



# VIRGINIA

## REGISTER OF REGULATIONS

VOL. 33 ISS. 14

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

MARCH 6, 2017

### TABLE OF CONTENTS

<b>Register Information Page</b> .....	1823
<b>Publication Schedule and Deadlines</b> .....	1824
<b>Regulations</b> .....	1825
7VAC13-20. Regulations to Govern the Certification of Small, Women-Owned, and Minority-Owned Businesses (Final) .....	1825
11VAC15-40. Charitable Gaming Regulations (Proposed) .....	1827
14VAC5-190. Rules Governing the Reporting of Cost and Utilization Data Relating to Mandated Benefits and Mandated Providers (Final) .....	1829
18VAC15-40. Virginia Certified Home Inspectors Regulations (Final) .....	1839
18VAC90-19. Regulations Governing the Practice of Nursing (Fast-Track) .....	1843
22VAC30-80. Auxiliary Grants Program (Proposed) .....	1845
<b>General Notices/Errata</b> .....	1852

---

# VIRGINIA REGISTER INFORMATION PAGE

---

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

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

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

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

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

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

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

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

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

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

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

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

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

## **STATEMENT**

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

## **CITATION TO THE VIRGINIA REGISTER**

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

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

Members of the Virginia Code Commission: **John S. Edwards**, 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.

---

## PUBLICATION SCHEDULE AND DEADLINES

---

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

---

### March 2017 through April 2018

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
34:13	January 31, 2018	February 19, 2018
34:14	February 14, 2018	March 5, 2018
34:15	February 28, 2018	March 19, 2018
34:16	March 14, 2018	April 2, 2018
34:17	March 28, 2018	April 16, 2018
34:18	April 11, 2018	April 30, 2018

\*Filing deadlines are Wednesdays unless otherwise specified.

---

# REGULATIONS

---

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

---

## Symbol Key

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

---

## TITLE 7. ECONOMIC DEVELOPMENT

### DEPARTMENT OF SMALL BUSINESS AND SUPPLIER DIVERSITY

#### Final Regulation

**REGISTRAR'S NOTICE:** The Department of Small Business and Supplier Diversity is claiming an exemption from the Administrative Process Act in accordance with subdivision 8 of § 2.2-1606 of the Code of Virginia, which exempts regulations implementing certification programs for small, women-owned, and minority-owned businesses and employment services organizations from the Administrative Process Act pursuant to subdivision B 2 of § 2.2-4002 of the Code of Virginia.

**Title of Regulation:** **7VAC13-20. Regulations to Govern the Certification of Small, Women-Owned, and Minority-Owned Businesses (amending 7VAC13-20-100, 7VAC13-20-210, 7VAC13-20-220).**

**Statutory Authority:** § 2.2-1606 of the Code of Virginia.

**Effective Date:** April 6, 2017.

**Agency Contact:** Reba O'Connor, Regulatory Coordinator, Department of Small Business and Supplier Diversity, 101 North 14th Street, 11th Floor, Richmond, VA 23219, telephone (804) 593-2005, or email reba.oconnor@sbsd.virginia.gov.

#### **Summary:**

*The amendments add a description and explanation of the ownership requirements that must be satisfied before a wholly owned subsidiary may be certified as a small, women-owned, or minority-owned (SWaM) business; clarify the process for revocation of a SWaM certification; and clarify the reapplication process after denial of an initial SWaM certification.*

#### **7VAC13-20-100. Ownership.**

A. The ownership by women, minority, or individual owners (in the case of a small business) must be real, substantial, and continuing going beyond the pro forma ownership of the business.

B. Records of the applicant's business arrangements must demonstrate that the women, minority, or individual owners who the applicant claims to have ownership interests in the applicant's business share in all risks and profits in proportion to their ownership interests.

C. Women, minority, or individual owners who the applicant claims to have an ownership interest in the

applicant's business ("qualifying individuals") as evidenced by securities must hold the securities directly or in a trust as described in subsection I of this section, except that a parent or holding company may be utilized only as described in subsection K of this section.

D. Contribution of capital or expertise.

1. Contribution of capital, expertise, or both by women, minority, or individual owners to acquire their ownership interest shall be real and substantial and be in proportion to the interests acquired.

2. Insufficient contributions shall include promises to contribute capital or expertise in the future; a note or notes payable to the business or its owners who are not themselves women, minority, or individual owners; or the mere participation as an employee.

E. In a sole proprietorship, the woman, minority, or individual applying for certification must own 100% of the business and its assets.

F. Corporations.

1. In a corporate form of organization, women, minority, or individual owners must own at least 51% of each class of voting stock outstanding and 51% of the aggregate of all stock outstanding.

2. Any voting agreements among the shareholders must not dilute the beneficial ownership, the rights, or the influence of the women, minority, or individual owners of the stock or classes of stock of the corporation.

3. Women, minority, or individual owners shall possess the right to all customary incidents of ownership (e.g., ability to transfer stock, title possession, enter binding agreements, etc.).

G. Partnerships.

1. General partnership. In a general partnership, women, minority, or individual owners must own at least 51% of the partnership interests.

2. Limited partnership.

a. In a limited partnership, the women, minority, or individual owners who are general partners must own at least 51% of the general partnership interest and exert at least 51% of the control among general partners. The women, minority, or individual owners who are general partners must receive at least 51% of the profits and benefits, including tax credits, deductions, and postponements distributed or allocable to the general partner.

---

# Regulations

---

b. In addition, the women, minority, or individual owners who are limited partners must own at least 51% of the limited partnership interests and receive at least 51% of the profits and benefits, including tax credits, deductions, and postponements distributed or allocable to the limited partners.

## H. Limited liability companies.

1. In a limited liability company, women, minority, or individual owners must own at least 51% of membership interests and have at least 51% of the management and control among the members.

2. The women, minority, or individual owners must also participate in all risks and profits of the organization at a rate commensurate with their membership interests.

I. Trusts. In order to be counted as owned by women, minority, or individual owners, securities held in a trust must meet the following requirements, as applicable:

1. Irrevocable trusts. The beneficial owner of securities held in an irrevocable trust is a woman, a minority individual, or ~~an individual~~ natural person who is not a minor and all the trustees are women, minority individuals, or ~~individuals~~ natural persons, provided that a financial institution may act as trustee.

2. Revocable trusts. The beneficial owner of securities held in a revocable trust is a woman, a minority individual, or ~~an individual~~ natural person who is not a minor; all the grantors are women, minority individuals, or ~~individuals~~ natural persons; and all the trustees are women, minority individuals, or ~~individuals~~ natural persons, provided that a financial institution may act as trustee.

3. Employee stock ownership plans (ESOPs). Securities owned by women, minority individuals, or ~~individuals~~ natural persons who are participants in an employee stock ownership plan qualified under 26 USC § 401, Internal Revenue Code, 1986, as amended, and held in a trust where all or at least 51% or more of the trustees are women, minority individuals, or ~~individuals~~ natural persons, provided that a financial institution may act as trustee.

4. Other requirements. Businesses whose securities are owned in whole or part in a trust are not thereby exempt from the other requirements of this chapter.

J. Joint venture. In a joint venture, the women, minority, or individual owners must own at least 51% of the business venture, exert at least 51% of the control of the venture, and have made at least 51% of the total investment.

K. Subsidiaries. As provided in subsection C of this section, an eligible small, women-owned, or minority-owned business must be owned directly by the qualifying individuals. Except as provided in this subsection, a firm that is not at least 51% owned directly by the qualifying individuals, but instead is owned by another firm, cannot be certified as a small, women-owned, or minority-owned business.

1. If the qualifying individuals own and control a firm through a parent or holding company established for tax, capitalization, or other legitimate business purposes, and the parent or holding company in turn owns and controls an operating subsidiary, the subsidiary shall be certified if it otherwise meets all requirements. In this situation, the qualifying individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

2. A subsidiary may be certified only if there is cumulatively 51% ownership of the subsidiary by the qualifying individuals. The following examples illustrate how this cumulative ownership provision works:

a. Example 1: Qualifying individuals own 100% of a holding company that has a wholly owned subsidiary. The subsidiary shall be certified if it meets all other requirements.

b. Example 2: Qualifying individuals own 100% of the holding company that owns 51% of a subsidiary. The subsidiary shall be certified if all other requirements are met.

c. Example 3: Qualifying individuals own 80% of the holding company that in turn owns 70% of a subsidiary. In this case, the cumulative ownership of the subsidiary by qualifying individuals is 56% (80% of the 70%). This is more than 51%, so the subsidiary shall be certified if all other requirements are met.

d. Example 4: This example is the same as Example 2 or 3, but someone other than the qualifying individual owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by qualifying individuals, through the holding or parent company, the subsidiary may not be certified because it fails to meet control requirements.

e. Example 5: Qualifying individuals own 60% of the holding company that in turn owns 51% of a subsidiary. In this case, the cumulative ownership of the subsidiary by qualifying individuals is about 31%. This is less than 51%, so the subsidiary will not be certified.

f. Example 6: In the case of small business certification, the holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts or number of employees of the holding company, its affiliates, and its subsidiaries are greater than the size standard for the subsidiary seeking certification. Under the rules concerning an eligible small business, the subsidiary fails to meet the size standard and cannot be certified.

## **7VAC13-20-210. Revocation procedure.**

A. Initiation of the revocation process.

1. The department may, at the request of any state agency or at its own discretion, examine any certified business to verify that it continues to meet the applicable eligibility

requirements for certification as a small, women-owned, or minority-owned business.

2. Any individual or firm that believes that a business certified by the department does not qualify under the standards of eligibility for certification may request that the department undertake a review to verify that the certified business continues to meet the eligibility requirements for certification. Such requests must be written and signed and must contain specific identification of the affected business and the basis for the belief that the business does not meet the eligibility standards. After reviewing the request, the department shall determine whether to conduct a review of the business. The department's decision may not be appealed by the party seeking such verification. Written requests for verification of continued eligibility of a certified business for certification should be sent to the Virginia Department of Small Business and Supplier Diversity at its principal place of business.

**B. Review procedure.**

1. If the department determines to conduct a review of a business's certification, the department shall notify the business in writing that the department is reviewing its certification, explaining the basis for its decision to conduct a review.

2. The department may request records or other documentation from the business, may conduct an onsite visit of the business facilities, and may question other parties during its review.

3. The department may impose a time limit of not less than 15 days in which the business must respond to a request for records or other documentation. A reasonable extension may be given by the department for good cause shown by the business. Requests for time extensions should be made in writing to the department and should specify the length of time for which the extension is being requested and the reason for the request. If the business fails to provide the information in the time requested, the department shall issue a notice of intent to revoke the certification.

4. Upon completion of the review, a written report shall be prepared, which shall include:

- a. A statement of the facts leading to the review;
- b. A description of the process followed in the review;
- c. The findings of the review; and
- d. A conclusion that contains a recommendation for disposition of the matter.

**C. Revocation process.**

1. If during the review procedure a business is found to be ineligible for certification and is issued a notice of intent to revoke its certification, the business shall have the right to an informal fact-finding proceeding as provided in 7VAC13-20-230.

2. A business's certification will remain effective until the issuance of a letter of revocation.

3. If the business does not request an appeal within 10 days of the notice of intent to revoke, as provided in 7VAC13-20-230, a letter of revocation will be issued at the end of such 10-day period.

4. A business whose certification has been revoked may reapply for certification in the same category 12 months after the date of revocation.

