



VIRGINIA

REGISTER OF REGULATIONS

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VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

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

Members of the Virginia Code Commission: **John S. Edwards**, 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>
33:15	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 (Tuesday)	December 11, 2017
34:9	December 6, 2017	December 25, 2017
34:10	December 19, 2017 (Tuesday)	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.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider amending **2VAC5-675, Regulations Governing the Pesticide Fees Charged By the Department of Agriculture and Consumer Services**. The purpose of the proposed action is to conduct a comprehensive review of the current fee structure and adjust the fee structure, if appropriate, to reflect actual costs of program implementation.

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

Statutory Authority: § 3.2-3906 of the Code Virginia.

Public Comment Deadline: April 19, 2017.

Agency Contact: Liza Fleeson Trossbach, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6559, FAX (804) 371-2283, TTY (800) 828-1120, or email liza.fleeson@vdacs.virginia.gov.

VA.R. Doc. No. R17-5041; Filed February 22, 2017, 11:50 a.m.

Labor's requirements under the Fair Labor Standards Act, as set out in Fact Sheet 79B. This action applies to EPSDT-covered attendant services as well as waiver-covered attendant services.

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

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

Public Comment Deadline: April 19, 2017.

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

VA.R. Doc. No. R17-4749; Filed March 7, 2017, 2:26 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects intends to consider amending **18VAC10-20, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations**. The purpose of the proposed action is to conduct a regulatory review to ensure the board's regulations are clearly written and easily understandable, reflective of changes in technology and training, and representative of current professional and industry standards. The regulations will also be reviewed for consistency, and language may be modified for ease of understanding by the general public and regulants. The board may make other changes it identifies as necessary during the regulatory review process. Although the last general review of the regulations became effective on January 1, 2016, that regulatory action was first initiated in 2010. In the time elapsed between initiation of the action and its effective date, professional and industry standards appear to have changed enough to warrant another review. Ensuring that the regulations remain consistent with current professional practice standards is essential for establishing regulants' minimum qualifications to perform their duties while protecting the health, safety, and welfare of the citizens of the Commonwealth.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

EDITOR'S NOTE: This notice was previously published in [33:9 VA.R. 869 December 26, 2016](#); however, the last sentence of the first paragraph was inadvertently omitted. The Department of Medical Assistance Services has requested that the notice be republished with an additional 30-day public comment period.

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending **12VAC30-50, Amount, Duration, and Scope of Medical and Remedial Care Services**, and **12VAC30-120, Waivered Services**. The purpose of the proposed action is to ensure that Medicaid authorization and reimbursement for consumer-directed personal care, respite, and companion services is limited to 40 hours per week for an attendant serving a single consumer, in accordance with Item 306 PPPP of Chapter 780 of the 2016 Acts of Assembly, the 2016 Appropriation Act. This action will also clarify that the limit will not be applied to live-in attendants consistent with the U.S. Department of

Notices of Intended Regulatory Action

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

Statutory Authority: §§ 54.1-201 and 54.1-404 of the Code of Virginia.

Public Comment Deadline: April 19, 2017.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email apelscidla@dpor.virginia.gov.

VA.R. Doc. No. R17-5025; Filed February 17, 2017, 3:01 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 1. ADMINISTRATION

DEPARTMENT OF LAW

Fast-Track Regulation

Title of Regulation: 1VAC45-20. Regulations Regarding the Virginia Human Rights Act (adding 1VAC45-20-10 through 1VAC45-20-130).

Statutory Authority: § 2.2-520 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 19, 2017.

Effective Date: May 5, 2017.

Agency Contact: Paul Kugelman, Assistant Attorney General and Regulatory Coordinator, Department of Law, 202 North 9th Street, Richmond, VA 23219, telephone (804) 786-6576, or email pkugelman@oag.state.va.us.

Basis: Subdivision B 2 of § 2.2-520 of the Code of Virginia states that it is the Department of Law's Division of Human Rights duty to, among other things, adopt and amend regulations concerning the Virginia Human Rights Act pursuant to the Virginia Administrative Process Act (APA) (§ 2.2-4000 et seq. of the Code of Virginia). While these amendments, in substantial part, consist of technical amendments reflecting the Department of Law's adopting these regulations to reflect a statutory change in Virginia law, which are exempted from the APA under § 2.2-4006 A 4 a of the Code of Virginia, the Division of Human Rights is now permitted 30 working days from the receipt of a complaint to request information and the respondent is now permitted 21 working days. As these changes are expected to be noncontroversial, they are submitted under the fast-track rulemaking process provided for in § 2.2-4012.1 of the Code of Virginia.

Purpose: To further the policy of the Commonwealth to ensure that all Virginians are provided access to employment, places of public employment, including educational institutions, and in real estate transactions free from illegal discrimination, the Division of Human Rights adopts and promulgates these regulations to serve as the division's regulations with regard to continuing the operations of the former Virginia Human Rights Council. After this fast-track rulemaking action is effective, the division intends to begin a general regulatory review process to consider and make necessary substantive changes to the division's regulations.

Rationale for Using Fast-Track Rulemaking Process: The promulgation of this regulation should be noncontroversial

because the division is, in substantial part, adopting the regulations of its predecessor, the Virginia Human Rights Council, with technical changes reflecting the division assuming administrative and enforcement authority of the Virginia Human Rights Act and the substantive changes only expand deadlines.

Substance: As previously noted, the vast majority of the amendments are technical in nature either reflecting the Department of Law's Division of Human Rights adoption of the former Human Rights Council's regulations or providing clarifying language. Changes in substance are in 1VAC45-20-80 A, which now allows the division 30 working days from the date of the filing of the complaint to request information from the respondent and allows the respondent 21 working days to respond to the division's request.

Issues: The primary advantage of the division's regulations is that the Virginia Administrative Code will be updated to accurately reflect that the operations of the former Virginia Human Rights Council have been transferred to the division. There are no disadvantages of this action to the public or to the agency.

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

Summary of the Proposed Amendments to Regulation. The Department of Law proposes to update and adopt the regulation that governed human rights complaints under the now defunct Virginia Human Rights Council.¹

Result of Analysis. Benefits outweigh costs for all proposed changes.

Estimated Economic Impact. In 2012, as part of the Governor's initiative to streamline executive branch agencies and regulation, the General Assembly abolished the Virginia Human Rights Council and moved its investigative functions to the Office of the Attorney General. In order to implement this statutory change, the Department of Law now proposes to adopt this Virginia Human Rights Council's regulation, update statutory references and correct obsolete language as well as add several definitions. None of the proposed changes to this regulation are substantive changes to the process of reporting suspected human rights violations and having those reports investigated. Consequently, no affected entity is likely to incur any cost or harm on account of these changes. These entities will benefit from clarifying changes that, for instance, correct the address at which complaints can be filed in person or by mail and insert an email address so that complaints can be filed electronically.

