity of the building.

"Residence" means principal legal dwelling or abode that is occupied for living purposes by the provider and contains the facilities necessary for sleeping, eating, cooking, and family living.

"Sanitized" means treated in such a way as to remove bacteria and viruses from inanimate surfaces through first cleaning and secondly using a solution of one tablespoon of bleach mixed with one gallon of water and prepared fresh daily or using a sanitizing solution approved by the U.S. Environmental Protection Agency. The surface of the item is sprayed or dipped into the sanitizing solution and then allowed to air dry for a minimum of two minutes or according to the sanitizing solution instructions.

"School age" means eligible to attend public school, age five or older by September 30 of that same year.

"Serious injury" means a wound or other specific damage to the body such as, ~~but not limited to,~~ unconsciousness; broken bones; dislocation; deep cut requiring stitches; poisoning; concussion; and a foreign object lodged in eye, nose, ear, or other body orifice.

"Shaken baby syndrome" or "abusive head trauma" means a traumatic injury that is inflicted upon the brain of an infant or young child. The injury can occur during violent shaking, causing the child's head to whip back and forth, the brain to move about, and blood vessels in the skull to stretch and tear.

"Shelter-in-place" means movement of occupants of the building to designated protected spaces within the building.

"Substitute provider" means an individual who meets the qualifications of a provider; is designated by the provider; and who provides care, protection, supervision, and guidance for children in the family day home when the provider is absent from the home for more than two hours.

"Time out" means a discipline technique in which a child is moved for a brief time away from the stimulation and reinforcement of ongoing activities and other children in the group to allow the child who is losing self-control to regain composure.

"Toddler" means a child from 16 months of age up to 24 months of age.

**22VAC40-111-30. Operational responsibilities.**

A. The provider shall ensure compliance with these standards and the terms of the current license issued by the department and with relevant federal, state or local laws, and other relevant regulations.

B. The provider will ensure compliance with the home's policies that have been disclosed to the parents as required by 22VAC40-111-70.

C. The provider shall be of good character and reputation. Character and reputation investigation includes, ~~but is not limited to,~~ background checks as required by §§ 63.2-1702 and 63.2-1721 of the Code of Virginia.

D. The provider shall meet the requirements specified in 22VAC40-191, Background Checks for Child Welfare Agencies.

E. The provider shall ensure that the home's activities, services, and facilities are conducive to the welfare of children in care.

F. The provider shall be responsible for the home's day-to-day operation.

G. The provider shall post with parental approval, a current list of all children's allergies, sensitivities, and dietary restrictions.

~~G. H.~~ The provider shall ensure that any advertising is not misleading or deceptive as required by § 63.2-1713 of the Code of Virginia.

~~H. I.~~ The provider shall meet the requirements specified in 22VAC40-80, General Procedures and Information for Licensure.

**22VAC40-111-50. General recordkeeping.**

~~A. The family day home shall keep a written record of children in attendance each day.~~

~~B. The provider's records~~ A. Records required by this regulation may be kept as hard copy or electronically and shall be maintained in the home and made accessible to the department's representative.

B. The family day home shall maintain a written record of daily attendance that documents the arrival and departure of each child in care as it occurs.

C. Information contained in a child's record shall be privileged and confidential. The provider shall not distribute or release information in a child's record to any unauthorized person without the written consent of the child's parent.

D. Children's records shall be made available to a child's parent upon request, unless otherwise ordered by the court.

E. Records and reports on children, caregivers, and household members required by this chapter shall be maintained and made accessible to the department's representative for two years from the date of termination of services for a child, date of separation from employment for caregivers, or date of termination of residence for a household member, or unless specified otherwise.

**22VAC40-111-60. Children's records.**

A. The provider shall maintain an up-to-date record at the family day home for each enrolled child.

B. A child's record shall contain the following information:

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1. Child's full name, nickname (if any), sex, address, and birth date;
2. Emergency ~~contact~~ care information including:
  - a. Name, home address, and telephone number of each parent who has custody;
  - b. Name, address, and telephone number of each custodial parent's place of employment;
  - c. Name, office address, and telephone number of the child's physician;
  - d. Name, address, and telephone number of two designated persons to contact in case of an emergency if the parent cannot be reached;
  - e. Information on allergies and intolerance to ~~food~~, medication, or any other substances, and actions to take in an emergency situation;
  - f. A written care plan for each child with a diagnosed food allergy, to include instructions from a physician regarding the food to which the child is allergic and the steps to be taken in the event of a suspected or confirmed allergic reaction;
  - g. Name and policy number of the child's medical insurance, if applicable;
  - g. ~~h.~~ h. Names of persons other than the custodial parents who are authorized to pick up the child;
  - h. ~~i.~~ i. Appropriate legal paperwork when a custodial parent does not authorize the provider to release the child to the other parent; and
  - i. ~~j.~~ j. Chronic physical problems, pertinent developmental information, and any special accommodations needed;
3. First and last dates of attendance;
4. Parent's signed ~~acknowledgement~~ acknowledgment of the receipt of the information required by 22VAC40-111-70;
5. Proof of the child's age and identity and the names and addresses of previously attended child day care and schools as required by 22VAC40-111-80;
6. ~~Immunization records for the child as required by 22VAC40-111-90;~~
7. ~~Results of the health examination for the child as required by 22VAC40-111-100;~~
8. 6. Written authorization for emergency medical care should an emergency occur and the parent cannot be located immediately unless the parent presents a written objection to provision of medical treatment on religious or other grounds;
9. 7. Written authorization if a caregiver is to administer prescription or nonprescription medication to the child as required by 22VAC40-111-700 A 2;
10. ~~8.~~ 8. Written authorization if the child is to participate in swimming or wading activities as required by 22VAC40-111-660 B;