**7VAC13-20-220. Reapplication.**

A. A business whose application for certification has been denied may reapply for the same category of certification 12 months after the date on which the business receives the notice of denial ~~if no appeal is filed or 12 months after the appeal is exhausted~~. An applicant denied certification ~~as a women-owned or minority-owned business may reapply for certification as a small business~~ may apply for certification in any other category without delay if otherwise eligible.

B. The applicant may request a waiver of the 12-month reapplication period from the department director by submitting a written request for reconsideration and providing a reasonable basis for the waiver. The director or his designee, in his discretion, shall render a final decision regarding the request for reconsideration and waiver within 30 days, which determination shall not constitute a case decision subject to appeal.

VA.R. Doc. No. R17-5029; Filed February 13, 2017, 2:31 p.m.

**TITLE 11. GAMING**

**CHARITABLE GAMING BOARD**

**Proposed Regulation**

Title of Regulation: **11VAC15-40. Charitable Gaming Regulations (amending 11VAC15-40-300).**

Statutory Authority: § 18.2-340.15 of the Code of Virginia.

Public Hearing Information:

March 14, 2017 - 10:45 a.m. - American Veterans Post 7, 1340 North Liberty Street, Harrisonburg, VA 22802

Public Comment Deadline: May 5, 2017.

Agency Contact: Michael Menefee, Program Manager, Charitable and Regulatory Programs, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3983, FAX (804) 371-7479, or email michael.menefee@vdacs.virginia.gov.

Basis: Section 2.2-2455 of the Code of Virginia establishes the Charitable Gaming Board as a policy board. Section 18.2-340.15 of the Code of Virginia authorizes the board to prescribe regulations and conditions under which charitable gaming is to be conducted in Virginia.

---

# Regulations

---

**Purpose:** This proposed regulatory action increases the number of electronic pull-tab devices that may be used at private social quarters. Increasing device limits provides an opportunity for participating charitable organizations to increase revenue. Many of these nonprofits use these revenues to support numerous community programs that often benefit and promote the welfare of the citizens of the Commonwealth. The board seeks to increase the number of electronic pull-tab devices used in private social quarters from the currently allowed five devices to nine devices. The department does not anticipate any potential issues that may need to be addressed as this regulation is developed.

**Substance:** This regulatory action consists of one amendment to 11VAC15-40-300. The amendment is substantive and increases the number of electronic pull-tab devices that qualifying charitable organizations may operate in private social quarters from five devices to nine devices.

**Issues:** The decision to increase the permissible number of electronic pull-tab devices from five devices to nine devices is the result of a petition for rulemaking submitted by a manufacturer of electronic pull-tabs. This manufacturer requested that the board review the number of electronic pull-tab devices allowed in private social quarters, and the board granted the petitioner's request. Special interest groups that are concerned with the expansion of gaming in the Commonwealth typically monitor the progress of all regulations pertaining to charitable gaming. The department is not aware of specific concerns with the proposed regulations. This regulatory action poses no specific advantages or disadvantages to the public or the Commonwealth.

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

**Summary of the Proposed Amendments to Regulation.** As a result of a petition for rulemaking,<sup>1</sup> the Charitable Gaming Board (Board) proposes to amend its regulation to increase the number of electronic pull-tab devices allowed for private social quarters.

**Result of Analysis.** Benefits likely outweigh costs for this proposed change.

**Estimated Economic Impact.** This regulatory action affects private social quarters. Charitable gaming at private social quarters is where entrance to the premises is limited to members of the organization operating the social quarters and their guests.

This action increases the number of electronic pull-tab devices permitted at private social quarters. According to 11VAC15-40-10, an electronic pull-tab device may "take the form of an upright cabinet or a handheld device or may be of any other composition as approved by the department."<sup>2</sup> More recent versions of the devices resemble tablet computers.<sup>3</sup>

Current regulation allows a maximum of 10 stand-alone (cabinet style) electronic pull-tab devices<sup>4</sup> and 50 handheld

electronic pull-tab devices in premises where bingo sessions open to the public are conducted. Private social quarters are currently limited to a total of five electronic pull-tab devices, regardless of device type. The Board now proposes to increase the number of pull-tab devices allowed in private social quarters to nine.

This change increases the number of devices allowed, but not required, for private social quarters. Accordingly, charitable organizations that have private social quarters are unlikely to incur the costs of procuring additional devices unless they expect the revenue from having extra gaming devices available would outweigh the costs. This regulatory change does not increase regulatory compliance costs for any entity. Charitable organizations with private social quarters may see increased revenues if they increase the number of pull-tab devices available at gatherings for members and their guests. Revenue and profits for manufacturers of electronic pull-tab devices may also increase as this regulatory change may increase demand for electronic pull-tab devices.

**Businesses and Entities Affected.** Board staff reports that there are approximately 330 charitable organizations in the Commonwealth that are allowed to conduct gaming open to the public and that there are seven manufacturers of electronic pull-tab devices that sell such devices in Virginia. All of these entities, as well as any charitable organizations that only have private social quarters gaming for members and their guests, will be affected by this proposed regulatory change.

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

**Projected Impact on Employment.** This proposed regulatory change is unlikely to have any impact on employment in the Commonwealth.

**Effects on the Use and Value of Private Property.** This proposed regulation is unlikely to have any impact on the use or value of private property.

**Real Estate Development Costs.** This proposed regulation is unlikely to 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.** No small business is likely to incur compliance costs on account of this proposed regulatory change.

**Alternative Method that Minimizes Adverse Impact.** No small business is likely to incur compliance costs on account of this proposed regulatory change.

### **Adverse Impacts:**

**Businesses.** No business is likely to incur compliance costs on account of this proposed regulatory change.

Localities. No locality is likely to be adversely affected by this proposed regulatory change.

Other Entities. No other entities are likely to suffer any adverse impact on account of this proposed regulation.

<sup>1</sup> <http://townhall.virginia.gov/L/viewpetition.cfm?petitionid=224>

<sup>2</sup> <http://law.lis.virginia.gov/admincode/title11/agency15/chapter40/section10/>

<sup>3</sup> VTabs, the company that initiated the petition for this action, has some examples of current devices on its website. See <http://www.v-tabs.com/>.

<sup>4</sup> Electronic pull-tabs are defined in the regulation as "an electronic version of a single instant bingo card or pull-tab. An electronic pull-tab is a predetermined game outcome in electronic form, distributed on-demand from a finite number of game outcomes by a distributed pull-tab system." Electronic pull-tab devices are upright cabinet style gaming devices or handheld gaming devices that allow gamers to play pull-tab style instant bingo games. For examples of electronic pull-tab devices, see here: <http://www.v-tabs.com/>

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

Summary:

*The proposed amendment increases the number of electronic pull-tab devices used in private social quarters from the currently allowed five devices to nine devices.*

Article 4  
Electronic Pull-tab Devices

**11VAC15-40-300. Electronic pull-tab device general requirements.**

A. Each electronic pull-tab device shall bear a seal approved by the commissioner and affixed by the department.

B. An electronic pull-tab device shall not be capable of being used for the purposes of engaging in any game prohibited by the department.

C. In addition to a video monitor or touch screen, each electronic pull-tab device may have one or more of the following: a bill acceptor, printer, and electromechanical buttons for activating the game and providing player input, including a means for the player to make selections and choices in games.

D. For each electronic pull-tab device, there shall be located anywhere within the distributed pull-tab system, nonvolatile memory or its equivalent. The memory shall be maintained in a secure location for the purpose of storing and preserving a set of critical data that has been error checked in accordance with the critical memory requirements of this regulation.

E. An electronic pull-tab device shall not have any switches, jumpers, wire posts, or other means of manipulation that could affect the operation or outcome of a game. The electronic pull-tab device may not have any functions or parameters adjustable through any separate video display or input codes except for the adjustment of features that are wholly cosmetic.

F. An electronic pull-tab device shall not have any of the following attributes: spinning or mechanical reels, pull handle, sounds or music solely intended to entice a player to play, flashing lights, tower light, top box, coin tray, ticket acceptance, hopper, coin acceptor, enhanced animation, cabinet or payglass artwork, or any other attribute identified by the department.

G. An electronic pull-tab device shall be robust enough to withstand forced illegal entry that would leave behind physical evidence of the attempted entry or such entry that causes an error code that is displayed and transmitted to the distributed pull-tab system. Any such entry attempt shall inhibit game play until cleared, and shall not affect the subsequent play or any other play, prize, or aspect of the game.

H. Except as provided in subsection I of this section, the number of electronic pull-tab devices, other than those electronic pull-tab devices that are handheld, present at any premises at which charitable gaming is conducted shall be limited to 10. Except as provided in subsection I of this section the number of handheld electronic pull-tab devices present at any premises at which charitable gaming is conducted shall be limited to 50. The department shall determine whether an electronic pull-tab device is handheld.

I. The number of electronic pull-tab devices used to facilitate the play of electronic pull-tabs sold, played, and redeemed at any premises pursuant to § 18.2-340.26:1 of the Code of Virginia shall be limited to ~~five~~ nine.

V.A.R. Doc. No. R15-32; Filed February 15, 2017, 10:43 a.m.



**TITLE 14. INSURANCE**

**STATE CORPORATION COMMISSION**

**Final Regulation**

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

Title of Regulation: **14VAC5-190. 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).**

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

Effective Date: March 1, 2017.

---

# Regulations

---

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 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. A change since publication of the proposed regulation clarifies that no Form 190-A reports are required to be filed in 2017, instead health insurance issuers required to file reports with the bureau must do so by May 1, 2018, and every other year thereafter.*

AT RICHMOND, FEBRUARY 13, 2017

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 ADOPTING REVISIONS TO RULES

On December 5, 2016, the State Corporation Commission ("Commission") issued an Order to Take Notice ("Order") to consider revisions to the Rules Governing the Reporting of Cost and Utilization Data Relating to Mandated Benefits and Mandated Providers set forth in Chapter 190 of Title 14 of the Virginia Administrative Code ("Rules").

Section 38.2-3419.1 of the Code of Virginia ("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. These amendments were proposed by the Bureau of Insurance ("Bureau") 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.

The Order required that on or before January 31, 2017, any person requesting a hearing on the amendments to the Rules shall have filed such request for a hearing with the Clerk of the Commission ("Clerk"). No request for a hearing was filed with the Clerk.

The Order also required any interested persons to file with the Clerk their comments in support of or in opposition to the amendments to the Rules on or before January 31, 2017. No comments were filed with the Clerk.

Although the Bureau did not receive any comments in support of or in opposition to the amendments to the Rules, upon further consideration, the Bureau recommends that the May 1, 2017 date cited in subsection A of 14 VAC 5-190-50 be amended to May 1, 2018. This amendment clarifies that no Form 190-A reports are required to be filed in 2017, but instead, that health insurance issuers required to file reports with the Bureau must do so by May 1, 2018, and every other year thereafter.

NOW THE COMMISSION, having considered the proposed amendments and the Bureau's recommendation, is of the opinion that the attached amendments to the Rules should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to the Rules Governing the Reporting of Cost and Utilization Data Relating to Mandated Benefits and Mandated Providers at Chapter 190 of Title 14 of the Virginia Administrative Code, 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 5-190-70, repeal the Rules at 14 VAC 5-190-40 and forms, and add a new form; and which are attached hereto and made a part hereof, are hereby ADOPTED, to be effective March 1, 2017.

(2) The Bureau forthwith shall give notice of the adoption of the amendments to the Rules 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.