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Businesses and Entities Affected. These proposed regulatory changes will affect all individuals who file human rights complaints as well as the employers, places of public accommodation and education institutions that might be the subject of those complaints. Department of Law staff report that businesses with six or more employees are subject to this regulation and that they receive approximately 120 to 150 complaints per year alleging discrimination.

Localities Particularly Affected. These proposed regulatory changes will not particularly affect any locality.

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

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

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

Small Businesses:

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

Costs and Other Effects. No small businesses will be adversely affected by these proposed regulatory changes.

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

Adverse Impacts:

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

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

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

¹ The Virginia Human Rights Council was eliminated, and its investigative functions were transferred to the Attorney General's office, by Chapter 803 of the 2012 Acts of the Assembly. Chapter 803 can be accessed electronically here: <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=121&typ=bil&val=ch803>

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

Summary:

Chapters 803 and 835 of 2012 Acts of Assembly abolished the Human Rights Council and transferred the council's regulations to the Division of Human Rights of the Department of Law. This regulatory action (i) rennumbers

the regulations and places them under the Department of Law in the Virginia Administrative Code and makes minor or technical changes to reflect Chapters 803 and 835; (ii) specifies the elements that a complaint must contain, when a response to the division's request for information must be submitted, and the method for submitting correspondence after filing the initial complaint; and (iii) modifies certain timeframes.

CHAPTER 10
REGULATIONS TO SAFEGUARD VIRGINIANS'
HUMAN RIGHTS FROM UNLAWFUL
DISCRIMINATION

CHAPTER 20
REGULATIONS REGARDING THE VIRGINIA HUMAN
RIGHTS ACT

~~22VAC25-10-10.~~ 1VAC45-20-10. Policy.

The purpose of this chapter is to supplement the Virginia Human Rights Act (§ ~~2-1-714~~ 2.2-3900 et seq.) of the Code of Virginia, which safeguards all individuals within the Commonwealth from unlawful discrimination.

~~22VAC25-10-20.~~ 1VAC45-20-20. Definitions.

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

"Act" means the Virginia Human Rights Act, Chapter ~~43~~ 39 (§ ~~2-1-714~~ 2.2-3900 et seq.) of Title ~~2-1~~ 2.2 of the Code of Virginia.

"Complaint" means a written statement by a person or by the ~~council~~ division alleging an act of discrimination prohibited by § ~~2-1-716~~ 2.2-3901 of the Code of Virginia.

"Complainant" or "charging party" means a person who claims to have been injured by a discriminatory practice.

"Designee" means an individual ~~named~~ designated by the director to act in his stead ~~stay~~ pursuant to this chapter.

"Director" means an individual ~~appointed by the Governor~~ designated by the Attorney General to oversee the division and perform the duties and responsibilities outlined in the Act.

"Discharge" means an actual or constructive termination or separation of an employee from employment.

"Division" means the Division of Human Rights of the Department of Law.

"Hearing officer" means a person qualified from the list of hearing officers maintained by the Executive Secretary of the Supreme Court of Virginia.

"Respondent" means a person against whom a complaint of violation of the Act is filed. ~~Each reference to a "complainant" and "respondent" shall be deemed to refer, as appropriate, to the singular and plural.~~ In addition those terms and any other referring to people will be considered masculine or feminine.

~~22VAC25-10-30.~~ 1VAC45-20-30. Complaints by or on behalf of persons claiming to be aggrieved.

A. A complaint on behalf of a person claiming to be aggrieved may be made by any person, agency, or organization; however, the complaint ~~must~~ shall be made in writing. The written complaint need not identify by name the person on whose behalf it is made. The person making the complaint, however, shall provide the ~~council~~ council division orally with the name, address, and telephone number of the person on whose behalf the complaint is made. During the ~~council's~~ council's investigation, the director shall verify the complaint with the person on whose behalf the complaint is made. The ~~council division~~ council division may reveal the identity of complainants to federal, state, or local agencies that have agreed to keep such information confidential.

B. The complainant ~~has the responsibility of providing~~ shall provide the ~~council~~ council division with notice of any change in address and with notice of any prolonged absence from his current address.

C. A complaint shall be filed with the ~~council~~ council division not later than 180 days from the day upon which the alleged discriminatory practice occurred.

~~22VAC25-10-40.~~ 1VAC45-20-40. Where to make a complaint.

A complaint may be ~~made~~ filed in person at ~~1100 E. Bank Street, Washington Building, 12th Floor, Richmond, Virginia 23219~~ or by mail to 202 North 9th Street, Richmond, VA 23219 between the hours of 9:30 a.m. and 5 p.m., Monday through Friday; ~~or by mail at P.O. Box 717, Richmond, Virginia 23206;~~ or by FAX to (804) 225-3294; ~~or by email to human_rights@oag.state.va.us.~~ Telephone calls may be made at 1-800-633-5510 or to (804) 224-2292 225-2292 in order to receive information on how and where to file complaints. ~~No complaint will be taken over the phone.~~ Complaints shall not be accepted over the telephone.

~~22VAC25-10-50.~~ 1VAC45-20-50. Contents of complaint.

- A. Each complaint ~~should~~ shall contain the following:
1. The full name, address, and telephone number of the person making the complaint;
 2. The full name and address of the person against whom the complaint is made;
 3. A clear concise statement of the facts, including pertinent dates, constituting the alleged unlawful discriminatory practices;
 4. The date of filing and the name of the agency in cases where alleged complaints alleging unlawful discriminatory practices have been filed before a local, state, or federal agency charged with the enforcement of discrimination laws; and
 5. Any documentation the complainant ~~feels~~ believes will support the claim.

B. Notwithstanding the provisions of subsection A of this section, a complaint shall be considered filed when the ~~council~~ council division receives a written statement ~~which~~ that identifies the parties and describes generally the action or practices complained of.

C. A complaint may be reasonably and fairly amended by the complainant or the director at any time prior to a hearing. Except for the purposes of notifying the respondent as specified in subsection D of this section, amended complaints will be considered as having been made as of the original filing date.

D. When an amendment is filed, the ~~Office of Human Rights~~ division shall forward a copy of the amendment to the respondent within five working days of the amendment. The respondent shall, within 10 working days after receiving the amendment, file an answer to the amendment.

~~22VAC25-10-60.~~ 1VAC45-20-60. Filing referrals to state and federal agencies.