11. ~~9.~~ 9. Written authorization if the child is taken off the premises of the family day home as required by 22VAC40-111-980;
12. ~~10.~~ 10. Special instructions to the provider including, ~~but not limited to,~~ exception to an infant's sleeping position as required in 22VAC40-111-590 A, recommendations for the care and activities of a child with special needs as required in 22VAC40-111-620 A, and exception to an infant's being fed on demand as required in 22VAC40-111-960 A;
13. ~~11.~~ 11. Record of any accidents or injuries sustained by the child while at the family day home as required by 22VAC40-111-840; ~~and~~
14. ~~12.~~ 12. Documentation of the review of the child's emergency contact information as required by 22VAC40-111-780 B;
13. 13. Immunization records for the child as required by 22VAC40-111-90; and
14. 14. Results of the health examination for the child as required by 22VAC40-111-100.

## **22VAC40-111-90. Immunizations for children.**

A. Before a child may attend the family day home, the provider shall obtain documentation that the child has been ~~adequately~~ immunized according to the requirements of § 32.1-46 A of the Code of Virginia and applicable State Board of Health regulations.

1. The provider may allow a child to attend contingent upon a conditional enrollment. Documentation related to the child's conditional enrollment shall be maintained in the child's record.
2. Conditional enrollment means the enrollment of a child for a period of 90 days contingent upon the child having received at least one dose of each of the required vaccines and the child possessing a plan, from a physician or local health department, for completing his immunization requirements within the ensuing 90 calendar days. If the child requires more than two doses of hepatitis B vaccine, the conditional enrollment period, for hepatitis B vaccine only, shall be 180 calendar days.
3. If a child is homeless and does not have documentation of the required immunizations, the provider may allow the child to attend during a grace period of no more than 90 days to allow the parent or guardian time to obtain documentation of required immunizations. Enrollment of a homeless child without the required immunizations must be documented in the child's record.

B. Pursuant to subsection C of § 22.1-271.2 of the Code of Virginia, documentation of immunizations is not required for any child whose:

1. Parent submits an affidavit to the family day home on the current form approved by the Virginia Department of Health stating that the administration of immunizing agents

conflicts with the parent's or child's religious tenets or practices; or

2. Physician or a local health department states on a Department of Health-approved form that one or more of the required immunizations may be detrimental to the child's health, indicating the specific nature and probable duration of the medical condition or circumstance that contraindicates immunization.

C. The family day home shall obtain documentation of additional immunizations for a child who is not exempt from the immunization requirements according to subsection B of this section:

1. Once every six months for children under the age of two years; and
2. Once between each child's fourth and sixth birthdays.

**22VAC40-111-100. Physical examinations for children.**

A. The provider shall obtain documentation of a physical examination by or under the direction of a physician prior (i) to a child's attendance or (ii) within 30 days after the first day of attendance.

If a child is homeless and does not have documentation of a physical examination, the provider may allow the child to attend during a grace period of no more than 90 days to allow the parent or guardian time to obtain documentation of the required physical examination. Enrollment of a homeless child without documentation of a physical examination must be documented in the child's record.

B. The physical examination prior to attendance shall have been conducted within:

1. Two months prior to attendance for children six months of age or younger;
2. Three months prior to attendance for children age seven months through 18 months;
3. Six months prior to attendance for children age 19 months through 24 months;
4. Twelve months prior to attendance for children two years of age through five years of age; or
5. Twenty-four months prior to attendance for children six years of age and above older.

**EXCEPTIONS:**

~~1. A new physical examination is not required if a copy of the physical examination is available to the admitting family day home for a child transferring from a facility licensed by the Virginia Department of Social Services, approved by a licensed family day system, voluntarily registered by the Virginia Department of Social Services or by a contract agency of the Virginia Department of Social Services, or transferring from a Virginia Department of Education approved child care program.~~

C. When a child transfers from a facility licensed by the Virginia Department of Social Services, approved by a

licensed family day system, voluntarily registered by the Virginia Department of Social Services, or approved by the Virginia Department of Education, a new physical examination is not required if a copy of the physical examination from the originating program is maintained in the child's record.

~~2. D.~~ Pursuant to subsection D of § 22.1-270 of the Code of Virginia, physical examinations are not required for any child whose parent objects on religious grounds. The parent must submit a signed statement noting that the parent objects on religious grounds and certifying that to the best of the parent's knowledge the child is in good health and free from communicable or contagious disease.

~~3. E.~~ For a school age child, a copy of the physical examination required for his entry into a Virginia public kindergarten or elementary school is acceptable documentation to meet the requirements of this section.

**22VAC40-111-130. General qualifications for caregivers.**

A. Caregivers shall:

1. Be of good character and reputation;
2. Be physically and mentally capable of carrying out assigned responsibilities;
3. Be courteous, respectful, patient, and affectionate toward the children in care;
4. Be able to speak, read, and write in English as necessary to:
  - a. Carry out assigned job responsibilities, and
  - b. Communicate effectively with emergency responders; and
5. Meet the requirements specified in 22VAC40-191, Background Checks for Child Welfare Agencies.