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

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

(5) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

(6) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

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 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-~~

---

# Regulations

---

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 2018 ], 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 sitused outside of Virginia, and policies sitused 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 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

---

# Regulations

---

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~~

~~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 Narcosynthesis 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

---

# Regulations

---

## 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)

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

---

# Regulations

---

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~~

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 \[ , Mandated Benefits Reporting Form for Virginia \(undated\) \], http://www.scc.virginia.gov/boi/co/health/mandben.aspx](http://www.scc.virginia.gov/boi/co/health/mandben.aspx)

VA.R. Doc. No. R17-4880; Filed February 13, 2017, 3:57 p.m.



**TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

**VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS**

**Final Regulation**

**REGISTRAR'S NOTICE:** The Board for Asbestos, Lead, and Home Inspectors is claiming an exemption from the Administrative Process Act in accordance with the fourth enactment of Chapters 161 and 436 of the 2016 Acts of Assembly, which exempts the board's initial adoption of regulations necessary to implement the provisions of the acts; however, the board is required to provide an opportunity for public comment on the regulations prior to adoption.

**Title of Regulation:** 18VAC15-40. Virginia Certified Home Inspectors Regulations (amending 18VAC15-40-10, 18VAC15-40-50; adding 18VAC15-40-200 through 18VAC15-40-300; repealing 18VAC15-40-52).

**Statutory Authority:** §§ 54.1-201 and 54.1-501 of the Code of Virginia.

**Effective Date:** April 17, 2017.

**Agency Contact:** Trisha L. Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (804) 350-5354, or email alhi@dpor.virginia.gov.

**Summary:**

*Chapters 161 and 436 of the 2016 Acts of Assembly require that a home inspector be licensed and that a home inspector conducting an inspection of a new residential structure have an endorsement on his license indicating*

---

# Regulations

---

*completion of a training module developed by the Board for Asbestos, Lead, and Home Inspectors. The amendments conform the regulations by implementing a home inspector training program. The amendments also establish a new fee schedule and amend definitions. By separate action, the board will amend the regulation to establish a licensure program.*

## Part I General

### 18VAC15-40-10. Definitions.

A. The following words and terms when used in this chapter shall have the following meanings unless a different meaning is provided or is plainly required by the context:

"Adjacent" means structures, grading, drainage, or vegetation within three feet of the residential building that may affect the residential building.

"Board" means the Virginia Board for Asbestos, Lead, and Home Inspectors.

"Certificate holder" means any person holding a valid certificate as a certified home inspector issued by the board.

"Certification" means an authorization issued to an individual by the board to perform certified home inspections by meeting the entry requirements established in these regulations.

"Client" means a person who engages or seeks to engage the services of a certified home inspector for the purpose of obtaining an inspection of and a written report upon the condition of a residential building.

"Compensation" means the receipt of monetary payment or other valuable consideration for services rendered.

"Component" means a part of a system.

"Contact hour" means 50 minutes of participation in a structured training activity.

"CPE" means continuing professional education.

"Department" means the Department of Professional and Occupational Regulation.

"Financial interest" means financial benefit accruing to an individual or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership exceeds 3.0% of the total equity of the business; (ii) annual gross income that exceeds or may be reasonably anticipated to exceed \$1,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination of it, paid or provided by a business that exceeds or may be reasonably expected to exceed \$1,000 annually; or (iv) ownership of real or personal property if the interest exceeds \$1,000 in value and excluding ownership in business, income, salary, other compensation, fringe benefits, or benefits from the use of property.

"Fireplace" means an interior fire-resistant masonry permanent or prefabricated fixture that can be used to burn fuel and is either vented or unvented.

"Foundation" means the base upon which the structure or a wall rests, usually masonry, concrete, or stone, and generally partially underground.

"New residential structure" or "NRS" means a residential structure for which the first conveyance of record title to a purchaser has not occurred or the purchaser has not taken possession, whichever occurs later.

"Prelicense education course" means an instruction program approved by the board and is one of the requirements for licensure effective July 1, 2017.

"Inspect" or "inspection" means to visually examine readily accessible systems and components of a building established in this chapter.

"Outbuilding" means any building on the property that is more than three feet from the residential building that might burn or collapse and affect the residential building.

"Readily accessible" means available for visual inspection without requiring moving of personal property, dismantling, destructive measures, or any action that will likely involve risk to persons or property.

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

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

"Residential building" means, for the purposes of home inspection, a structure consisting of one to four dwelling units used or occupied, or intended to be used or occupied, for residential purposes.

"Solid fuel burning appliances" means a hearth and fire chamber or similarly prepared place in which a fire may be built and that is built in conjunction with a chimney, or a listed assembly of a fire chamber, its chimney and related factory-made parts designed for unit assembly without requiring field construction.

"System" means a combination of interacting or interdependent components, assembled to carry out one or more functions.

"Virginia Residential Code" means the provisions of the Virginia Construction Code (Part I (13VAC5-63-10 et seq.) of 13VAC5-63) applicable to R-5 residential structures and that includes provisions of the International Residential Code as amended by the Board of Housing and Community Development.

B. Terms not defined in this chapter have the same definitions as those set forth in § 54.1-500 of the Code of Virginia.

### 18VAC15-40-50. Application fees Fees.

~~The application fee for an initial home inspector certification shall be \$80.~~

Fee type	Fee amount	When due
<u>Initial home inspector application</u>	\$80	<u>With application for home inspector</u>
<u>Initial NRS specialty application</u>	\$80	<u>With application for NRS specialty designation</u>
<u>Home inspector renewal</u>	\$45	<u>With renewal application</u>
<u>Home inspector with NRS specialty renewal</u>	\$90	<u>With renewal application</u>
<u>Home inspector reinstatement</u>	\$125	<u>With reinstatement application</u>
<u>Home inspector with NRS specialty reinstatement</u>	\$170	<u>With reinstatement application</u>
<u>Prelicensure education course approval</u>	\$250	<u>With prelicensure education course approval application</u>
<u>NRS training module approval</u>	\$150	<u>With NRS training module approval application</u>
<u>NRS CPE course approval</u>	\$150	<u>With NRS CPE course approval application</u>

**18VAC15-40-52. ~~Renewal and reinstatement fees. (Repealed.)~~**

Renewal and reinstatement fees are as follows:

Fee type	Fee amount	When due
Renewal	\$45	With renewal application
Late renewal	+ \$45 (renewal) + \$35 (late fee) = \$80 total fee	With renewal application
Reinstatement	+ \$80 (reinstatement) + \$45 (renewal) = \$125 total fee	With reinstatement application

**Part VI**

Approval of Prelicensure Education Courses, New Residential Structures Training Module, and New Residential Structures Continuing Professional Education

**18VAC15-40-200. Prelicensure education courses, new residential structures training modules, and new residential structures continuing professional education courses generally.**

All prelicensure education courses, NRS training modules, and NRS CPE courses proposed for the purposes of meeting the requirements of this chapter must be approved by the board. Prelicensure education courses and training modules may be approved retroactively upon request of the provider with the

application; however, no applicant will receive credit until such approval is granted by the board.

**18VAC15-40-210. Approval of prelicensure education courses.**

A training provider seeking approval of a prelicensure education course shall submit an application for prelicensure education course approval on a form provided by the board. In addition to the appropriate fee provided in 18VAC15-40-50, the application shall include:

1. The name of the provider;
2. Provider contact person, address, and telephone number;
3. Course contact hours;
4. Schedule of prelicensure education courses if established, including dates, times, and locations;
5. Method of delivery;
6. Instructor information, including name, license number, if applicable, and a list of trade-appropriate designations, as well as a professional resume with a summary of teaching experience and subject matter knowledge and qualifications acceptable to the board;
7. Materials to be provided to students;
8. Fees for prelicensure education course and materials; and
9. Training module syllabus.

**18VAC15-40-220. Prelicensure education course requirements.**

A prelicensure education course must be a minimum of 35 hours. The syllabus for each type of prelicensure education course shall encompass the following subject areas and include methods for identification and inspection, safety and maintenance, and standards for material selection and installation procedures, as applicable:

1. Site conditions;
2. Exterior components of the residential building;
3. Structural system elements;
4. Electrical system elements;
5. Heating and cooling systems;
6. Insulation, moisture management systems, and ventilation systems;
7. Plumbing systems;
8. Interior components;
9. Fireplace and chimney systems;
10. Common permanently installed appliances;
11. Inspection report requirements;
12. Responsibilities to the client, including required contract elements; and
13. Overview of the board's regulations.

---

# Regulations

---

## **18VAC15-40-230. Approval of new residential structures training modules and new residential structures continuing professional education.**

A training provider seeking approval of an NRS training module or NRS CPE course shall submit an application for NRS training module or NRS CPE course approval on a form provided by the board. NRS training modules and NRS CPE can be provided in a classroom environment, online, or through distance learning. In addition to the appropriate fee provided in 18VAC15-40-50, the application shall include:

1. The name of the provider;
2. Provider contact person, address, and telephone number;
3. Module or CPE course contact hours;
4. Schedule of training module or CPE course if established, including dates, times, and locations;
5. Method of delivery;
6. Instructor information, including name, license number, if applicable, and a list of trade-appropriate designations, as well as a professional resume with a summary of teaching experience and subject matter knowledge and qualifications acceptable to the board;
7. Materials to be provided to students;
8. Fees for NRS training module or NRS CPE course and materials; and
9. Training module syllabus.

## **18VAC15-40-240. New residential structures training module requirements.**

A. In order to qualify as an NRS training module pursuant to this chapter, the training module must include a minimum of eight contact hours and the syllabus shall encompass all of the subject areas set forth in subsection B of this section.

B. The following subject areas as they relate to the Virginia Residential Code shall be included in all NRS training modules. The time allocated to each subject area must be sufficient to ensure adequate coverage of the subject as determined by the board.

1. Origin of the Virginia Residential Code.
  - a. Overview of Title 36 of the Code of Virginia.
  - b. Roles and responsibilities of the Board of Housing and Community Development and the Department of Housing and Community Development.
  - c. Virginia Uniform Statewide Building Code, Part I (13VAC5-63-10 et seq.) of 13VAC5-63.
2. Scope of the Virginia Residential Code.
  - a. Purpose of the Virginia Residential Code.
  - b. Exemptions from the Virginia Residential Code.
  - c. Compliance alternatives.
  - d. Code official discretion in administration and enforcement of the Virginia Residential Code.
  - e. Process for amending the Virginia Residential Code.

f. Code violations and enforcement.

(1) Statute of limitations.

(2) Effect of violations.

g. Examples of code and non-code violations.

3. Roles of the building code official and the home inspector, including an overview of § 36-105 of the Code of Virginia.

## **18VAC15-40-250. New residential structures training modules and new residential structures continuing professional education requirements.**

In order to qualify for NRS CPE for the renewal of home inspector licenses with the NRS specialty, the NRS CPE must include a minimum of four contact hours and the syllabus shall encompass all of the topic areas listed in 18VAC15-40-240 for an NRS training module.

## **18VAC15-40-260. Documentation of prelicense education courses, new residential structures training modules, and new residential structures continuing professional education completion requirements.**

All prelicense education course, NRS training module, and NRS CPE providers must provide each student who successfully completes the course or training module with a certificate of completion or other documentation that the student may use as proof of course or training module completion. Such documentation shall contain the contact hours completed, the date of training, and the course identification number assigned by the board.