A. Complaints ~~which~~ that are under the jurisdiction of another state agency are considered filed with that agency when received by the ~~council~~ council ~~if the filing falls within the time limits for filing as required by that agency pursuant to § 2.1-722 of the Code of Virginia~~ division ~~provided the time limit for filing with the other agency has not expired.~~

B. The ~~council~~ council division has established interagency agreements with the following state agencies:

1. Department of Professional and Occupational Regulation-Real Estate Board;
2. Department of Labor and Industry;
3. Department of ~~Personnel and Training~~ Human Resources Management;
4. ~~Department for Rights of Virginians with Disabilities~~ Virginia Office of Protection and Advocacy; and
5. Department of ~~Employee Relations Counselors~~ Human Resources Management, Office of Employee Dispute Resolutions.

~~If it is deemed appropriate, agreements will be established with other state agencies and these regulations will be amended to include the agencies.~~

If the director or his designee determines that the complaint is not within the ~~council's~~ council's ~~division's~~ jurisdiction, but possibly in the jurisdiction of one of the interagency agreement agencies, the complaint shall be sent to the appropriate agency within 15 working days of the determination. The complainant shall be notified of this action and a reason provided. Once the complaint has been forwarded and the complainant notified, the ~~council~~ council division shall close the case. In the event the complaint is not under the jurisdiction of the agency to which it was referred or if additional evidence is submitted the case will be reopened.

C. Persons filing under Title VII of the Civil Rights Act of 1964, as amended, or the Fair Labor Standards Act shall be

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notified within 15 days that they should also file with the appropriate federal agency within the appropriate time period if the statute of limitations has not already expired.

D. All ~~charges~~ complaints shall be dated and ~~time~~ time-stamped upon receipt.

~~E. Complaints shall be filed with the council not later than 180 days from the day upon which the alleged discriminatory practice occurred.~~

22VAC25-10-70. 1VAC45-20-70. Notice of complaint.

Within 15 ~~working~~ days after the ~~filing~~ perfecting of a complaint, the director shall notify the respondent of the complaint by mail.

22VAC25-10-80. 1VAC45-20-80. Investigations by the director or his designee.

A. During the investigation of a complaint, the director may utilize the information gathered by government agencies. The director shall accept a statement of position or evidence submitted by the complainant, ~~the~~ person making the complaint on behalf of complainant, or the respondent. The director may submit a request for information to the respondent ~~which that~~, in addition to specific questions, may request a response to the allegations contained in the complaint. The director's or his designee's request for information shall be mailed within ~~20~~ 30 working days of receipt of the complaint. A response to the request for information ~~should~~ shall be submitted within ~~20~~ 21 working days from the date the request is postmarked.

~~B. The director may require the complainant to provide such additional information as he deems necessary to conduct an investigation. The complainant and respondent shall provide such additional information deemed necessary by the director or his designee to conduct an investigation.~~

C. The director may require a fact-finding conference held in accordance with § 2.2-4019 of the Code of Virginia with the parties prior to a determination of a complaint of discrimination. The conference is an investigative forum intended to define the issues, to determine the elements in dispute, and to ascertain whether there is a basis for a negotiated settlement of the complaint.

D. The director's or his designee's authority to investigate a complaint is not limited to the procedures outlined in subsections A, B, and C of this section.

22VAC25-10-90. 1VAC45-20-90. Dismissal; procedure and authority.

A. When the director determines that the complaint (i) is not timely filed; or (ii) fails to state a claim under the Act, the director shall dismiss the complaint.

B. When the director determines after investigation that there is not reasonable cause to believe that the Act has been violated, the director shall dismiss the complaint. If the complainant disagrees with the director's decision, the ~~council~~

division can be petitioned within 10 working days for a review of the decision.

~~C. Upon petition for review, the council shall establish a panel of three members to hear such petitions. If it is determined within 30 working days after the petition for review of a dismissal of a complaint that there is not reasonable cause to believe the respondent has engaged in a discriminatory practice, the council shall issue an order dismissing the complaint and furnish a copy of the order to all parties. Upon receiving a petition for review, the division shall determine whether to:~~

1. Issue a final determination to the parties in accordance with § 2.2-4023 of the Code of Virginia;

2. Refer the matter to the appropriate federal agency when applicable; or

3. Hold a formal hearing in accordance with 1VAC45-20-110.

22VAC25-10-100. 1VAC45-20-100. Settlement.

A. When the director determines that there is reasonable cause to believe that an unlawful discriminatory practice has occurred or is occurring, the director shall endeavor to eliminate such practice by informal methods of conference, conciliation, and negotiation.

B. When conciliation or negotiated settlement is successful, the terms of the agreement shall be reduced to writing and signed by the complainant, respondent, and the director within 10 working days of the ~~agreement~~ settlement.

22VAC25-10-110. Public 1VAC45-20-110. Formal hearing.

A. When conciliation efforts fail; or when the director determines that the conciliation process will not be in the best interest of the complainant or the Commonwealth, the director shall set the matter for public formal hearing conducted in accordance with § 2.2-4020 of the Code of Virginia or refer the complaint to the appropriate federal agency.

B. Notice of the time and place of the hearing shall be mailed to the parties at least 20 working days before the date of the hearing.

C. All hearings shall be open to the public.

D. A case ~~will~~ shall be heard by a hearing officer appointed by the ~~council~~ division from a list obtained from the Supreme Court of Virginia.

E. The hearing officer shall not be bound by statutory rules of evidence or technical rules of procedure.

F. Both the complainant and the respondent shall appear and be heard in person, but may be assisted by counsel; or by an authorized representative.

G. All testimony shall be given under oath or affirmation.

H. The order of presentation shall be established by the hearing officer with the burden of ~~going forward~~ proof being placed on the complainant.

I. ~~Any Where any party who fails to appear at a fact-finding conference or hearing or to respond to a request for information by a specified date, in the absence of good cause shown, shall be deemed to have waived all further rights to appear, present evidence, or petition for rehearing or reconsideration conducted pursuant to this chapter, the division shall proceed in accordance with the provisions of § 2.2-4020.2 of the Code of Virginia.~~

J. Irrelevant, immaterial, and unduly repetitious evidence shall, at the discretion of the hearing officer, be excluded. The rules of privilege shall be given effect.

K. The hearing officer may accept relevant documents or other evidence into the record as exhibits. Documents to be submitted at the hearing by a party ~~must~~ shall be distributed to the ~~council~~ division and the other party no later than five working days prior to the hearing. Documents not submitted in accordance with this rule ~~will~~ shall only be admitted when the ~~presiding body or~~ hearing officer determines that just cause exists ~~for failure to follow this rule.~~

L. Before the hearing ~~is closed~~ concludes, the parties shall be given an opportunity to present an oral closing argument of their ~~case~~ cases and proposed findings and conclusions in accordance with the provisions of § 2.2-4020 of the Code of Virginia.