B. Caregivers shall have current certification in cardiopulmonary resuscitation (CPR) as appropriate to the age of the children in care from an organization such as the American Red Cross, American Heart Association, American Safety and Health Institute, or National Safety Council. The training shall include an in-person competency demonstration.

C. Unless a caregiver is a registered nurse or licensed practical nurse with a current license from the Board of Nursing, the caregiver shall have current certification in first aid from an organization such as the American Red Cross, American Heart Association, American Safety and Health Institute, or National Safety Council.

**22VAC40-111-140. Qualifications and requirements for providers and substitute providers.**

A. Providers and substitute providers shall be 18 years of age or older.

B. Providers licensed after and substitute providers employed after June 30, 2010, shall have:

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1. (i) A high school program completion or the equivalent or (ii) evidence of having met the requirements for admission to an accredited college or university; and

2. Three months of programmatic experience;

~~3. Current certification in cardiopulmonary resuscitation (CPR), as appropriate to the age of the children in care, from the American Red Cross, American Heart Association, American Safety and Health Institute, or the National Safety Council, or current CPR certification issued within the past two years by a community college, a hospital, a rescue squad, or a fire department; and~~

~~4. Current certification in first aid from the American Red Cross, American Heart Association, American Safety and Health Institute, or the National Safety Council, or current first aid certification issued within the past three years by a community college, a hospital, a rescue squad, or a fire department.~~

~~EXCEPTION: A provider or substitute provider who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification.~~

C. Use of a substitute provider shall be limited to no more than a total of 240 hours per calendar year.

D. A substitute provider shall record and sign the time of arrivals and departures on each day that the substitute provider works.

## **22VAC40-111-150. Qualifications and requirements for assistants.**

A. Assistants shall be 16 years of age or older.

B. An assistant under the age of 18 years of age shall always work under the direct supervision of the provider or substitute provider. Direct supervision means being able to hear or see the assistant and children at all times.

C. An assistant 18 years of age or older shall not be left alone with children in care for more than two hours per day.

~~D. An assistant 18 years of age or older who is left alone with children in care shall have:~~

~~1. Current certification in cardiopulmonary resuscitation (CPR), as appropriate to the age of the children in care, from the American Red Cross, American Heart Association, American Safety and Health Institute, or National Safety Council, or current CPR certification issued within the past two years by a community college, a hospital, a rescue squad, or a fire department; and~~

~~2. Current certification in first aid from the American Red Cross, American Heart Association, American Safety and Health Institute, or National Safety Council, or current first aid certification issued within the past three years by a community college, a hospital, a rescue squad, or a fire department.~~

~~EXCEPTION: An assistant who is a registered nurse or licensed practical nurse with a current license from the Board~~

~~of Nursing shall not be required to obtain first aid certification.~~

~~E. D.~~ An assistant 18 years of age or older who meets the requirements for a substitute provider may act as the substitute provider when the provider is absent from the home for more than two hours.

## **22VAC40-111-200. Orientation.**

A. The provider shall orient the substitute provider and assistant by the end of their first week of assuming job responsibilities.

B. The orientation shall cover the following topics:

A. Caregivers shall complete a minimum of 16 hours of orientation training in areas relevant to their job responsibilities.

B. The Virginia Department of Social Services-sponsored orientation course shall be completed within 90 business days of employment.

C. Orientation shall include, but not be limited to, all topics within this section.

D. The provider shall orient the substitute provider and assistants on the following topics prior to working alone with children and within seven days of the date of hire:

1. Job responsibilities;

2. Requirements for parental notifications listed in 22VAC40-111-650;

3. Standards in this chapter that relate to the substitute provider's or assistant's responsibilities;

~~4. Emergency evacuation, relocation, and shelter in place procedures;~~

~~5. 4.~~ Location of emergency numbers, first aid kit, and emergency supplies;

~~6. 5.~~ Confidential treatment of information about children in care and their families; ~~and~~

~~7. Requirement for reporting suspected child abuse and neglect.~~

6. Recognizing child abuse and neglect and the legal requirements for reporting suspected child abuse as required by § 63.2-1509 of the Code of Virginia;

7. The provider's policies and procedures on the administration of medication;

8. Emergency preparedness and response planning for emergencies resulting from a natural disaster, or a human-caused event such as violence at a family day home and the home's specific emergency preparedness plan as required by 22VAC40-111-800 through 22VAC40-111-830;

9. Prevention and control of infectious diseases;

10. Prevention of sudden infant death syndrome and use of safe sleep practices; and

11. Prevention of shaken baby syndrome and abusive head trauma including procedures to cope with crying babies or distraught children.

E. The provider shall orient the substitute provider and assistant by the end of the first 30 days of assuming job responsibilities in the following topics:

1. Child development including, but not limited to: physical, cognitive, social, and emotional development; behavior management; and positive guidance techniques;

2. Prevention of and response to emergencies due to food and other allergic reactions including:

- a. Recognizing the symptoms of an allergic reaction;
- b. Responding to allergic reactions;
- c. Preventing exposure to the specific food and other substances to which the child is allergic; and
- d. Preventing cross-contamination.

3. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

4. Handling and storage of hazardous materials and the appropriate disposal of diapers and other items contaminated by body fluids; and

5. Precautions in transporting children, if applicable.

F. Documentation of the orientation shall be signed and dated by the provider and substitute provider or by the provider and assistant.