## **18VAC15-40-270. Maintenance of records.**

All providers of approved prelicense education courses, NRS training modules, or NRS CPE courses must establish and maintain a record for each student. The record shall include the student's name and address, the training module or course name and hours attended, the training module or course syllabus or outline, the name or names of the instructors, the date of successful completion, and the board's approved training module or course identification number. Records shall be available for inspection during normal business hours by authorized representatives of the board. Providers must maintain these records for a minimum of five years.

## **18VAC15-40-280. Reporting changes.**

Any change in the information provided in 18VAC15-40-210 or 18VAC15-40-230 must be reported to the board within 30 days of the change. Any change in information submitted will be reviewed to ensure compliance with the provisions of this chapter.

## **18VAC15-40-290. Withdrawal of approval.**

The board may withdraw approval of a prelicense education course, an NRS training module, or an NRS CPE course for the following reasons:

1. The training module or course being offered no longer meets the standards established by the board.

2. The provider, through an agent or otherwise, advertises its services in a fraudulent or deceptive way.
3. The provider, instructor, or contact person of the provider falsifies any information relating to the application for approval, training module, course information, or student records or fails to produce records required by 18VAC15-40-270.
4. A change in the information provided that results in noncompliance with this part.
5. Failure to comply with 18VAC15-40-280.

**18VAC15-40-300. Board authority to audit approved education courses and training modules.**

The board may conduct an audit of any board-approved prelicense education course, NRS training module, or NRS CPE course provider to ensure continued compliance with this chapter.

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 the 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 (18VAC15-40)

- [Home Inspector Association Membership Form, A506-3380AMF-v4 \(rev. 8/2015\)](#)
- [Home Inspector Certification Application Instructions, A506-3380INS-v2 \(eff. 8/2015\)](#)
- [Home Inspector Certification Application, A506-3380CERT-v3 \(eff. 8/2015\)](#)
- [Home Inspector Experience Verification Form, A506-3380EXP-v4 \(rev. 8/2015\)](#)
- [Home Inspector - Course Approval Application, Prelicense Education Course/NRS Training Module/NRS CPE, A506-3331HICRS-v1 \(eff. 4/2017\)](#)

VA.R. Doc. No. R17-4950; Filed February 15, 2017, 11:33 a.m.

**BOARD OF NURSING**

**Fast-Track Regulation**

Title of Regulation: **18VAC90-19. Regulations Governing the Practice of Nursing (amending 18VAC90-19-110).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 5, 2017.

Effective Date: April 20, 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](mailto:jay.douglas@dhp.virginia.gov).

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Nursing to 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 to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) that are reasonable and necessary to administer effectively the regulatory system.

Purpose: Given the volume of applications for licensure, the board has looked at its processes to determine whether there are ways to expedite the approval process. As an alternative to requiring an official transcript for each applicant, the board proposes to accept an attestation from the approved nursing education program that the class that has just graduated or is about to graduate has completed all requirements, including the requisite number of clinical hours. The attestation would be accompanied by a listing of those individuals who have met the requirements.

An attestation, as opposed to individual transcripts, is less burdensome for all parties – the applicant, the educational program, and the board. The goal of the proposal is to expedite the licensure process, so persons who are eligible registered nurse (RN) or practical nurse (LPN) licensure could begin more quickly to provide nursing services to the public. Since assurance of completion of all educational and clinical requirements can be obtained through the attestation, there is no risk of less competent nurses being granted a license. Public health and safety continues to be protected with assurance that a licensee has minimal competency to practice.

Rationale for Using Fast-Track Rulemaking Process: The proposed amendment is less burdensome for all parties; therefore, the board is confident that the rulemaking is noncontroversial and should be promulgated as a fast-track rulemaking action.

Substance: In examining its process for approval of application and in an effort to expedite that process, the board is proposing to accept an attestation of graduation from an approved educational program in lieu of a transcript for each individual graduate.

Issues: The primary advantage of the amendment is an expedited process for licensure of RNs and LPNs and less work for educational programs. There are no disadvantages. There is an advantage to the board because one attestation document from an educational program could replace dozens of individual transcripts. There are no disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

---

# Regulations

---

Summary of the Proposed Amendments to Regulation. The Board of Nursing (Board) proposes to accept an attestation of graduation from an approved nursing educational program in lieu of a transcript in order for candidates to take the licensure examination.

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

Estimated Economic Impact. Under the current regulation candidates for registered nurse licensure and practical nurse licensure are eligible to take the National Council Licensure Examination" (i) upon receipt by the board of the completed application, fee and an official transcript from the nursing education program; and (ii) when a determination has been made that no grounds exist upon which the board may deny licensure pursuant to § 54.1-3007 of the Code of Virginia." The Board proposes to accept either an official transcript or attestation of graduation from the nursing education program.

Under the proposed regulation, nursing education programs could submit a listing of their current graduating class to the Department of Health Professions (DHP) with an attestation that they have met the requirements for graduation including the clinical experience hours required for licensure. When an applicant submits her application, she would identify her educational program, and the Board could readily ascertain whether the applicant is on the list as a graduate. There would be no need to obtain an official transcript from the program. This would reduce the nursing education programs' costs of producing and sending individual transcripts and would save the nursing licensure applicant the time and cost of requesting that their transcript be sent, while ensuring that DHP and the Board have the relevant information concerning which candidates have met the education requirement. Thus the proposed amendment would create a net benefit.

Businesses and Entities Affected. The proposed amendment potentially affects all 139 approved nursing educational programs in the Commonwealth.<sup>1</sup> Nursing education programs may be small businesses or housed within a large hospital system or university.

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 significantly 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 would reduce administrative costs for small nursing programs.

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> Data source: Department of Health Professions

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

## Summary:

*The amendment allows nursing education programs to provide an attestation of graduation that a class, which has just graduated or is about to graduate, has completed all requirements in lieu of individual transcripts for candidates to take the licensure examination.*

### Part III

#### Licensure and Renewal; Reinstatement

#### **18VAC90-19-110. Licensure by examination.**

A. The board shall authorize the administration of the NCLEX for registered nurse licensure and practical nurse licensure.

B. A candidate shall be eligible to take the NCLEX examination (i) upon receipt by the board of the completed application, the fee, and an official transcript or attestation of graduation from the nursing education program and (ii) when a determination has been made that no grounds exist upon which the board may deny licensure pursuant to § 54.1-3007 of the Code of Virginia.

C. To establish eligibility for licensure by examination, an applicant for the licensing examination shall:

1. File the required application, any necessary documentation and fee, including a criminal history background check as required by § 54.1-3005.1 of the Code of Virginia.

2. Arrange for the board to receive an official transcript from the nursing education program that shows either:

a. That the degree or diploma has been awarded and the date of graduation or conferral; or

b. That all requirements for awarding the degree or diploma have been met and that specifies the date of conferral.

## 3. File a new application and reapplication fee if:

- a. The examination is not taken within 12 months of the date that the board determines the applicant to be eligible; or
- b. Eligibility is not established within 12 months of the original filing date.

D. The minimum passing standard on the examination for registered nurse licensure and practical nurse licensure shall be determined by the board.

E. Any applicant suspected of giving or receiving unauthorized assistance during the examination may be noticed for a hearing pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) to determine eligibility for licensure or reexamination.

F. Practice of nursing pending receipt of examination results.

1. A graduate who has filed a completed application for licensure in Virginia and has received an authorization letter issued by the board may practice nursing in Virginia from the date of the authorization letter. The period of practice shall not exceed 90 days between the date of successful completion of the nursing education program, as documented on the applicant's transcript, and the publication of the results of the candidate's first licensing examination.

2. Candidates who practice nursing as provided in subdivision 1 of this subsection shall use the designation "R.N. Applicant" or "L.P.N. Applicant" on a nametag or when signing official records.

3. The designations "R.N. Applicant" and "L.P.N. Applicant" shall not be used by applicants who either do not take the examination within 90 days following receipt of the authorization letter from the board or who have failed the examination.

## G. Applicants who fail the examination.

1. An applicant who fails the licensing examination shall not be licensed or be authorized to practice nursing in Virginia.

2. An applicant for licensure by reexamination shall file the required board application and reapplication fee in order to establish eligibility for reexamination.

3. Applicants who have failed the examination for licensure in another United States jurisdiction but satisfy the qualifications for licensure in this jurisdiction may apply for licensure by examination in Virginia. Such applicants shall submit the required application and fee. Such applicants shall not, however, be permitted to practice nursing in Virginia until the requisite license has been issued.

VA.R. Doc. No. R17-4839; Filed January 3, 2017, 9:43 a.m.

**TITLE 22. SOCIAL SERVICES****DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES****Proposed Regulation**

Title of Regulation: **22VAC30-80. Auxiliary Grants Program (amending 22VAC30-80-10, 22VAC30-80-20, 22VAC30-80-30, 22VAC30-80-40, 22VAC30-80-45, 22VAC30-80-60, 22VAC30-80-70).**

Statutory Authority: §§ 51.5-131 and 51.5-160 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: May 6, 2017.

Agency Contact: Tishaun Harris-Ugworji, Program Consultant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7531, or email tishaun.harrisugworji@dars.virginia.gov.

Basis: Section 51.5-160 of the Code of Virginia authorizes the Commissioner of the Department for Aging and Rehabilitative Services to adopt regulations for the administration of the auxiliary grants program. In addition, § 51.5-131 of the Code of Virginia authorizes the commissioner to promulgate regulations necessary to carry out the provisions of the laws of the Commonwealth administered by the Department for Aging and Rehabilitative Services.

Purpose: Implementing third-party payments contributes to the health, safety, welfare, and quality of life of auxiliary grant participants residing in assisted living facilities or adult foster care homes because it permits family members or others to provide goods and services needed by residents but not covered by auxiliary grant payments.

Substance: The proposed amendments (i) add a new section to the regulation to address third-party payments, (ii) define third-party payments and address documentation for these payments as well as permitted uses of third-party payments, and (iii) clarify what services and goods providers are required to provide under the Auxiliary Grants Program.

Issues: Allowing third-party payments will help assisted living providers offset costs of needed goods or services beyond those required by the auxiliary grant provider agreement. The primary disadvantages include that only an estimated 10% or fewer auxiliary grant participants have access to voluntary third-party payments; that the payments must be made after the goods or services are provided; and that third-party payments cannot be used for a private room upgrade.

The disadvantage to local departments of social services and the state Department of Social Services (DSS) is that the payments may complicate the calculation and verification of income for determining auxiliary grant eligibility and that

---

# Regulations

---

DSS licensing staff will have to add monitoring of third-party payment documentation to inspections. However, it is estimated that only a small percentage of auxiliary grants recipients will have access to third-party payments.

The impact of third-party payments on other federal or state services or benefits is unknown at this time.

Announcement of Periodic Review and Small Business Impact Review: Pursuant to Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapters 128 and 387 of the 2012 Acts of Assembly, the Department for Aging and Rehabilitative Services proposes to allow assisted living facilities and adult foster care homes to accept payments from third parties for certain goods and services provided to Auxiliary Grants recipients.

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

Estimated Economic Impact. This regulation contains rules for Auxiliary Grants Program (AG). An AG is an income supplement for individuals who receive Supplemental Security Income and certain other aged, blind, or disabled individuals who reside in a licensed assisted living facility (ALF) or an approved adult foster care home (AFCH). AG is the primary state funding available for assisted living for low-income individuals in Virginia.