M. The hearing shall be recorded by an official reporter and one transcript ~~will~~ shall be purchased by the ~~council~~ division. ~~The council's~~ After the division has received the transcript, the division's copy ~~will~~ shall be made available for review within a ~~reasonable time after~~ five working days upon request ~~at to the Office of Human Rights~~ division during regular business hours.

22VAC25-10-120. 1VAC45-20-120. Findings and recommendations.

A. The hearing officer ~~of the council~~ shall ~~state~~ submit a recommended decision with findings of fact and conclusions of law in writing to the division. The ~~findings recommended decision~~ of the hearing officer shall be filed with the ~~council~~ division within ~~30 working~~ 90 days of the date of completion of the hearing.

B. If the ~~council votes to~~ director accepts the hearing officer's findings that the respondent has not engaged in a discriminatory practice, ~~it~~ the division shall issue an order dismissing the complaint. A copy of the order shall be furnished to the complainant and the respondent.

C. If the ~~council votes to~~ division accepts the hearing officer's findings that the respondent has committed an unlawful discriminatory practice, ~~it~~ the division shall state its findings and may issue recommendations to the respondent to eliminate the discriminatory practice, including, ~~but not limited to:~~

1. Hiring, reinstating, promoting, or upgrading the position of the complainant, with or without back pay, and providing such fringe benefits as the complainant has been denied;
2. Restoring or admitting the complainant to membership in a labor organization, a training program, a guidance program, or other occupational training program, using the objective criteria for admission of persons to such programs;
3. Leasing, renting, or selling property at issue to the complainant;
4. Extending to the complainant the full and equal enjoyment of the goods, services, facilities, privileges, or accommodations of the respondent;
5. Admitting the complainant to a public accommodation or an educational institution;
6. Reporting as to the manner of compliance;
7. Posting notices in a conspicuous place setting forth requirements for compliance with this chapter or other information that the ~~council~~ division deems necessary to explain the Act;
8. Revising personnel policies and procedures, including the undertaking of affirmative efforts; and
9. Reimbursing attorney's fees to complainant.

~~D. If the council votes not to accept the hearing officer's findings, it will return the findings to the hearing officer for further consideration, or appoint a new hearing officer and set a new hearing on the complaint. If the division rejects the hearing officer's recommended decision, the division shall state its own finding of facts and/or conclusions of law based on the record.~~

E. Copies of ~~council's~~ the division's final decision, including where applicable, any recommendations, shall be furnished to the complainant and respondent within 15 working days.

22VAC25-10-130. 1VAC45-20-130. General.

A. If the ~~council~~ division fails to act by dates specified ~~herein~~ in this chapter, neither the rights of the complainant nor the respondent ~~will~~ shall be prejudiced.

B. If the complainant or the respondent fails to comply with the provisions stated ~~herein~~ in this chapter, except where good cause is shown, the failure may be deemed a waiver of any rights provided ~~herein~~ in this chapter.

C. After the initial filing, all correspondence relative to the case ~~should~~ shall be by certified mail, hand delivered, or by a carrier ~~who~~ that will furnish a receipt.

VA.R. Doc. No. R17-3944; Filed March 1, 2017, 11:23 a.m.



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TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: 4VAC20-620. Pertaining to Summer Flounder (amending 4VAC20-620-30, 4VAC20-620-40, 4VAC20-620-50).

Statutory Authority: § 28-2.201 of the Code of Virginia.

Effective Date: February 28, 2017.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments modify the landing dates, landing periods, possession limits, and landing limits for summer flounder commercially harvested outside of Virginia waters and increase the minimum size for summer flounder recreationally harvested in Virginia waters to 17 inches.

4VAC20-620-30. Commercial harvest quota and allowable landings.

A. During each calendar year, allowable commercial landings of summer flounder shall be limited to a quota in total pounds calculated pursuant to the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Summer Flounder Fishery Management Plan, as approved by the National Marine Fisheries Service on August 6, 1992 (50 CFR Part 625); and shall be distributed as described in subsections B through G of this section.

B. The commercial harvest of summer flounder from Virginia tidal waters for each calendar year shall be limited to ~~300,000~~ 100,000 pounds of the annual quota described in subsection A of this section. ~~Of this amount, 142,114 pounds shall be set aside for Chesapeake Bay-wide harvest.~~

C. From the first Monday in January through October 31 the allowable landings of summer flounder harvested outside of Virginia shall be limited to an amount of pounds equal to ~~70.7%~~ 60% of the quota described in subsection A of this section after deducting the amount specified in subsection B of this section.

D. From November 1 through December 31, allowable landings of summer flounder harvested outside of Virginia shall be limited to an amount of pounds equal to ~~29.3%~~ 40% of the quota; as described in subsection A of this section; after

deducting the amount specified in subsection B of this section, and as may be further modified by subsection E of this section.

E. Should landings from the first Monday in January through October 31 exceed or fall short of ~~70.7%~~ 60% of the quota described in subsection A of this section, any such excess shall be deducted from allowable landings described in subsection D of this section, and any such shortage shall be added to the allowable landings as described in subsection D of this section. Should the commercial harvest specified in subsection B of this section be projected as less than ~~300,000~~ 100,000 pounds, any such shortage shall be added to the allowable landings described in subsection D of this section.

F. The Marine Resources Commission will give timely notice to the industry of the calculated poundages and any adjustments to any allowable landings described in subsections C and D of this section. It shall be unlawful for any person to harvest or to land summer flounder for commercial purposes after the commercial harvest or any allowable landings as described in this section have been attained and announced as such. If any person lands summer flounder after the commercial harvest or any allowable landing have been attained and announced as such, the entire amount of summer flounder in that person's possession shall be confiscated.

G. It shall be unlawful for any buyer of seafood to receive any summer flounder after any commercial harvest or landing quota as described in this section has been attained and announced as such.

4VAC20-620-40. Commercial vessel possession and landing limitations.

A. It shall be unlawful for any person harvesting summer flounder outside of Virginia's waters to do any of the following, except as described in subsections B, C, D, and E of this section:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of 10% by weight of Atlantic croaker or the combined landings, on board a vessel, of black sea bass, scup, squid, scallops and Atlantic mackerel.
2. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of 1,500 pounds landed in combination with Atlantic croaker.
3. Fail to sell the vessel's entire harvest of all species at the point of landing.

B. Nothing in this chapter shall preclude a vessel from possessing any North Carolina vessel possession limit of summer flounder in Virginia; however, no vessel that possesses the North Carolina vessel possession limit of summer flounder shall offload any amount of that possession limit, except as described in subsection J of this section.