G. Caregivers who are employed prior to (the effective date of this chapter) shall complete the Virginia Department of Social Services-sponsored orientation training as required in subsection B of this section within one year of (the effective date of this chapter). This training may count towards annual training requirements in section 22VAC40-111-210.

**22VAC40-111-210. Annual Ongoing training.**

A. In addition to satisfactory completion of first aid training and CPR training, caregivers shall obtain a minimum of eight clock hours of training annually in areas relevant to their job responsibilities.

- 1. Effective July 1, 2011, caregivers shall obtain 12 clock hours of training annually.
- 2. Effective July 1, 2012, caregivers shall obtain 14 clock hours of training annually.
- 3. Effective July 1, 2013, caregivers shall obtain 16 clock hours of training annually.

B. The annual training shall cover areas such as, but not limited to:

- 1. Physical, intellectual, social, and emotional child development;
- 2. Behavior management and discipline techniques;
- 3. Health and safety in the family day home environment;

4. Art and music activities for children;

5. Child nutrition;

6. Recognition and prevention of child abuse and neglect;

7. Emergency preparedness as required by 22 VAC 40-111-800 C; or

8. Recognition and prevention of the spread of communicable diseases.

A. Caregivers shall complete a minimum of 20 hours of training annually.

B. Annual training shall include topics relevant to the caregiver's job responsibilities and the care of children.

C. Training on the following health and safety topics shall be completed every two years:

1. Child development including but not limited to: physical, cognitive, social, and emotional development;

2. Behavior management and positive guidance techniques;

3. Prevention and control of infectious diseases;

4. Prevention of sudden infant death syndrome and use of safe sleep practices;

5. Prevention of and response to emergencies due to food and other allergic reactions including:

- a. Recognizing the symptoms of an allergic reaction;
- b. Responding to allergic reactions;
- c. Preventing exposure to the specific food and other substances to which the child is allergic; and
- d. Preventing cross-contamination.

6. The home's policies and procedures on the administration of medication;

7. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

8. Prevention of shaken baby syndrome and abusive head trauma including procedures to cope with crying babies or distraught children;

9. Signs and symptoms of child abuse and neglect and requirements for mandated reporters;

10. Emergency preparedness and response planning for emergencies resulting from a natural disaster, or a human-caused event such as violence at a family day home and the home's specific emergency preparedness plan as required by 22VAC40-111-800 through 22VAC40-111-830. Training on the home's emergency preparedness plan shall be completed annually and each time the plan is updated;

11. Handling and storage of hazardous materials and the appropriate disposal of diapers and other items contaminated by body fluids;

12. Precautions in transporting children, if applicable; and

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13. If applicable, the recommended care requirements related to the care and development of children with special needs.

D. CPR and first aid training may count towards the annual training hours required in subsection A of this section if requirements in 22VAC-40-111-230 B are met.

## **22VAC40-111-230. Documentation of education and training.**

A. The provider shall maintain written documentation of each caregiver's applicable education and programmatic experience, ~~applicable~~ first aid and CPR certification, orientation, annual training, and applicable medication administration training.

B. Written documentation of ~~annual~~ training shall include:

1. Name of the caregiver;
2. ~~Name of the training session~~ Training topic;
3. Evidence that training in each topic required in 22VAC40-111-210 C has been completed;
4. Date and total hours of the session; and
4. 5. Name of the organization that sponsored the training and the trainer.

## **22VAC40-111-650. Parent notifications.**

A. The provider shall provide written notification to the parent within 10 business days after the effective date of the change when there is no longer liability insurance in force on the family day home operation.

1. The provider shall obtain the parent's written [ ~~acknowledgement~~ acknowledgment ] of the receipt of this notification, and
2. A copy of the parent's written [ ~~acknowledgement~~ acknowledgment ] of the receipt of this notification shall be maintained in the child's record.

B. Caregivers shall provide information daily to parents about the child's health, development, behavior, adjustment, or needs.

C. The provider shall give parents prior notice when a substitute provider will be caring for the children.

D. Caregivers shall notify parents when persistent behavioral problems are identified and such notification shall include any disciplinary steps taken in response.

E. The provider shall notify the parent immediately when the child:

1. Has a head injury or any serious injury that requires emergency medical or dental treatment;
2. Has an adverse reaction to medication administered;
3. Has been administered medication incorrectly;
4. Is lost or missing; or
5. Has died.

F. The provider shall notify a parent the same day whenever first aid is administered to the child.

G. When a child has been exposed to a communicable disease listed in the Department of Health's current communicable disease chart, the provider shall notify the parent within 24 hours or the next business day of the home's having been informed, unless forbidden by law, except for life-threatening diseases, which must be reported to parents immediately. The provider shall consult the local health department if there is a question about the communicability of a disease.

H. A parent shall be notified immediately of any confirmed or suspected allergic reaction and the ingestion of prohibited food even if a reaction did not occur.

I. Parents shall be informed of any changes in the home's emergency preparedness and response plan.

~~I.~~ J. Except in emergency evacuation or relocation situations, the provider shall inform the parent and have written permission as required by 22VAC40-111-980 whenever the child will be taken off the premises of the family day home, before such occasion.

~~J.~~ K. If an emergency evacuation or relocation is necessary, the parent shall be informed of the child's whereabouts as soon as possible.