House Joint Resolution 580 of the 2011 General Assembly directed the Joint Legislative Audit and Review Commission (JLARC) to study third-party payments for assisted living services.<sup>1</sup> JLARC studied the issue and among other things found that the AG rate was well below Virginia's market prices for assisted living causing ALFs to stop accepting any AG recipients or accepting only highly-functioning individuals.<sup>2</sup> In order to help address the issue, JLARC made a number of recommendations and noted that payments to ALFs by third parties would have limited impact because fewer than ten percent of AG recipients have such support. Consistent with the JLARC recommendations, Chapters 128 and 387 of the 2012 Acts of Assembly<sup>3</sup> allowed ALFs and AFCHs to accept payments from third parties for certain goods and services provided to AG recipients; prohibited counting of these payments as income for the purpose of

determining eligibility for or calculating the amount of the AG; restricted third-party payments to items other than food and shelter; and required documentation of such payments. The proposed changes update the regulation to conform to the statutory changes.

The main economic effects of allowing facilities to accept third-party payments include helping facilities to provide goods and services recipients want or need (e.g., supplemental incontinence supplies) and the administrative costs of managing and documenting such payments. It should be noted that the facilities have the option but not the obligation to accept such payments. By choosing to accept such payments they reveal that expected benefits to them exceed anticipated costs. Also, facilities have already been allowed to accept third-party payments since 2012 under the statute. Thus, no significant economic impact is expected upon promulgation of the proposed regulation. The proposed changes are beneficial in that they will update the regulation to conform to the statutory changes.

Businesses and Entities Affected. Currently, there are 281 ALFs and 48 AFCHs accepting AG residents. In fiscal year 2015, the average AG caseload was 4,368.

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. The majority of ALF and AFCH providers that accept AG residents are small businesses. The costs and other effects on them are the same as 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://leg1.state.va.us/cgi-bin/legp504.exe?111+ful+HJ580ER>

<sup>2</sup> <http://jlarc.virginia.gov/pdfs/reports/Rpt426.pdf>

<sup>3</sup> <http://leg1.state.va.us/cgi-bin/legp504.exe?121+ful+CHAP0128> & <http://lis.virginia.gov/cgi-bin/legp604.exe?121+ful+CHAP0387>

Agency's Response to Economic Impact Analysis: The Department for Aging and Rehabilitative Services agrees that the information provided by the Department of Planning and Budget in the July 20, 2016, economic impact analysis of the proposed amendments to 22VAC30-80, Auxiliary Grant Program, was correct at the time of completion.

Summary:

*The proposed amendments (i) permit assisted living facilities and adult foster care programs to accept payments from third parties for certain goods and services provided to auxiliary grants recipients, (ii) address documentation for and permitted uses of third-party payments, and (iii) clarify the services and goods that providers are required to provide under the Auxiliary Grants Program.*

**22VAC30-80-10. Definitions.**

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

"Adult foster care" or "AFC" means a locally optional program that provides room and board, supervision, and special services to an ~~adult~~ individual who has a physical or mental health need. Adult foster care may be provided for up to three ~~adults~~ individuals by any one provider who is approved by the local department of social services.

"Assisted living care" means a level of service provided by an assisted living facility for ~~adults~~ individuals who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive) as documented on the Uniform Assessment Instrument.

"Assisted living facility" or "ALF" means, as defined in § 63.2-100 of the Code of Virginia, any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is

funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

Assuming responsibility for the well-being of individuals residing in an ALF, either directly or through contracted agents, is considered "general supervision and oversight."

"Authorized payee" means the individual who may be a court-appointed conservator or guardian, a person with a valid power of attorney, or an authorized representative with the documented authority to accept funds on behalf of the individual. An authorized payee for the auxiliary grant shall not be (i) the licensee or (ii) the owner of, employee of, or an entity hired by or contracted by the ALF or AFC home.

"Authorized representative" means the person representing or standing in place of the individual receiving the auxiliary grant for the conduct of the auxiliary grant recipient's affairs (i.e., personal or business interests). "Authorized representative" may include a guardian, conservator, attorney-in-fact under durable power of attorney, trustee, or other person expressly named in writing by the individual as his agent. An authorized representative shall not be (i) the licensee or (ii) the owner of, employee of, or an entity hired by or contracted by the ALF or AFC home unless the auxiliary grant recipient designates such a person to assist with financial management of his personal needs allowance as a choice of last resort because there is no other authorized representative willing or available to serve in this capacity.

"Auxiliary Grants Program" or "AG" means a state and locally funded assistance program to supplement income of an individual receiving Supplemental Security Income (SSI) or adult who would be eligible for SSI except for excess income, who resides in an ALF or in AFC home with an established rate.

"Certification" means a an official approval as designated on the form provided by the department and prepared by the ALF annually certifying that the ALF has properly managed the personal funds and personal needs allowances of individuals residing in the ALF and is in compliance with program regulations and appropriate licensing regulations.

"Department" means the Department for Aging and Rehabilitative Services.

"Established rate" means the rate as set forth in the appropriation act or as set forth to meet federal maintenance of effort requirements.

"Licensee" means any person, association, partnership, corporation, or governmental unit to whom a license to

---

# Regulations

---

operate an AFC is issued in accordance with 22VAC40-60 or a license to operate an ALF is issued in accordance with 22VAC40-72.

"Personal funds" means payments the individual receives, whether earned or unearned, including wages, pensions, Social Security benefits, and retirement benefits. "Personal funds" does not include personal needs allowance.

"Personal needs allowance" means ~~an amount of money reserved for meeting the adult's personal needs when computing the amount of the AG payment~~ a portion of the AG payment that is reserved for meeting the individual's personal needs. The amount is established by the Virginia General Assembly.

~~"Personal representative" means the person representing or standing in the place of the individual for the conduct of his affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney, next of kin, descendant, trustee, or other person expressly named by the individual as his agent.~~

"Personal toiletries" means hygiene items provided to the individual by the ALF or AFC home including deodorant, razor, shaving cream, shampoo, soap, toothbrush, and toothpaste.

"Program" means the Auxiliary Grant Program.

"Provider" means an ALF that is licensed by the Department of Social Services or an AFC provider that is approved by a local department of social services.

"Provider agreement" means a document that the ALF must complete and submit to the department when requesting to be approved for admitting individuals receiving AG.

"Qualified assessor" means an individual who is authorized by 22VAC30-110 to perform an assessment, reassessment, or change in level of care for an individual applying for AG or residing in an ALF.

"Rate" means the established rate.

"Residential living care" means a level of service provided by an ALF for ~~adults~~ individuals who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the Uniform Assessment Instrument (UAI).

"Third-party payment" means a payment made by a third party to an ALF or AFC home on behalf of an AG recipient for goods or services other than for food, shelter, or specific goods or services required to be provided by the ALF or AFC home as a condition of participation in the Auxiliary Grants Program in accordance with 22VAC30-80-45.

"Uniform Assessment Instrument" or "UAI" means the department-designated assessment form. It is used to record assessment information for determining the level of service that is needed.

## **22VAC30-80-20. Assessment.**

A. In order to receive payment from the program for care in an ALF or in AFC home, an individual applying for AG shall have been assessed by a qualified assessor using the UAI in accordance with 22VAC30-110 and determined to need residential or assisted living care or AFC.

B. As a condition of eligibility for the program, a UAI shall be completed on an individual prior to admission, except for an emergency placement as documented and approved by a Virginia adult protective services worker; at least once annually; and whenever there is a significant change in the individual's level of care, and a determination is made that the individual needs residential or assisted living care in an ALF or AFC home.

C. The ALF or AFC provider is prohibited from charging a security deposit or any other form of compensation for providing a room and services to the individual. The collection or receipt of money, gift, donation or other consideration from or on behalf of an individual for any services provided is prohibited.

## **22VAC30-80-30. Basic services.**

The rate established under the program shall cover the following services:

### 1. Room and board.

a. ~~Provision of a~~ A furnished room in accordance with 22VAC40-72-730;

b. Housekeeping services based on the needs of the individual;

c. Meals and snacks provided in accordance with 22VAC40-72 including, but not limited to food service, nutrition, number and timing of meals, observance of religious dietary practices, special diets, menus for meals and snacks, and emergency food and water. A minimum of three well-balanced meals shall be provided each day. When a diet is prescribed for an individual by his physician, it shall be prepared and served according to the physician's orders. Basic and bedtime snacks shall be made available for all individuals desiring them and shall be listed on the daily menu. Unless otherwise ordered in writing by the individual's physician, the daily menu, including snacks, for each individual shall meet the guidelines of the U.S. Department of Agriculture's Food Guide Pyramid, taking into consideration the age, sex, and activity of the resident. Second servings shall be provided, if requested, at no additional charge. At least one meal each day shall include a hot main dish; and

d. Clean bed linens and towels as needed by the individual and at least once a week.

### 2. Maintenance and care.

a. Minimal assistance as defined in 22VAC40-72-10 with personal hygiene including bathing, dressing, oral hygiene, hair grooming and shampooing, care of

clothing, shaving, care of toenails and fingernails or arranging for such assistance if the resident's medical condition precludes facility from providing the service, arranging for haircuts as needed, and care of needs associated with menstruation or occasional bladder or bowel incontinence;

b. Medication administration as required by licensing regulations including insulin injections;

c. Provision of personal toiletries including toilet paper;

d. Minimal assistance with the following:

(1) Care of personal possessions;

(2) Care of personal ~~funds~~ needs allowance if requested by the individual and provider policy allows this practice, and in compliance with 22VAC40-72-140 and 22VAC40-72-150, Standards for Licensed Assisted Living Facilities;

(3) Use of the telephone;

(4) Arranging transportation;

(5) Obtaining necessary personal items and clothing;

(6) Making and keeping appointments; and

(7) Correspondence;

e. ~~Securing~~ Arranging health care and transportation when needed for medical treatment;

f. Providing social and recreational activities in accordance with 22VAC40-72-520; and

g. General supervision for safety.

**22VAC30-80-40. Personal needs allowance.**

A. The personal needs allowance is included in the monthly AG payment to the individual and must be used by or on behalf of the individual for personal items. These funds shall not be commingled with the funds of the provider and shall be maintained in a separate bank account or given directly to the individual or authorized representative. The personal needs allowance shall not be charged by the provider for any item or service not requested by the individual. The provider shall not require an individual or his ~~personal~~ authorized representative to request any item or service as a condition of admission or continued stay. The provider must inform the individual or his ~~personal~~ authorized representative of a charge for any requested item or service not covered under the AG and the amount of the charge. The personal needs allowance is expected to cover the cost of the following items and services:

1. Clothing;
2. Personal toiletries not included in those to be provided by the provider or if the individual requests a specific type or brand of toiletry;
3. Personal items including tobacco products, sodas, and snacks beyond those required in subdivision 1 c of 22VAC30-80-30.
4. Hair care services;

5. Over-the-counter medication, medical copayments and deductibles, insurance premiums;

6. Other needs such as postage stamps, dry cleaning, laundry, direct bank charges, personal transportation, and long distance telephone calls;

7. Personal telephone, television, or radio;

8. Social events and entertainment offered outside the scope of the activities program; and

9. Other items agreed upon by both parties except those listed in subsection B of this section.

B. The personal needs allowance shall not be encumbered by the following:

1. Recreational activities required by licensing regulations (including any transportation costs of those activities);

2. Administration of accounts (bookkeeping, account statements);

3. Debts owed the provider for basic services as outlined by regulations; or

4. Provider laundry charges in excess of \$10 per month.

**22VAC30-80-45. Conditions of participation in the program.**

A. Provider agreement for ALF.

1. As a condition of participation in the program, the ALF provider is required to complete and submit to the department a signed provider agreement as stipulated ~~below~~ in subdivision 2 of this subsection. The agreement is to be submitted prior to the ALF accepting AG payment for qualified individuals. A copy of the ALF's current license must be submitted with the provider agreement.