C. From ~~the second Wednesday in March 1~~ through ~~June 6~~ April 30, it shall be unlawful for any person harvesting

summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the combined total of the Virginia landing limit described in ~~subdivisions 3 and 4~~ subdivision 2 of this subsection and the amount of the legal North Carolina landing limit or trip limit.
- ~~2. Land summer flounder in Virginia for commercial purposes more than twice during each consecutive period, with the initial period beginning on the second Wednesday in March.~~
- ~~3. Land in Virginia more than a total of 7,500 pounds of summer flounder during the initial 30 day period beginning on the second Wednesday in March.~~
4. 2. Land in Virginia more than a total of ~~5,000~~ 7,500 pounds of summer flounder ~~during the 60 day period beginning on April 8.~~
- ~~5. 3.~~ Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

D. From November 1 through December 31 of each year, if it has not been announced that 85% of the allowable landings have been taken, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the combined total of the Virginia landing limit described in subdivision 2 of this subsection and the amount of the legal North Carolina landing limit or trip limit.
2. Land in Virginia more than a total of 7,500 pounds of summer flounder.
3. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

E. From January 1 through December 31 of each year, any boat or vessel issued a valid federal summer flounder moratorium permit and owned and operated by a legal Virginia Commercial Hook-and-Line Licensee that possesses a Restricted Summer Flounder Endorsement shall be restricted to a possession and landing limit of 200 pounds of summer flounder, except as described in 4VAC20-620-30 F.

F. Upon request by a marine police officer, the seafood buyer or processor shall offload and accurately determine the total weight of all summer flounder aboard any vessel landing summer flounder in Virginia.

G. Any possession limit described in this section shall be determined by the weight in pounds of summer flounder as customarily packed, boxed and weighed by the seafood buyer or processor. The weight of any summer flounder in pounds found in excess of any possession limit described in this section shall be prima facie evidence of violation of this chapter. Persons in possession of summer flounder aboard any vessel in excess of the possession limit shall be in

violation of this chapter unless that vessel has requested and been granted safe harbor. Any buyer or processor offloading or accepting any quantity of summer flounder from any vessel in excess of the possession limit shall be in violation of this chapter, except as described by subsection J of this section. A buyer or processor may accept or buy summer flounder from a vessel that has secured safe harbor, provided that vessel has satisfied the requirements described in subsection J of this section.

H. If a person violates the possession limits described in this section, the entire amount of summer flounder in that person's possession shall be confiscated. Any confiscated summer flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine police officer shall inventory the confiscated summer flounder and, at a minimum, secure two bids for purchase of the confiscated summer flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder and all funds derived from such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

I. It shall be unlawful for a licensed seafood buyer or federally permitted seafood buyer to fail to contact the Marine Resources Commission Operation Station prior to a vessel offloading summer flounder harvested outside of Virginia. The buyer shall provide to the Marine Resources Commission the name of the vessel, its captain, an estimate of the amount in pounds of summer flounder on board that vessel, and the anticipated or approximate offloading time. Once offloading of any vessel is complete and the weight of the landed summer flounder has been determined, the buyer shall contact the Marine Resources Commission Operations Station and report the vessel name and corresponding weight of summer flounder landed. It shall be unlawful for any person to offload from a boat or vessel for commercial purposes any summer flounder during the period of 9 p.m. to 7 a.m.

J. Any boat or vessel that has entered Virginia waters for safe harbor shall only offload summer flounder when the state that licenses that vessel requests to transfer quota to Virginia, in the amount that corresponds to that vessel's possession limit, and the commissioner agrees to accept that transfer of quota.

K. After any commercial harvest or landing quota as described in 4VAC20-620-30 has been attained and announced as such, any boat or vessel possessing summer flounder on board may enter Virginia waters for safe harbor but shall contact the Marine Resources Commission Operation Center in advance of such entry into Virginia waters.

L. When it is projected and announced that 85% of the allowable landings have been taken, it shall be unlawful to

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land summer flounder in Virginia, except as described in subsection A of this section.

M. It shall be unlawful for any person harvesting summer flounder outside of Virginia waters to possess aboard any vessel, in Virginia, any amount of summer flounder, once it has been projected and announced that 100% of the quota described in 4VAC20-620-30 A has been taken.

4VAC20-620-50. Minimum size limits.

A. The minimum size for summer flounder harvested by commercial fishing gear shall be 14 inches, total length.

B. The minimum size of summer flounder harvested by recreational fishing gear, including but not limited to hook and line, rod and reel, spear and gig, shall be ~~16~~ 17 inches, total length, except that the minimum size of summer flounder harvested in the Potomac River tributaries shall be the same as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

C. Length shall be measured in a straight line from tip of nose to tip of tail.

D. It shall be unlawful for any person to possess any summer flounder smaller than the designated minimum size limit.

E. Nothing in this chapter shall prohibit the landing of summer flounder in Virginia that were legally harvested in the Potomac River.

VA.R. Doc. No. R17-5044; Filed February 28, 2017, 3:39 p.m.

◆ ————— ◆

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC30-120. Waivered Services (amending 12VAC30-120-380).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 19, 2017.

Effective Date: May 4, 2017.

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

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the

Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Chapter 780 of the 2016 Acts of the Assembly, Item 306 MMMM directed as follows:

"1. The Department of Medical Assistance Services, in consultation with the appropriate stakeholders, shall amend the state plan for medical assistance and/or seek federal authority through an 1115 demonstration waiver, as soon as feasible, to provide coverage of inpatient detoxification, inpatient substance abuse treatment, residential detoxification, residential substance abuse treatment, and peer support services to Medicaid individuals in the Fee-for-Service and Managed Care Delivery Systems. The department shall have the authority to implement this change effective upon passage of this Act, and prior to the completion of any regulatory process undertaken in order to effect such change.

2. The Department of Medical Assistance Services shall make programmatic changes in the provision of all Substance Abuse Treatment Outpatient, Community Based and Residential Treatment services (group homes and facilities) for individuals with substance abuse disorders in order to ensure parity between the substance abuse treatment services and the medical and mental health services covered by the department and to ensure comprehensive treatment planning and care coordination for individuals receiving behavioral health and substance use disorder services. The department shall take action to ensure appropriate utilization and cost efficiency, and adjust reimbursement rates within the limits of the funding appropriated for this purpose based on current industry standards. The department shall consider all available options including, but not limited to, service definitions, prior authorization, utilization review, provider qualifications, and reimbursement rates for the following Medicaid services: substance abuse day treatment for pregnant women, substance abuse residential treatment for pregnant women, substance abuse case management, opioid treatment, substance abuse day treatment, and substance abuse intensive outpatient. The department shall have the authority to implement this change effective upon passage of this Act, and prior to the completion of any regulatory process undertaken in order to effect such change.

3. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance and any waivers thereof to include peer support services to children and adults with mental health conditions and/or substance use disorders. The department shall work with

its contractors, the Department of Behavioral Health and Developmental Services, and appropriate stakeholders to develop service definitions, utilization review criteria and provider qualifications. The department shall have the authority to implement this change effective upon passage of this Act, and prior to the completion of any regulatory process undertaken in order to effect such change.

4. The Department of Medical Assistance Services shall, prior to the submission of any state plan amendment or waivers to implement paragraphs MMMM 1, MMMM 2, and MMMM 3, submit a plan detailing the changes in provider rates, new services added and any other programmatic changes to the Chairmen of the House Appropriations and Senate Finance Committees."

Purpose: The purpose of this action is to comport the managed care regulations (12VAC30-120-360 through 12VAC30-120-420) with the Addiction and Recovery Treatment Services (ARTS) regulatory action, posted on the Virginia Regulatory Town Hall (TH 4692/7734) and published in the Virginia Register of Regulations ([33:12 V.A.R. 1325-1376 February 6, 2017](#)). This regulatory action is not essential to protect the health, safety, or welfare of the Commonwealth's citizens or Medicaid individuals.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action is being promulgated as a fast-track rulemaking action because public comments received about the general concept and features of the original ARTS services specified to date have been positive. The comprehensive ARTS proposal has been such a substantial improvement over the current fragmented approach to substance use treatment that the affected entities are actively participating with DMAS in its redesign and transformation efforts. This action merely comports these managed care regulations with the previously recommended regulations.

Substance:

Current policy: DMAS covers approximately 1.1 million individuals; 80% of members receive care through contracted managed care organizations (MCOs) and 20% of members receive care through fee-for-service (FFS). The majority of members enrolled in Virginia's Medicaid and FAMIS programs include children, pregnant women, and individuals who meet the disability category of being aged, blind, or disabled. The 20% of the individuals receiving care through fee for service do so because they meet one of 16 categories of exception to MCO participation, for example: (i) inpatients in state mental hospitals, long-stay hospitals, nursing facilities, or intermediate care facilities for individuals with intellectual disabilities; (ii) individuals on spend down; (iii) individuals younger than 21 years of age who are in residential treatment facility Level C programs; (iv) newly eligible individuals in their third trimester of pregnancy; (v) individuals who permanently live outside their area of residence; (vi) individuals receiving hospice services; (vii)

individuals with other comprehensive group or individual health insurance; (viii) individuals eligible for Individuals with Disabilities Education Act (IDEA) Part C services; (ix) individuals whose eligibility period is less than three months or is retroactive; and (x) individuals enrolled in the Virginia Birth-Related Neurological Injury Compensation Program.

Historically, Virginia funded only limited kinds of substance use treatment services to limited populations of Medicaid eligible individuals, for example, pregnant women and children. Within the current system, nontraditional community-based addiction treatment services are "carved out" (excluded from coverage) of the MCOs and managed by Magellan, the behavioral health service administrator contractor for DMAS. The original ARTS regulatory action changed this approach, and this action comports these remaining regulations to the original action.

Recommendations: To comport these managed care regulations with the ARTS regulatory action, the amendment replaces a description of community mental health services with a reference to 12VAC30-50-130 and 12VAC30-50-226.

Issues: The advantage to DMAS is the consistency between different controlling regulations in support of appeals and legal actions. There are no disadvantages for DMAS. There are no advantages or disadvantages to citizens, Medicaid individuals, or providers as the ARTS regulatory action sets out all of the details and requirements of the new program.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. On behalf of the Board of Medical Assistance Services (Board), the Director of the Department of Medical Assistance (DMAS) proposes to amend this regulation on waived services to conform it to the Board's fast track addiction recovery treatment (ARTS) regulation, which has been submitted to the Registrar and will be published in the Virginia Register of Regulations (Volume 33, Issue 12) on February 6, 2017.¹ Needed changes to this regulation were inadvertently omitted from that initial regulatory action.

Result of Analysis. Benefits likely outweigh costs for these proposed changes.

Estimated Economic Impact. Chapter 780 (Item 306-MMMM) of the 2016 Acts of the Assembly² directs DMAS "to provide coverage of inpatient detoxification, inpatient substance abuse treatment, residential detoxification, residential substance abuse treatment and peer support services in the Fee-for-Service and Managed Care Delivery Systems." Chapter 780 also directed DMAS to make programmatic changes so that substance abuse treatment services are paid the same as medical and mental health services (within the limits of the funding appropriated for that purpose). Most of these changes were made in a fast track action that has completed executive branch review and is now awaiting publication. Changes that were necessary to conform this regulation (12VAC30-120) to the ARTS regulation were

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inadvertently left out of that action. Consequently, the Director now proposes to remove language and regulatory references that will soon be obsolete and replace them with references to the regulatory language promulgated with the ARTS regulation. No entities are likely to incur costs on account of these changes. Interested parties will benefit from soon to be obsolete language and references being removed as they may cause confusion.

Businesses and Entities Affected. These proposed regulatory changes will affect locally run Community Services Boards and Behavioral Health Authorities (CSBs/BHAs), inpatient hospitals, some physicians and nurse practitioners, case managers, residential treatment facilities, group homes and outpatient clinics as well as all Medicaid recipients. DMAS reports that there are currently 1.1 million Medicaid recipients in the Commonwealth and that there are 39 CSBs and one BHA run by various localities in the Commonwealth.

Localities Particularly Affected. Locally run CSBs/BHAs and their staff will likely be disproportionately affected by this proposed regulation.

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

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

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

Small Businesses:

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

Costs and Other Effects. These proposed regulatory changes are unlikely to affect any small business in the Commonwealth.

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

Adverse Impacts:

Businesses. Businesses in the Commonwealth are unlikely to experience any adverse impacts on account of this proposed regulation.

Localities. No localities are likely to incur costs on account of these proposed regulatory changes.

Other Entities. These proposed regulatory changes are unlikely to affect other entities in the Commonwealth.

² More information on this mandate can be found at <http://townhall.virginia.gov/L/viewmandate.cfm?mandateid=743>

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget and concurs with this analysis.

Summary:

The amendment replaces a description of community mental health services with a reference to 12VAC30-50-130 and 12VAC30-50-226 to align the regulation with the new Addiction and Recovery Treatment Services program.

12VAC30-120-380. MCO responsibilities.

A. The MCO shall provide, at a minimum, all medically necessary covered services provided under the State Plan for Medical Assistance and further defined by written DMAS regulations, policies and instructions, except as otherwise modified or excluded in this part.

1. Nonemergency services provided by hospital emergency departments shall be covered by MCOs in accordance with rates negotiated between the MCOs and the hospital emergency departments.