## **22VAC40-111-760. First aid and emergency medical supplies.**

A. The following emergency supplies shall be in the family day home, accessible to outdoor play areas, on field trips, in vehicles used for transportation, and wherever children are in care:

1. A first aid kit that contains at a minimum:
  - a. Scissors;
  - b. Tweezers;
  - c. Gauze pads;
  - d. Adhesive tape;
  - e. Adhesive bandages, assorted sizes;
  - f. Antiseptic cleaning solution or pads;
  - g. Digital thermometer;
  - h. Triangular bandages;
  - i. Single use gloves such as surgical or examination gloves;
  - ~~j. In homes located more than one hour's travel time from a healthcare facility, activated charcoal preparation (to be used only on the direction of a physician or the home's local poison control center); and~~
  - ~~k.~~ j. First aid instructional manual.
2. An ice pack or cooling agent.

B. The first aid kit shall be readily accessible to caregivers and inaccessible to children.

**22VAC40-111-800. Emergency preparedness and response plan.**

A. The family day home shall have a written emergency preparedness and response plan that:

1. Includes emergency evacuation, emergency relocation, ~~and~~ shelter-in-place, and lockdown procedures;
2. Addresses the most likely to occur scenarios, including ~~but not limited to~~ fire, severe storms, flooding, tornadoes, ~~and~~ loss of utilities, earthquakes, intruders, violence on or near the premises, chemical spills, and facility damage and other situations that may require evacuation, shelter-in-place, or lockdown; and
3. Includes provisions for a responsible person who is 18 years of age or older and is able to arrive at the family day home within 10 minutes for emergency backup care until the children can be picked up by their parents.

B. The provider shall review the emergency plan at least annually and update the plan as needed. The provider shall document in writing each review and update to the emergency plan.

C. The provider shall ensure that each caregiver receives training regarding the emergency evacuation, emergency relocation, ~~and~~ shelter-in-place, and lockdown procedures by the end of his first week of assuming job responsibilities, on an annual basis, and at the time of each plan update.

**22VAC40-111-810. Evacuation and relocation procedures.**

Evacuation procedures shall include:

1. Methods to alert caregivers and emergency responders;
2. Designated primary and secondary routes out of the building;
3. Designated assembly point away from the building;
4. Designated relocation site;
5. Methods to ensure all children are evacuated from the building and, if necessary, moved to a relocation site;
6. Methods to account for all children at the assembly point and relocation site;
7. Methods to ensure essential documents, including emergency contact information, medications, and supplies are taken to the assembly point and relocation site;
8. Method of communication with parents and emergency responders after the evacuation; ~~and~~
9. Method of communication with parents after the relocation;
10. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during evacuation or relocation; and
11. Procedures to reunite children with a parent or authorized person designated by the parent to pick up the child.

**22VAC40-111-820. Shelter-in-place and lockdown procedures.**

A. Shelter-in-place procedures shall include:

1. Methods to alert caregivers and emergency responders;
2. Designated safe location within the home;
3. Designated primary and secondary routes to the safe location;
4. Methods to ensure all children are moved to the safe location;
5. Methods to account for all children at the safe location;
6. Methods to ensure essential documents, including emergency contact information, and supplies are taken to the safe location; ~~and~~
7. Method of communication with parents and emergency responders;
8. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during shelter-in-place; and
9. Procedure to reunite children with a parent or authorized person designated by the parent to pick up the child.

B. Lockdown procedures, to include facility containment, shall include:

1. Methods to alert caregivers and emergency responders;
2. Methods to account for all children at the lockdown location;
3. Methods of communication with parents and emergency responders;
4. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during lockdown; and
5. Procedure to reunite children with a parent or authorized person designated by the parent to pick up the child.

**22VAC40-111-830. Emergency response drills.**

A. The emergency evacuation procedures shall be practiced monthly with all caregivers and children in care during all shifts that children are in care.

B. Shelter-in-place procedures shall be practiced a minimum of twice per year.

C. Lockdown procedures shall be practiced at least annually.

D. Documentation shall be maintained of emergency evacuation ~~and~~, shelter-in-place, and lockdown drills that includes:

1. Identity of the person conducting the drill;
2. The date and time of the drill;
3. The method used for notification of the drill;
4. The number of caregivers participating;
5. The number of children participating;
6. Any special conditions simulated;

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7. The time it took to complete the drill;
8. Problems encountered, if any; and
9. For emergency evacuation drills only, weather conditions.

~~D.~~ E. Records of emergency evacuation ~~and~~ shelter-in-place, and lockdown drills shall be maintained for one year.

## **22VAC40-111-850. Reports to department.**

A. The provider shall ~~report to the department within 24 hours~~ inform the department's representative as soon as possible but not to exceed one business day of the circumstances surrounding the following incidents:

1. Lost or missing child when local authorities have been contacted for help;
- ~~2. Serious injury to a child while under the family day home's supervision; and~~
- ~~3.~~ 2. Death of a child while under the family day home's supervision; and
3. The suspension or termination of all child care services for more than 24 hours as a result of an emergency situation and any plans to resume child care.

B. The provider shall inform the department's representative as soon as practicable, but not to exceed two business days, of any serious injury to a child while under the home's supervision.

C. A written report shall be completed and submitted to the department within five working days of the date the incident occurred.