2. The ALF provider shall agree to the following conditions in the provider agreement to participate in the program:

a. Provide services in accordance with all laws, regulations, policies, and procedures that govern the provision of services in the facility;

b. Submit an annual certification form by October 1 of each year;

c. Care for individuals with AG in accordance with the requirements ~~herein~~ in this chapter at the current established rate;

d. Refrain from charging the individual, his family, or his authorized personal representative a security deposit or any other form of compensation as a condition of admission or continued stay in the facility;

e. Accept the established rate as payment in full for services rendered;

f. Account for the personal needs allowances in a separate bank account and apart from other facility funds and issue a ~~monthly~~ statement to each individual regarding his account balance that includes any payments

---

# Regulations

---

deposited or withdrawn during the previous calendar month;

g. Provide a 60-day written notice to the regional licensing office in the event of the facility's closure or ownership change;

h. Provide written notification of the date and place of an individual's discharge or the date of an individual's death to the local department of social services determining the individual's AG eligibility and to the qualified assessor within 10 days of the individual's discharge or death; and

i. Return to the local department of social services determining the individual's AG eligibility, all AG funds received after the death or discharge date of an individual in the facility.

B. As a condition of participation in the program, the AFC provider shall be approved by a local department of social services and comply with the requirements set forth in 22VAC30-120.

C. ALFs and AFC homes providing services to AG recipients may accept third-party payments made by persons or entities for goods or services to be provided to the AG recipient. The department shall not include such payments as income for the purpose of determining eligibility for or calculating the amount of an AG provided that the payment is made:

1. Directly to the ALF or AFC home by the third party on behalf of the individual after the goods or services have been provided;

2. Voluntarily by the third party, and not in satisfaction of a condition of admission, continued stay, or provision of proper care and services, unless the AG recipient's physical needs exceed the services required to be provided by the ALF as a condition of participation in the auxiliary grant program; and

3. For specific goods or services provided to the individual other than food, shelter, or other specific goods or services required to be provided by the ALF or AFC home as a condition of participation in the AG program.

D. Third-party payments shall not be used to pay for a private room in an ALF or AFC home.

E. ALFs and AFC homes shall document all third-party payments received on behalf of an individual, including the source, amount, and date of the payment, and the goods or services for which such payments were made. Documentation related to the third-party payments shall be provided to the department upon request.

F. ALFs and AFC homes shall provide each AG recipient and his authorized representative with a written list of the goods and services that shall be covered by the AG as defined in this chapter, including a clear statement that the facility shall not charge an individual or the individual's family or authorized representative additional amounts for goods or services included on such list.

## **22VAC30-80-60. Reimbursement.**

A. Any ~~moneys~~ payments contributed toward the cost of care pending AG eligibility determination shall be reimbursed to the individual or contributing party by the ALF or AFC provider once eligibility for AG is established and that payment received. The payment shall be made payable to the individual, who will then reimburse the provider for care. If the individual is not capable of managing his finances, his ~~personal~~ authorized representative is responsible for reimbursing the provider.

B. In the event an ALF is closed, the facility shall prorate the rate up to the date of the individual's discharge and return the balance of the AG to the local department of social services that determined the individual's eligibility for the ~~grant~~ AG. If the facility maintained the individual's personal needs allowance, the facility shall provide a final accounting of the individual's personal needs allowance account within 60 days of the individual's discharge. Verification of the accounting and of the reimbursement to the individual shall be ~~mailed sent~~ to the case management agency responsible for the individual's annual reassessment. In the event of the individual's death, the provider shall give to the individual's personal representative a final accounting of the individual's funds within 60 calendar days of the event. All AG funds received after the death or discharge date shall be returned to the local department of social services responsible for determining the individual's AG eligibility as soon as practicable.

C. Providers who do not comply with the requirements of this ~~regulation~~ chapter may be subject to adverse action, which may include suspension of new AG program admissions or termination of provider agreements.

## **22VAC30-80-70. ~~Certification~~ ALF certification and record requirements.**

A. ALFs shall submit an annual certification form by October 1 of each year for the preceding state fiscal year. The certification shall include the following: identifying information about the ALF, census information including a list of individuals who resided in the facility and received AG during the reporting period and personal needs allowance accounting information. If a provider fails to submit an annual certification form, the provider will not be authorized to accept additional individuals with AG.

B. All information reported by an ALF on the certification form shall be subject to audit by the department. Financial information that is not reconcilable to the provider's general ledger or similar records could result in establishment of a liability to the provider. Records shall be retained for three years after the end of the reporting period or until audited by the department, whichever is first.

C. All records maintained by an AFC provider, as required by 22VAC30-120, shall be made available to the department or the approving local department of social services upon request. All records are subject to audit by the department.

Financial information that is not reconcilable to the provider's records could result in establishment of a liability to the provider. Records shall be retained for three years after the end of the reporting period or until audited by the department, whichever is first.

VA.R. Doc. No. R16-4472; Filed February 1, 2017, 4:22 p.m.

---

# GENERAL NOTICES/ERRATA

---

## STATE AIR POLLUTION CONTROL BOARD State Implementation Plan Revision - PM<sub>2.5</sub> Infrastructure

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed plan to assure necessary authorities are contained in the state implementation plan (SIP) for the fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS) supporting the infrastructure requirements of the federal Clean Air Act (the Act). The Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia SIP in accordance with the requirements of § 110(a) of the Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act.

Purpose of notice: DEQ is seeking comment on the issue of whether the plan demonstrates the Commonwealth's compliance with federal Clean Air Act requirements related to general state plan infrastructure for controlling the interstate transport of air pollution for the PM<sub>2.5</sub> NAAQS.

Public comment period: March 6, 2017, through April 6, 2017.

Public hearing: A public hearing will be conducted if a request is made in writing to the contact listed at the end of this notice. In order to be considered, the request must include the full name and address of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Description of proposal: The proposed revision consists of a demonstration that Virginia meets the obligations of § 110(a)(2)(D)(i)(I) with respect to the 2012 PM<sub>2.5</sub> NAAQS. Section 110(a)(2)(D)(i)(I) prohibits states from significantly contributing to nonattainment or interfering with maintenance of a specific NAAQS in any downwind area: "Each such plan shall contain adequate provisions prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollution in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard."

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR

51.104. It is planned to submit all provisions of the proposal as a revision to the SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. All information received is part of the public record.

To review proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website at <http://www.deq.state.va.us/Programs/Air/PublicNotices/airplansandprograms.aspx>. The documents may also be obtained by contacting the DEQ representative named at the end of this notice. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

- 1) Main Street Office, 8th Floor, 629 East Main Street, Richmond, VA, telephone (804) 698-4070,
- 2) Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (276) 676-4800,
- 3) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,
- 4) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, VA, telephone (434) 582-5120,
- 5) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800,
- 6) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,
- 7) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and
- 8) Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA, telephone (757) 518-2000.

Contact Information: Doris A. McLeod, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4197, FAX (804) 698-4510, or email [doris.mcleod@deq.virginia.gov](mailto:doris.mcleod@deq.virginia.gov).

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Spout Springs Solar LLC Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Appomattox County

Spout Springs Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Appomattox County

pursuant to 9VAC15-60. The project is located on two parcels totaling 298 acres off Richmond Highway, Route 460 approximately 3.5 miles west of the town of Appomattox. The project will have a rated capacity of up to 20 megawatts alternating current and comprise approximately 65,000 solar photovoltaic panels situated on approximately 80 to 85 acres.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

### **Virginia Solar LLC Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Culpeper County**

Virginia Solar LLC has provided a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Culpeper County pursuant to 9VAC15-60. The project, Brandy Station, will be located on 180 acres across multiple parcels on land north of Greens Corner Road, west of Stevensburg Road, and east of Glen Ella Road. The solar project conceptually consists of 88,209 320-watt panels plus nine 2.5-megawatt inverters, which will provide a maximum 20 megawatts of nameplate capacity.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

### **Solar Access Development Group, LLC Withdrawal of Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Culpeper County**

Solar Access Development Group, LLC notified the Department of Environmental Quality that the notice of intent to submit a permit by rule application for the construction of a 20-megawatt alternating current solar facility located in Stevensburg in Culpeper County on 210 acres north of the intersection of Fairfield Lane and York Road and to the east of Stevensburg Road is being withdrawn. The original notice of intent was published in the Virginia Register on September 5, 2016, Volume 33, Issue 1.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23238, telephone (804) 698-4423, FAX (804) 698-4510, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

### **Halifax Solar LLC Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Halifax County**

Halifax Solar, LLC has provided the Department of Environmental Quality with a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Halifax County pursuant to 9VAC15-60. The project is located on a single parcel totaling 125 acres located off Dryburg Road, Route 716 at the

intersection of Route 360 in Clover, Virginia. The project will have a rated capacity of up to 15 megawatts alternating current and comprise approximately 55,000 solar photovoltaic panels situated on approximately 87 acres.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23238, telephone (804) 698-4423, FAX (804) 698-4510, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

### **Hickory Solar 1 LLC Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Chesapeake**

Hickory Solar 1, LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Chesapeake pursuant to 9VAC15-60. The project is located on a single parcel totaling 154.5 acres off Ballentine Road near Battlefield Boulevard in Hickory, Virginia. The project will have a rated capacity of up to 20 megawatts alternating current and comprise approximately 90,000 solar photovoltaic panels situated on approximately 90 acres.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23238, telephone (804) 698-4423, FAX (804) 698-4510, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

### **Hickory Solar 2 Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Chesapeake**

Hickory Solar 2, LLC has provided the Department of Environmental Quality with a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Chesapeake pursuant to 9VAC15-60. The project is located on a single parcel totaling 154.5 acres off Ballentine Road near Battlefield Boulevard in Hickory, Virginia. The project will have a rated capacity of up to 15 megawatts alternating current and comprise approximately 55,000 solar photovoltaic panels situated on approximately 60 acres.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23238, telephone (804) 698-4423, FAX (804) 698-4510, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

### **Sydnor Solar Farm LLC Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Mecklenburg County**

On February 6, 2017, Sydnor Solar Farm, LLC provided the Department of Environmental Quality with a notice of intent to submit the necessary documentation for a permit by rule for a small renewable solar energy project. Sydnor Solar Farm, LLC is proposing to develop a nine-megawatt solar farm to be located in Mecklenburg County. The Sydnor Solar Farm Project will use 40.9 acres of land and be located at 80

---

## General Notices/Errata

---

Carter's Point Road in the southwest corner of Mecklenburg County off of highway 58 in unincorporated Buffalo Junction. The solar farm will utilize traditional photovoltaic modules on a fixed ground mount system.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23238, telephone (804) 698-4423, FAX (804) 698-4510, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

### **Pamplin Solar LLC Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Appomattox County**

Pamplin Solar LLC has provided the Department of Environmental Quality with a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Appomattox County pursuant to 9VAC15-60. The project is located on a single parcel totaling 114 acres off Highway 460 between Morning Star Road and Cavalier Lane approximately four miles southeast of Appomattox. The project will have a rated capacity of up to 20 megawatts alternating current and comprise approximately 65,000 solar photovoltaic panels situated on approximately 82 acres.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23238, telephone (804) 698-4423, FAX (804) 698-4510, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

### **Rives Road Solar LLC Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Prince George County**

Rives Road Solar, LLC has provided the Department of Environmental Quality with a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Prince George County pursuant to 9VAC15-60. The project is located on two parcels totaling 148 acres off Rives Road at Interstate 295 in South Prince George, Virginia. The project will have a rated capacity of up to 20 megawatts alternating current and comprise approximately 65,000 solar photovoltaic panels situated on approximately 75 acres.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23238, telephone (804) 698-4423, FAX (804) 698-4510, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

## **FORENSIC SCIENCE BOARD**

### **Notice of Periodic Review and Small Business Impact Review**

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Forensic Science Board is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed,

amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

### **6VAC40-11, Public Participation Guidelines**

### **6VAC40-20, Regulations for Breath Alcohol Testing**

### **6VAC40-30, Regulations for the Approval of Field Tests for Detection of Drugs**

### **6VAC40-40, Regulations for the Implementation of the Law Permitting DNA Analysis upon Arrest for All Violent Felonies and Certain Burglaries**

### **6VAC40-50, Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material**

### **6VAC40-60, DNA Data Bank Regulations**

The comment period begins March 6, 2017, and ends March 31, 2017.