2. Services that shall be provided outside the MCO network shall include, but are not limited to, those services identified and defined by the contract between DMAS and the MCO. Services reimbursed by DMAS include, ~~but shall not be limited to,~~ dental and orthodontic services for children up to age 21; for all others, dental services (as described in 12VAC30-50-190); school health services; community mental health services ~~(rehabilitative, targeted case management and the following substance abuse treatment services: emergency services (crisis); intensive outpatient services; day treatment services; substance abuse case management services; and opioid treatment services)~~ as defined in 12VAC30-50-228 and 12VAC30-50-491, (12VAC30-50-130 and 12VAC30-50-226); Early Intervention services provided pursuant to Part C of the Individuals with Disabilities Education Act (IDEA) of 2004 (as defined in 12VAC30-50-131 and 12VAC30-50-415); and long-term care services provided under the § 1915(c) home-based and community-based waivers including related transportation to such authorized waiver services.

3. The MCOs shall pay for emergency services and family planning services and supplies whether such services are provided inside or outside the MCO network.

B. EPSDT services shall be covered by the MCO and defined by the contract between DMAS and the MCO. The MCO shall have the authority to determine the provider of service for EPSDT screenings.

C. The MCOs shall report data to DMAS under the contract requirements, which may include data reports, report cards for members, and ad hoc quality studies performed by the MCO or third parties.

¹ <http://townhall.virginia.gov/L/ViewStage.cfm?stageid=7734>

D. Documentation requirements.

1. The MCO shall maintain records as required by federal and state law and regulation and by DMAS policy. The MCO shall furnish such required information to DMAS, the Attorney General of Virginia or his authorized representatives, or the State Medicaid Fraud Control Unit on request and in the form requested.

2. Each MCO shall have written policies regarding member rights and shall comply with any applicable federal and state laws that pertain to member rights and shall ensure that its staff and affiliated providers take those rights into account when furnishing services to members in accordance with 42 CFR 438.100.

E. The MCO shall ensure that the health care provided to its members meets all applicable federal and state mandates, community standards for quality, and standards developed pursuant to the DMAS managed care quality program.

F. The MCOs shall promptly provide or arrange for the provision of all required services as specified in the contract between the Commonwealth and the MCO. Medical evaluations shall be available within 48 hours for urgent care and within 30 calendar days for routine care. On-call clinicians shall be available 24 hours per day, seven days per week.

G. The MCOs shall meet standards specified by DMAS for sufficiency of provider networks as specified in the contract between the Commonwealth and the MCO.

H. Each MCO and its subcontractors shall have in place, and follow, written policies and procedures for processing requests for initial and continuing authorizations of service. Each MCO and its subcontractors shall ensure that any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested, be made by a health care professional who has appropriate clinical expertise in treating the member's condition or disease. Each MCO and its subcontractors shall have in effect mechanisms to ensure consistent application of review criteria for authorization decisions and shall consult with the requesting provider when appropriate.

I. In accordance with 42 CFR 447.50 through 42 CFR 447.60, MCOs shall not impose any cost sharing obligations on members except as set forth in 12VAC30-20-150 and 12VAC30-20-160.

J. An MCO may not prohibit, or otherwise restrict, a health care professional acting within the lawful scope of practice, from advising or advocating on behalf of a member who is his patient in accordance with 42 CFR 438.102.

K. An MCO that would otherwise be required to reimburse for or provide coverage of a counseling or referral service is not required to do so if the MCO objects to the service on moral or religious grounds and furnishes information about

the service it does not cover in accordance with 42 CFR 438.102.

VA.R. Doc. No. R17-5009; Filed February 23, 2017, 8:47 a.m.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Fast-Track Regulation

Title of Regulation: 12VAC35-240. Eugenics Sterilization Compensation Program (adding 12VAC35-240-10 through 12VAC35-240-70).

Statutory Authority: § 37.2-203 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 19, 2017.

Effective Date: May 4, 2017.

Agency Contact: Ruth Anne Walker, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, 11th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 786-8623, or email ruthanne.walker@dbhds.virginia.gov.

Basis: Section 37.2-203 of the Code of Virginia authorizes the State Board of Behavioral Health and Developmental Services to adopt regulations necessary to carry out the provisions of Title 37.2 (§ 37.2-100 et seq.) of the Code of Virginia and other laws of the Commonwealth administered by the Commissioner of the Department of Behavioral Health and Developmental Services or the department. Chapter 665 of the 2015 Acts of Assembly (the Appropriation Act) enacted the Commonwealth's Compensation for Victims of the 1924 Eugenical Sterilization Program and authorized regulations to implement of the chapter.

Purpose: The regulation describes appropriate documentation to verify the claims of and to compensate individuals who were victims of forced sterilization pursuant to the Virginia Eugenical Sterilization Act ("Act") and who were living as of February 1, 2015 (up to \$25,000 per individual). The regulation also provides an administrative process for handling all claims. This regulation does not impact the health, safety, or welfare of citizens, except to compensate individuals who were involuntarily sterilized according the Act.

Rationale for Using Fast-Track Rulemaking Process: Since the current regulations were approved as emergency by the Governor on November 20, 2015, there have been no complaints filed by the public about the administrative structure for compensation.

Substance: The substantive changes are intended to make the process more flexible for those claimants who clearly are known to the agency or organization that provides care, but due to certain life circumstances, such as extended residence in a facility or lack of family documentation, may not have typical forms of identification. Also, if an individual has an

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outdated photo identification card but is no longer physically able to obtain one, the regulation allows the department reasonable flexibility to consider other documentation to confirm identity.

The changes from the emergency regulation currently in effect to this permanent regulation:

- Clarify appropriate documentation for proof of identity, including adding documents that are acceptable and language for flexibility regarding the availability of identification with both a photographic image and a signature. For example, identification bearing a photographic image is 'preferred'; identification from U.S. territories, a U.S. military dependent's card, or a Native American tribal document is acceptable.
- Clarify the need to document proof of any name change and list the following as acceptable proof: marriage license, divorce decree, death certificate, adoption record, court order approving a legal change of name, or other legal document indicating an official name change.
- Give the department discretion to deem other documents than those listed elsewhere in the regulation as sufficient to prove a claimant's identity.
- Allow the department to use a cross match with a federal or state government data system to establish a claimant's identity.

Issues: The changes are intended to assist victims of past action by the Commonwealth under the Act. There is no burden on private citizens or businesses due to these provisions, or any advantage or disadvantage. There is no adverse impact to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 665 of the 2015 Acts of the Assembly, the Board of Behavioral Health and Development Services (Board) proposes to promulgate a replacement for an emergency regulation that is set to expire May 20, 2017. This regulation, and the emergency regulation it replaces, set rules for the compensation of individuals involuntarily sterilized under the Virginia Eugenical Sterilization Act of 1924 (repealed in 1974).