## **22VAC40-111-870. General requirements for meals and snacks.**

A. Meals and snacks shall be served in accordance with the times children are in care, which include:

1. For family day homes operating less than four consecutive hours at least one snack shall be served.
2. For family day homes operating four to seven consecutive hours at least one meal and one snack shall be served.
3. For family day homes operating seven to 12 consecutive hours at least one meal and two snacks or two meals and one snack shall be served.
4. For family day homes operating 12 to 16 consecutive hours at least two meals and two snacks or three meals and one snack shall be served.

B. A family day home shall ensure that children arriving from a half-day, morning program who have not yet eaten lunch receive a lunch.

C. The family day home shall ~~schedule~~ have scheduled snacks or meals so there is a period of at least 1-1/2 hours, but no more than three hours, between each meal or snack unless there is a scheduled rest or sleep period for children between the meals and snacks.

D. Children shall be served small-sized portions.

~~E. Food shall be prepared, stored, served, and transported in a clean and sanitary manner.~~

~~F.~~ E. Leftover food shall be discarded from individual plates following a meal or snack.

~~G.~~ F. Tables and high chair trays shall be cleaned after each use, but at least daily.

G. Food shall be prepared, stored, served, and transported in a clean and sanitary manner.

H. When food is prepared that a child in care is allergic to, the caregiver shall take steps to avoid cross-contamination in order to prevent an allergic reaction.

I. Caregivers who prepare and serve food to children, or supervise meals, shall be aware of the food allergies, sensitivities, and dietary restrictions for each child.

J. Caregivers shall not serve prohibited food to a child.

## **22VAC40-111-990. Requirements for drivers.**

A. Drivers must be 18 years of age or older.

B. The provider shall ensure that during transportation of children the driver has:

1. A valid driver's license;
2. The name, address, and telephone number of the family day home;
3. A copy of the parent's written permission to transport the child;
4. A copy of each child's emergency ~~contact~~ care information as required in 22VAC40-111-60 B 2;
5. Allergy care plan and information as required in 22VAC40-111-60 B 2;
- ~~5.~~ 6. Emergency supplies as required in 22VAC40-111-760; and
- ~~6.~~ 7. A mechanism for making telephone calls to emergency responders and parents (~~e.g., change, calling card, cellular phone~~) such as a cellular phone.

VA.R. Doc. No. R16-4604; Filed December 7, 2016, 8:57 a.m.

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# GENERAL NOTICES/ERRATA

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## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

### Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-130, Rules and Regulations Governing Laboratory Fees for Services Rendered or Performed**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated October 18, 2016, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

There is a continuing need for this regulation in order to support the operation of the Animal Health Laboratory System. There have been no complaints from the public concerning the regulation. The regulation is necessarily uncomplicated. There is no overlap with federal or state law or regulations. Technology, economic conditions, and other factors have not impacted the need for this regulation but, in fact, make the existence of this regulation even more necessary as economic conditions have resulted in the Animal Health Laboratory System being more dependent on fee revenue to provide the current technology needed to offer services to clients. The primary effect on small business is a beneficial one as veterinary practices, agricultural businesses, and livestock and animal owners in the Commonwealth are able to obtain laboratory services nearby and at an affordable price. Therefore, the agency has determined to retain the regulation in its current form.

Contact Information: Dr. Joseph Garvin, Program Manager, Office of Laboratory Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-9202, FAX (804) 371-2380, or email [joseph.garvin@vdacs.virginia.gov](mailto:joseph.garvin@vdacs.virginia.gov).

### Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-205, Rules and Regulations Pertaining to Shooting Enclosures**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services (VDACS) is publishing its report of findings dated October 18, 2016, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

There is a continued need for this regulation because there is still one shooting enclosure currently operating in the Commonwealth. There have been no complaints from the public concerning this regulation. This regulation is detailed but is clearly written and easily understandable. This regulation does not overlap, duplicate, or conflict with federal or state law or other regulation but expands upon § 3.2-6039

of the Code of Virginia. There have been no technologic, economic, or other factors that have changed in the area affected by the regulation since the last review period. This regulation necessarily impacts small business, as the operators of shooting enclosures are for-profit private businesses. However, the impact is appropriate and necessary in order to protect public health, welfare, and safety. The collection of a small annual fee from shooting enclosure operators is necessary in order to offset any cost to VDACS for administering the provisions of the regulation. Therefore, the agency has determined to retain the regulation in its current form.

Contact Information: Dr.Carolynn Bissett, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4560, FAX (804) 371-2380, or email [carolynn.bissett@vdacs.virginia.gov](mailto:carolynn.bissett@vdacs.virginia.gov).

### Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-230, Rules and Regulations Applicable to Controlled Atmosphere (CA) Apples**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated October 17, 2016, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The regulation has minimal impact on small businesses. The agency is recommending that the regulation should remain in effect without change. The regulation promotes the welfare of citizens by making available to the public better quality fruit throughout the year, and it provides equitable pricing for fruit producers and sellers. The agency has not received any comments or complaints regarding the regulation. The regulation does not duplicate any state or federal laws or regulations. The regulation is not overly complex. The agency has determined that no changes have occurred in the area affected by this regulation since the last periodic review that would make it necessary to amend or repeal the regulation. The agency believes the current version of the regulation is the least burdensome and least intrusive alternative for the apple industry and affected small businesses.

Contact Information: Dennis Clary, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1933, FAX (804) 371-7785, or email [dennis.clary@vdacs.virginia.gov](mailto:dennis.clary@vdacs.virginia.gov).

### Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-250, Rules and Regulations Relating to Grain Dealers Licensing and**

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**Bonding Law**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated November 15, 2016, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Because the selling of grain in Virginia is tremendously important to the state's economy, there is a continued need for this regulation. The agency has determined that this regulation is effective in achieving its goals of protecting Virginia farmers against loss when selling their grain. The agency has not received any complaints or comments concerning this regulation. The regulation is not unnecessarily complex. The regulation does not conflict with state or federal law. The agency has determined that no change occurred in the area affected by the regulation subsequent to the agency's previous periodic review that would necessitate the amendment or repeal of this regulation. This regulation is still very important in ensuring fair and prompt payment for grain transactions between buyer and seller.

Contact Information: Randy Sanford, Grain Law Supervisor, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3939, FAX (804) 371-7785, or email [randy.sanford@vdacs.virginia.gov](mailto:randy.sanford@vdacs.virginia.gov).

### **Small Business Impact Review - Report of Findings**

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-300, Rules and Regulations for the Enforcement of the Virginia Seed Potato Standards**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated October 17, 2016, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The regulation has minimal impact on small businesses. The agency is recommending that the regulation should remain in effect without change. The regulation assists in ensuring the quality of the seed potatoes shipped into Virginia and is necessary to support the economic welfare of potato producers. The agency has not received any comments or complaints regarding the regulation. The regulation does not duplicate any state or federal laws or regulations. The regulation is not overly complex. The agency has determined that no changes have occurred in the area affected by this regulation since the last periodic review that would make it necessary to amend or repeal the regulation. The agency believes the current version of the regulation is the least burdensome and least intrusive alternative for the potato industry and affected small businesses.

Contact Information: Dennis Clary, Program Manager, Department of Agriculture and Consumer Services, P.O. Box

1163, Richmond, VA 23218, telephone (804) 786-1933, FAX (804) 371-7785, or email [dennis.clary@vdacs.virginia.gov](mailto:dennis.clary@vdacs.virginia.gov).

### **Small Business Impact Review - Report of Findings**

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-370, Rules and Regulations for Enforcement of the Virginia Animal Remedies Law**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated October 21, 2016, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The provisions of this regulation establish general requirements that are consistent with current industry practices and that are not unnecessarily burdensome. The agency has determined that this regulation should be retained in order to continue to protect public health, safety, and welfare. The agency has not received any complaints or comments from the public concerning this regulation. The agency has determined that this regulation is not unnecessarily complex and that the complexity of this regulation is not such that it would have an economic impact on small businesses. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The agency has determined that no change in the animal remedy industry has occurred subsequent to the agency's previous periodic review of this regulation that would necessitate the amendment or repeal of this regulation.

Contact Information: Debra Martin, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, or email [debra.martin@vdacs.virginia.gov](mailto:debra.martin@vdacs.virginia.gov).

### **Small Business Impact Review - Report of Findings**

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-380, Rules and Regulations for the Enforcement of the Virginia Dealers in Agricultural Products Law**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated October 21, 2016, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The provisions of this regulation establish notice and written receipt requirements and are not unnecessarily burdensome. The agency has determined that this regulation should be retained in order to continue to protect and support the economic welfare of producers of agricultural produce. The agency has not received any complaints or comments from the public concerning this regulation. The agency has determined that this regulation is not unnecessarily complex,

and that the complexity of this regulation is not such that it would have an economic impact on small businesses.

The federal Perishable Agricultural Commodities Act (7 USC § 499a et seq.) (Act) requires any person who buys or sells more than 2,000 pounds of fresh or frozen fruits and vegetables in any given day to be licensed. Rules and Regulations for the Enforcement of the Virginia Dealers in Agricultural Products Law (2VAC5-380) does not appear to overlap, duplicate, or conflict with the requirements of the Act or with any other federal or state law or regulation. The agency has determined that no change in the affected industry has occurred subsequent to the agency's previous periodic review of this regulation that would necessitate the amendment or repeal of this regulation.

Contact Information: Debra Martin, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, or email [debra.martin@vdacs.virginia.gov](mailto:debra.martin@vdacs.virginia.gov).

### **Small Business Impact Review - Report of Findings**

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-405, Regulations for the Application of Fertilizer to Nonagricultural Lands**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated October 20, 2016, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The agency determined these requirements are not unnecessarily burdensome and provide an important means of ensuring the proper training, certification, and recordkeeping for licensees and contractor-applicators who apply fertilizer for commercial purposes to nonagricultural lands. The regulation also provides a means of enforcing reporting requirements for certain fertilizer applications and is necessary to minimize the risk of environmental harm resulting from the improper application of fertilizers to nonagricultural lands. The agency has determined that this regulation is not unnecessarily complex, and that the complexity of this regulation is not such that it would have an economic impact on small businesses.

Regulations for the Application of Fertilizer to Nonagricultural Lands (2VAC5-405) does not appear to overlap, duplicate, or conflict with any federal or state law or regulation. The agency has determined that no change in the affected industry has occurred since the regulation was last amended in February 2012 that would necessitate the amendment or repeal of this regulation.

Contact Information: Debra Martin, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218,

telephone (804) 786-3515, FAX (804) 371-7793, or email [debra.martin@vdacs.virginia.gov](mailto:debra.martin@vdacs.virginia.gov).