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

Contact Information: Amy M. Curtis, Department Counsel, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-2281, FAX (804) 786-6857, or email [amy.curtis@dfs.virginia.gov](mailto:amy.curtis@dfs.virginia.gov).

## **STATE BOARD OF HEALTH**

### **Notice of Periodic Review and Small Business Impact Review**

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent

with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

## **12VAC5-220, Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations**

### **12VAC5-408, Certificate of Quality Assurance of Managed Care Health Insurance Plan Licensees**

The comment period begins March 6, 2017, and ends March 27, 2017.

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

Contact Information: Erik Bodin, Director, Virginia Department of Health, Office of Licensure and Certification, 9960 Mayland Drive, Suite 401, Henrico, VA 23233, telephone (804) 367-2102, FAX (804) 527-4502, or email [erik.bodin@vdh.virginia.gov](mailto:erik.bodin@vdh.virginia.gov).

## **DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

### **Changes to Supplemental Payments for Private Hospital Partners of Type One Hospitals**

#### **Notice of Intent to Amend the Virginia State Plan for Medical Assistance Pursuant to § 1902(a)(13) of the Act (USC 1396a(a)(13))**

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services (12VAC30-70) and Methods and Standards for Establishing Payment Rates; other Types of Care (12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR § 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from William Lessard, Provider Reimbursement Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219. Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Mr. Lessard and such comments are available for review at the same address.

Public Comment Period: February 10, 2017, through March 13, 2017.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed change in supplemental payments for private

hospital partners of Type One hospitals as it relates to institutional provider rates.

Comments may be submitted, in writing, on the Town Hall public comment forum attached to this notice at <http://townhall.virginia.gov/L/Forums.cfm>. This notice is available for public review on the Regulatory Town Hall at <http://www.townhall.virginia.gov>, on the General Notices page, found at <https://townhall.virginia.gov/L/generalnotice.cfm>.

Reimbursement Changes Affecting Inpatient Hospital Services (12VAC30-70) and Other Types of Care (12VAC30-80). Hospital inpatient and outpatient reimbursement is being amended to change supplemental payments for private hospital partners of Type One hospitals by adding new qualifying hospitals. The State Plan supplemental payment provisions currently only apply to Culpeper Hospital. This amendment will add Haymarket and Prince William hospitals, where the University of Virginia has a minority ownership.

DMAS estimates that this will increase Medicaid reimbursement by \$6,783,000 annually.

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

#### **Increase Rates for Existing Substance Use Disorder Services**

#### **Notice of Intent to Amend the Virginia State Plan for Medical Assistance Pursuant to § 1902(a)(13) of the Act (USC 1396a(a)(13))**

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates; other Types of Care (12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from William Lessard, Provider Reimbursement Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, or via email at [william.lessard@dmass.virginia.gov](mailto:william.lessard@dmass.virginia.gov).

DMAS is making this change in its methods and standards for setting payment rates for services to comply with the legislative mandates set forth in Item 306 of Chapter 780 of the 2016 Acts of Assembly.

---

## General Notices/Errata

---

Reimbursement Changes Affecting Other Providers (12VAC30-80). Increase rates for existing substance use disorder services, effective April 1, 2017.

The expected annual increase in expenditures for the rate increase is \$1,460,647 for three months in SFY 17 and \$3,911,066 for SFY 18.

Contact Information: Emily McClellan, Regulatory Manager, Department of Medical Assistance Services, Division of Policy and Research, 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).

### STATE WATER CONTROL BOARD

#### Proposed Consent Order for Coverstone Associates

An enforcement action has been proposed for Coverstone Associates, a Virginia Limited Partnership in Prince William County. The consent order describes a settlement to resolve violations of State Water Control Law and the applicable regulations associated with the Coverstone Apartments Oil Discharge. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Daniel Burstein will accept comments by email at [daniel.burstein@deq.virginia.gov](mailto:daniel.burstein@deq.virginia.gov) or by postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from March 7, 2017, through April 6, 2017.

#### Proposed Consent Order for Highland County School Board

An enforcement action has been proposed for the Highland County School Board for violations at the Highland County High School in Monterey, Virginia. The State Water Control Board proposes to issue a consent order to the Highland County School Board to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Tamara Ambler will accept comments by email at [tamara.ambler@deq.virginia.gov](mailto:tamara.ambler@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 February 20, 2017, to March 22, 2017.

#### Proposed Consent Order for Julius Morris, Trustee of the Sunnyside Land Trust

An enforcement action has been proposed for Julius Morris, Trustee of the Sunnyside Land Trust (Trustee) for violations at Barrington Place in Greene County, Virginia. The State Water Control Board proposes to issue a consent order to Trustee to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or

online at [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, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, from March 6, 2017, to April 5, 2017.

#### Notice of Public Meeting and Public Comment on Modifications to Several Total Maximum Daily Loads of Waters in the Cities of Hampton, Newport News, and Poquoson and York County

The Department of Environmental Quality (DEQ) will host a public meeting to provide information and obtain public comment on modifications to the total maximum daily loads (TMDLs) developed for Poquoson River and Back River, along with several tributaries, located in the Cities of Hampton, Newport News, and Poquoson and York County. The meeting will be held Thursday, March 16, 2017, at 6 p.m. at the Sandy Bottom Nature Park Conference Room located at 1255 Big Bethel Road, Hampton VA 23666. In the event of inclement weather, an alternative meeting date is scheduled at the same location for March 27, 2017.

The purpose of the meeting is to provide information and discuss the draft modifications of the TMDLs with community members and local government. Beginning March 16, 2017, the draft reports of the modified TMDLs can be found at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx>.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the State Water Control Law require the DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. A component of a TMDL is the wasteload allocation (WLA); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Administrative Process Act for any future adoption of the TMDL WLAs. An advisory committee to assist in development of this TMDL was convened on December 10, 2014. Information on the development of the TMDLs for the impairments is available upon request.

Poquoson River, Hodges Creek, Lyons Creek, Floyds Bay, White House Cove, Bennett Creek, Patricks Creek, Chisman Creek, Goose Creek, Lambs Creek, Upper Boathouse Creek, and Back Creek were identified in Virginia's 2014 Water Quality Assessment and Integrated Report as impaired due to violations of the state's water quality standards for recreation, bacteria and shellfish consumption, bacteria (Enterococci and fecal coliform) and do not support the designated uses.

A total maximum daily load of Enterococci and fecal coliform was developed to address the bacterial impairments in the waterways and cities mentioned above. This TMDL was approved by the U.S. Environmental Protection Agency on March 19, 2014. The report is available at

[http://www.deq.virginia.gov/Portals/0/DEQ/Water/TMDL/apptmdls/baycoast/Poquoson\\_River\\_10Feb2014.pdf](http://www.deq.virginia.gov/Portals/0/DEQ/Water/TMDL/apptmdls/baycoast/Poquoson_River_10Feb2014.pdf).

The Back River watershed includes the Northwest and Southwest Branches, Brick Kiln Creek, Newmarket Creek, Cedar Creek, Harris River, Long and Grunland Creeks, Tabbs Creek, Topping Creek, and Wallace Creek. These waterbodies were also identified in Virginia's 2014 Water Quality Assessment and Integrated Report as impaired due to violations of the state's water quality standards for recreation, bacteria and shellfish consumption, bacteria (Enterococci and fecal coliform) and do not support the designated uses.

A total maximum daily load of Enterococci and fecal coliform was developed to address the bacterial impairments in the waterways and cities mentioned above. This TMDL was approved by the U.S. Environmental Protection Agency on April 24, 2014. The report is available at: [http://www.deq.virginia.gov/Portals/0/DEQ/Water/TMDL/apptmdls/baycoast/Back\\_River\\_11feb2014.pdf](http://www.deq.virginia.gov/Portals/0/DEQ/Water/TMDL/apptmdls/baycoast/Back_River_11feb2014.pdf).

The public comment period on materials presented at this meeting will extend from March 17, 2017, to April 17, 2017. Please note, all written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Rachel Hamm, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, telephone (757) 518-2024, or email [rachel.hamm@deq.virginia.gov](mailto:rachel.hamm@deq.virginia.gov).

**Notice of Intent Regarding § 401 Water Quality Certification of Norfolk District Army Corps of Engineers 2017 Nationwide Permits**

Pursuant to Virginia water protection (VWP) permit regulation 9VAC25-210-130 H, the Department of Environmental Quality (DEQ), under the authority of the State Water Control Board (Board), is giving notice of its intent to provide § 401 Water Quality Certification, as detailed in this notice, for activities authorized by the U.S. Army Corps of Engineers (USACE) Norfolk District Regional 2017 Nationwide Permits (NWP) listed in this notice, after considering public comment for a 30-day period starting February 15, 2017.

On January 6, 2017, the USACE Norfolk District published a notice in the Federal Register announcing the reissuance of all 50 existing nationwide permits (NWP), general conditions, and definitions with some modifications. The Corps also issued two new NWPs, one new general condition, and five new definitions. The 2017 NWPs will go into effect on March 19, 2017, and will expire on March 18, 2022.

DEQ, under the authority of the Board, may only issue final § 401 Certification decisions on a nationwide or regional USACE permit if the permit meets the requirements of the VWP regulation, as well as having advertised and accepted public comment for 30 days on its intent to provide, deny, or condition the certification. Therefore, DEQ will issue its final

§ 401 Water Quality Certification decision on the NWPs at the end of the public comment process.

Written comments, including those by email, must be received no later than 11:59 p.m. on March 17, 2017, and should be submitted to Steven Hardwick at Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4168, or email [steven.hardwick@deq.virginia.gov](mailto:steven.hardwick@deq.virginia.gov). Only those comments received within this period will be considered by DEQ. Written comments shall include the name, address, and telephone number of the writer and shall contain a complete, concise statement of the factual basis for comments.