### **Small Business Impact Review - Report of Findings**

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-520, Rules and Regulations Governing Testing of Milk for Milkfat, Protein, and Lactose Content by Automated Instrument Methods**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated October 18, 2016, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

There is a continuing need for this regulation as it provides for alternative testing methods for determining the composition of milk or other fluid dairy products that are cost-effective to the industry. The agency has not received any complaints or comments concerning the regulation from the public. The regulation is simple and easily understood. The regulation is not mandated by any federal law or regulation but is authorized by and expands upon state law. It does not conflict with any federal or state laws or regulations. No changes to agency or industry practices have occurred that would necessitate any modifications. The most current testing method technologies are supported by this regulation. The economic impact of the regulation on small businesses is favorable in that small laboratory equipment companies can offer for sale alternative testing equipment that meets regulatory guidelines. In addition, the regulation is effective in providing alternative, cost-effective testing methods for determining the composition of milk or other fluid dairy products. Therefore, the agency has determined that the regulation should be retained in its current form.

Contact Information: Robert Trimmer, Program Supervisor, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1452, FAX (804) 371-7792, or email [robert.trimmer@vdacs.virginia.gov](mailto:robert.trimmer@vdacs.virginia.gov).

## **VIRGINIA LOTTERY**

### **Director's Orders**

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on December 7, 2016. The orders may be viewed at the Virginia Lottery, 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 One Hundred Sixty-Two (16)

Virginia Lottery's "Farm Fresh Season's Winnings Promotion" Final Rules for Operation (effective December 1, 2016, through the end promotion date)

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## General Notices/Errata

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### Director's Order Number One Hundred Sixty-Three (16)

Virginia Lottery's Scratch Game 1729 "Diamond Dig" Final Rules for Game Operation (effective November 18, 2016)

### Director's Order Number One Hundred Sixty-Four (16)

Virginia Lottery's "Farm Fresh Big Money Super Ticket Promotion" Final Rules for Operation (effective February 1, 2017, through the end promotion date)

### Director's Order Number One Hundred Sixty-Five (16)

Virginia Lottery's Scratch Game 1670 "Jumbo Bucks" Final Rules for Game Operation (effective November 18, 2016)

### Director's Order Number One Hundred Sixty-Six (16)

Virginia Lottery's "2017 Super Teacher Awards Contest" Final Rules for Operation (effective January 2, 2017)

## STATE WATER CONTROL BOARD

### Proposed Consent Special Order for Bland Development Corporation

An enforcement action has been proposed for Bland Development Corporation for violations at Eagle Preserve at Jordan on the James in Prince George, Virginia. The State Water Control Board proposes to issue a special order by consent to Bland Development Corporation to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Carla Pool will accept comments by email at [carla.pool@deq.virginia.gov](mailto:carla.pool@deq.virginia.gov), FAX at (804) 698-4277, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from December 26, 2016, to January 25, 2017.

### Proposed Consent Order for Harrisonburg Port Road Station Tanks 450, LLC (Port Road)

An enforcement action has been proposed for Harrisonburg Port Road Station Tanks 450, LLC (Port Road) for violations at Valley's 21 in Harrisonburg, Virginia. The State Water Control Board proposes to issue a consent order to Port Road for 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 [www.deq.virginia.gov](http://www.deq.virginia.gov). Tiffany Severs will accept comments by email at [tiffany.severs@deq.virginia.gov](mailto:tiffany.severs@deq.virginia.gov), FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, from December 26, 2016, to January 25, 2017.

### Proposed Enforcement Action for Amadas Industries, Inc.

An enforcement action has been proposed for Amadas Industries, Inc. (Suffolk) for alleged violations of the State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Jennifer Coleman, Esq. will accept comments by email at [jennifer.coleman@deq.virginia.gov](mailto:jennifer.coleman@deq.virginia.gov), FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from December 26, 2016, to January 27, 2017.

### Proposed Enforcement Action for Marple Run LLC

An enforcement action has been proposed for Marple Run LLC, for Marple Run Subdivision in Hampton, Virginia, for violations of the State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Russell Deppe will accept comments by email at [russell.deppe@deq.virginia.com](mailto:russell.deppe@deq.virginia.com), FAX at (804) 698-4277, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from December 26, 2016, to January 25, 2017.

## 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; *Email:* [varegs@dls.virginia.gov](mailto:varegs@dls.virginia.gov).

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/connect/commonwealth-calendar>.

**Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed:** A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.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

### ALCOHOLIC BEVERAGE CONTROL BOARD

Title of Regulation: **3VAC5-70. Other Provisions.**

Publication: 33:8 VA.R. 786-788 December 12, 2016.

Correction to Fast-Track Regulation:

Page 788, 3VAC5-70-20, subsection C, end of line 7, after "7.0%" delete "of" and insert "or"

VA.R. Doc. No. R17-4756; Filed December 15, 2016, 11:47 a.m.

### STATE BOARD OF HEALTH

Title of Regulation: **12VAC5-431. Sanitary Regulations for Hotels.**

Publication: 17:22 VA.R. 3259-3269 July 16, 2001.

Correction to Proposed Regulation:

Page 3268, 12VAC5-431-390, after "specified in" delete "12VAC5-430-30" and insert "12VA 5-431-30"

Page 3268, 12VAC5-431-400, subsection A, after "specified in" delete "12VAC5-430-30" and insert "12VAC5-431-30"

VA.R. Doc. No. R94-256; Filed December 14, 2016, 12:24 p.m.