The details of the DEQ's preliminary decision are:

Nationwide Permit	Tentative § 401 Certification (*indicates a change from existing certification)	Conditions (underline indicates a change)
NWP 1 – Aids to Navigation	Unconditional	
NWP 2 – Structures in Artificial Canals	Unconditional	
NWP 3 – Maintenance	Conditional*	<u>provided that: (1) the deviations from the original configuration or filled area do not change the character, scope, or size of the original design or DEQ-approved alternative design; (2) the discharge does not: a) include changes to water withdrawal structures, such as the maintenance of an intake, weir, or water diversion structure, that could increase the withdrawal; b) increase the capacity of an impoundment; or c) alter instream flows; (3) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, except in the absence of same river</u>

# General Notices/Errata

		<u>watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>	NWP 8 – Oil and Gas Structures on the Outer Continental Shelf	Unconditional	
			NWP 9 – Structures in Fleeting and Anchorage Areas	Unconditional	
NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	Unconditional		NWP 10 – Mooring Buoys	Unconditional	
NWP 5 – Scientific Measurement Devices	Unconditional		NWP 11 – Temporary Recreational Structures	Unconditional	
NWP 6 – Survey Activities	Unconditional		NWP 12 – Utility Line Activities	Conditional	provided that: (1) the activities are not associated with a <u>surface water withdrawal or the transport of non-potable raw surface water, except for the purpose of hydrostatic testing and when the associated discharges are authorized by a VPDES permit, if required;</u> (2) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, <u>except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u> (3) temporary diversions of surface water associated with "pump arounds" during the construction of utility crossings are specifically allowed.
NWP 7 – Outfall Structures and Associated Intake Structures	Conditional	provided that: (1) the structure or maintenance is not associated with intake structures; (2) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, <u>except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>			

## General Notices/Errata

NWP 13 – Bank Stabilization	Conditional*	<u>provided that: (1) the stabilization activities do not permanently impact more than 1,500 linear feet of any type of nontidal stream bed, regardless of any waiver decision made by the USACE; (2) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>	NWP 15 – U.S. Coast Guard Approved Bridges	Unconditional	
			NWP 16 – Return Water From Upland Contained Disposal Areas	Conditional	<u>provided that: (1) the associated dredging does not otherwise require issuance of <del>an</del> a Virginia Water Protection Individual permit or General Virginia Water Protection Permit permit coverage from VDEQ; (2) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C.</u>
			NWP 17 – Hydropower Projects	Denied	
NWP 14 – Linear Transportation Projects	Conditional	<u>(1) unless otherwise covered under of the Norfolk District State Program General Permit SPGP-01, or other subsequent SPGPs; (2) provided that any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>	NWP 18 – Minor Discharges	Conditional	<u>provided that: (1) the discharge does not include water withdrawals, such as the construction of an intake structure, weir, <del>or</del> water diversion structure, or other structure transporting non-potable raw surface water; (2) a Virginia Pollutant Discharge Elimination System (VPDES) permit is obtained prior to the placement of any alternative septic system discharging into Virginia Department of Health (VDH) designated shellfish waters; (3) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality</u>

# General Notices/Errata

		<u>projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>	NWP 23 – Approved Categorical Exclusions	Conditional*	<u>provided that: (1) the discharge does not include water withdrawals, such as the construction of an intake structure, weir, or water diversion structure; (2) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>
NWP 19 – Minor Dredging	Conditional	<u>provided that: (1) the dredging is not used to create a deep space for water withdrawal; (2) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>			
NWP 20 – Response Operations for Oil or Hazardous Substances	Unconditional		NWP 24 – Indian Tribe or State Administered Section 404 Program	Not Applicable in VA	
NWP 21 – Surface Coal Mining Activities	Conditional	<u>(1) unless otherwise covered under of the Norfolk District State Program General Permit SPGP-01, or other subsequent SPGPs; (2) provided that any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C.</u>	NWP 25 – Structural Discharges	Conditional	<u>provided that: (1) the discharge does not include structures such as pilings to construct a platform to mount a pump for water withdrawals; (2) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>
NWP 22 – Removal of Vessels	Unconditional				

<p>NWP 27 – Aquatic Habitat Restoration, Enhancement, and Establishment Activities</p>	<p>Conditional</p>	<p>provided that: (1) when used to permit a wetland or stream mitigation bank or in-lieu fee mitigation site, compensation for any surface water impacts shall be debited from the bank or in-lieu fee credits; (2) natural stream channel design shall be used for stream restoration projects; (3) monitoring for performance of these sites shall be conducted including <del>submittal of as-built plans, surveys, and photographs</del> and reports submitted at the as-built and post-construction monitoring years, at a frequency and duration adequate to observe performance according to project objectives. If there is no monitoring schedule otherwise specified, then an as-built and a minimum of five years of post-construction monitoring will be required. The as-built report may include final grade topographic surveys (plan, profile, and cross sections, as appropriate), final location of all planted riparian buffer vegetation (as appropriate), site photographs, and a discussion of project design versus as-built conditions. Each post-construction monitoring report may include comparison of as-built to monitoring year surveys and (plan, profile, and cross sections, as appropriate), vegetation surveys (as appropriate), site photographs, and a discussion of project performance; (4) <del>Dam removal for those dams meeting the following</del></p>			<p><del>limits: a) less than 25 feet in height with a maximum impoundment capacity of less than 15 acre feet or b) less than six feet in height with a maximum impounding capacity less than 50 acre feet, or c) dams operated primarily for agricultural purposes which are less than 25 feet in height or which create a maximum impoundment capacity smaller than 100 acre feet; temporary diversions of surface water associated with "pump arounds" during the construction of stream or wetland restoration and/or creation areas are specifically allowed; (5) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C.</del></p>
			<p>NWP 28 – Modifications of Existing Marinas</p>	<p>Unconditional</p>	
			<p>NWP 29 – Residential Developments</p>	<p>Conditional</p>	<p>(1) unless otherwise covered under of the Norfolk District State Program General Permit SPGP-01, or other subsequent SPGPs; (2) provided that any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</p>

# General Notices/Errata

NWP 30 – Moist Soil Management for Wildlife	Unconditional		NWP 37 – Emergency Watershed Protection and Rehabilitation	Unconditional	
NWP 31 – Maintenance of Existing Flood Control Facilities	Unconditional		NWP 38 – Cleanup of Hazardous and Toxic Waste	Unconditional	
NWP 32 – Completed Enforcement Actions	Conditional	provided that: (1) the impact does not exceed 2 acres of wetlands or 1,500 linear feet of stream bed and only past unauthorized impacts are addressed; (2) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, <u>except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>	NWP 39 – Commercial and Institutional Developments	Suspended for use in VA	
NWP 33 – Temporary Construction, Access, and Dewatering	Unconditional		NWP 40 – Agricultural Activities	Conditional	(1) except for the location of concentrated animal feeding operations or waste storage facilities in surface waters; (2) except for activities associated with intake structures or impoundments in surface waters; (3) provided that any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C.
NWP 34 – Cranberry Production Activities	Unconditional		NWP 41 – Reshaping Existing Drainage Ditches	Conditional	provided that: (1) the impact does not exceed 2 acres of wetlands or 1,500 linear feet of stream bed; (2) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, <u>except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>
NWP 35 – Maintenance Dredging of Existing Basins	Unconditional				
NWP 36 – Boat Ramps	Unconditional				

## General Notices/Errata

NWP 42 – Recreational Facilities	Conditional	provided that: (1) the facility does not include an impoundment for irrigation; (2) compensation is required for wetland <del>and/or</del> or stream loss due to direct impacts <del>and</del> or permanent back flooding; (3) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C.	NWP 46 – Discharges in Ditches	Unconditional	
NWP 43 – Stormwater Management Facilities	Conditional	provided that: (1) the facility is not associated with a water withdrawal; (2) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, <u>except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>	NWP 48 – Existing Commercial Shellfish Aquaculture Activities	Conditional	provided that: (1) the activity complies with the conditions of any <u>Virginia Pollutant Discharge Elimination System (VPDES)</u> permit issued for the facility, <del>and provided that</del> ; (2) the associated activities do not include a surface water withdrawal or diversion; (3) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C.
NWP 44 – Mining Activities	Conditional	provided that: (1) the activity is not for hydraulic dredging; (2) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C.	NWP 49 – Coal Remining Activities	Unconditional	
NWP 45 – Repair of Uplands Damaged by Discrete Events	Unconditional		NWP 50 – Underground Coal Mining Activities	Unconditional	
			NWP 51 – Land-Based Renewable Energy Generation Facilities	Conditional	provided that: (1) the discharge does not include water withdrawals, such as the construction of an intake structure, weir, <del>or</del> water diversion structure, <u>or other structure transporting nonpotable raw surface water</u> ; (2) the impact does not exceed 2 acres of wetlands or 1,500 linear feet of stream bed; (3) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, <u>except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC)</u>

# General Notices/Errata

		<u>02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>
NWP 52 – Water-Based Renewable Energy Generation Pilot Projects	Conditional	provided that: (1) the discharge does not include water withdrawals, such as the construction of an intake structure, weir, <del>or</del> water diversion structure, <u>or other structure transporting non-potable raw surface water</u> ; (2) the impact does not exceed 2 acres of wetlands or 1,500 linear feet of stream bed; (3) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, <u>except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>
NWP 53 – Removal of Low- Head Dams	Unconditional	
NWP 54 – Living Shorelines	Unconditional	

**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

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**Title of Regulation:** 12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care.

**Publication:** 32:23 VA.R. 3087-3092 July 11, 2016.

**Correction to Final Regulation:**

Page 3089, 12VAC30-80-20, subsection D, column 1, after subdivision 2 b, insert the following:

3. Supplement payments to Type One hospitals for outpatient services.

a. In addition to payments for services set forth elsewhere in the State Plan, DMAS makes supplemental payments to qualifying state government owned or operated hospitals for outpatient services furnished to Medicare members on or after July 1, 2010. To qualify for a supplement payment, the hospital must be part of the state academic health system or part of an academic health system that operates under a state authority.

b. The amount of the supplemental payment made to each qualifying hospital shall be equal to the difference between the total allowable cost and the amount otherwise actually paid for the services by the Medicaid program based on cost settlement.

c. Payment for furnished services under this section shall be paid at settlement of the cost report.

VA.R. Doc. No. R14-3799; Filed February 15, 2017

**DEPARTMENT OF MEDICAL ASSISTANCE  
SERVICES**

**Title of Regulation: 12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care.**

Publication: 33:3 VA.R. 411-420 October 3, 2016.

Correction to Fast-Track Regulation:

Page 416, 12VAC30-80-20, subsection D, column 1, replace "3. (Reserved.)" with the following:

3. Supplement payments to Type One hospitals for outpatient services.

a. In addition to payments for services set forth elsewhere in the State Plan, DMAS makes supplemental payments to qualifying state government owned or operated hospitals for outpatient services furnished to Medicare members on or after July 1, 2010. To qualify for a supplement payment, the hospital must be part of the state academic health system or part of an academic health system that operates under a state authority.

b. The amount of the supplemental payment made to each qualifying hospital shall be equal to the difference between the total allowable cost and the amount otherwise actually paid for the services by the Medicaid program based on cost settlement.

c. Payment for furnished services under this section shall be paid at settlement of the cost report.

VA.R. Doc. No. R17-4190; Filed February 15, 2017

**BOARD OF NURSING**

**Title of Regulation: 18VAC90-19. Regulations Governing the Practice of Nursing.**

Publication: 33:10 VA.R. 1112-1136 January 9, 2017.

Correction to Final Regulation:

Page 1115, 18VAC90-19-30, in the table of fees required by the board, underline all dollar amounts in column 2 of the table.

VA.R. Doc. No. R17-4643; Filed February 20, 2017