Result of Analysis. The benefits of this proposed regulatory action outweigh its costs.

Estimated Economic Impact. In 1924, Virginia passed a law that allowed individuals who had been committed to state institutions,¹ and who were deemed mentally ill or mentally defective, to be forcibly sterilized. In 1974, the Virginia Eugenical Sterilization Act was repealed and in 1979, other statutory language that contained authorization for most involuntary sterilization was also repealed.² Between 1924 and 1979, it is estimated that between 7,325 and 8,300 individuals were forcibly sterilized in Virginia.³

In 2015, the General Assembly approved a compensation program for victims of Virginia's involuntary sterilization program who were living as of February 1, 2015 (or their estates if they were living on that date but subsequently died before their claim could be filed or processed). The General Assembly approved compensation up to \$25,000 per individual⁴ and directed the Department of Behavioral Health and Developmental Services (DBHDS) to establish a process and standards under which claims would be considered and paid. The General Assembly also authorized the Board to promulgate an emergency regulation containing the process and standards for considering claims. The Board promulgated an emergency regulation which became effective on November 20, 2015. This proposed regulation will replace the emergency regulation that is set to expire May 20, 2017.

This proposed regulation, and the emergency regulation that it replaces, requires that claimants who meet the legislative criteria submit a notarized claim application along with proof of identity and proof that they were involuntarily sterilized pursuant to the Virginia Eugenical Sterilization Act. The proposed regulation, and the emergency regulation it replaces, also set standards for proof of name change (if the name on the proof of identity is different than the name on the records of involuntary sterilization) and documentation that lawfully authorized representatives of claimants must submit to prove lawful authorization. The proposed regulation additionally sets parameters for a screening process to ensure that applications are complete and all documentation has been submitted, sets the process for appointing the review panel and for application reconsideration and sets the rules under which compensation will be dispersed. This proposed regulation will benefit victims of forced sterilization in the Commonwealth by partially compensating them for the losses they would have incurred on account of being unable to bear or father children. Victims will also receive a non-monetary benefit from this program as the monetary compensation is also an acknowledgment of the harm they wrongly suffered. The Commonwealth, and therefore the taxpayers of Virginia, will incur costs of up to \$25,000 for each claim paid. The benefits that will accrue to claimants likely outweigh these costs.

Businesses and Entities Affected. This proposed regulation affects all individuals who were involuntarily sterilized under the Virginia Eugenical Sterilization Act and who were still living on February 1, 2015. Although estimates exist for how many individuals were likely sterilized, no good estimates are available for the number of individuals who were involuntarily sterilized and were still living on February 1, 2015. Board staff reports that 28 individuals have filed claims since the emergency regulations became effective November 20, 2015.

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

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

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

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

Small Businesses:

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

Costs and Other Effects. No small businesses are likely to be affected by this proposed regulation.

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

Adverse Impacts:

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

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

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

¹ In 1924 these institutions included 1) the Virginia State Colony for Epileptics and Feeble-minded in Lynchburg, Virginia (now the Central Virginia Training Center), 2) Western State Hospital in Staunton Virginia, 3) Central State Mental Hospital in Petersburg, Virginia, 4) Eastern State Hospital in Williamsburg, Virginia and 5) Southwestern State Hospital in Marion, Virginia. See <https://www.uvm.edu/~lkaelber/eugenics/VA/VA.html> for more details.

² Compulsory sterilization is still allowed but in much narrower circumstances and with much more stringent patient protections. Now, a compulsory sterilization patient must be unable to give informed consent, in need of contraception, unable to use any other form of contraception, and permanently unable to raise a child.

³ <https://www.uvm.edu/~lkaelber/eugenics/VA/VA.html>

⁴ The General Assembly appropriated \$1.2 million dollars between the fiscal year 2016 and fiscal year 2017 budgets to pay claims under this program. If claims exceed that amount, DBHDS will pay claims in the order they were submitted, retain claims that are not paid and request an additional appropriation to pay them.

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

Summary:

Pursuant to Item 307 T of Chapter 665 of the 2015 Acts of Assembly, which establishes compensation for individuals who were involuntarily sterilized pursuant to the 1924

Virginia Eugenic Sterilization Act and who are living as of February 1, 2015, the regulation establishes (i) eligibility criteria, (ii) submission of claims, (iii) compensation, (iv) appropriate documentation for verification, and (v) an administrative process for handling claims.

CHAPTER 240
EUGENICS STERILIZATION COMPENSATION
PROGRAM

12VAC35-240-10. Definitions.

"Act" means Chapter 394 of the 1924 Acts of Assembly passed by the Virginia General Assembly on March 20, 1924, known as the Virginia Eugenic Sterilization Act, which provided for the sexual sterilization of individuals admitted to state institutions in certain cases.

"Application" means the Application Form for Filing a Claim for Compensation for Victims of the 1924 Eugenic Sterilization Act made available by the Department of Behavioral Health and Developmental Services.

"Claimant" means any person claiming eligibility who applies for compensation pursuant to this chapter.

"Commissioner" means the Commissioner of the Virginia Department of Behavioral Health and Developmental Services.

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

"Lawfully authorized representative" means (i) a person who is permitted by law or regulation to act on behalf of an individual or (ii) a personal representative of an estate, as defined in § 64.2-100 of the Code of Virginia, of an individual who died on or after February 1, 2015.

"Review panel" means a minimum of three department staff members who are appointed by the commissioner to make final determinations that applications for claims deemed complete pursuant to this chapter meet the criteria for compensation.

"Sterilization" means a medical procedure or form of birth control that leaves a male or female unable to reproduce or conceive children and was performed pursuant to the Act.

12VAC35-240-20. Eligibility criteria.

An individual or his lawfully authorized representative is eligible to request compensation under this chapter if the individual was:

1. Involuntarily sterilized pursuant to the Act;
2. Sterilized while a patient at Eastern State Hospital; Western State Hospital; Central State Hospital; Southwestern Virginia Mental Health Institute, formerly known as Southwestern State Hospital; or the Central Virginia Training Center, formerly known as the State Colony for Epileptics and Feeble-Minded; and
3. Living as of February 1, 2015.

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12VAC35-240-30. Claims for compensation.

A. Any individual who meets the eligibility criteria or his lawfully authorized representative, if applicable, may submit a claim for compensation.

B. Claimants shall submit applications with proof of identity and proof that the eligibility criteria are met. When an application is submitted for an individual who died on or after February 1, 2015, the application shall include a certified copy of a state-issued death certificate.

C. Claimants shall submit required documentation for proof of identity.

1. To establish proof of identity, a copy of one or more of the following documents preferably bearing a photographic image of the claimant's face and signature shall be submitted with the application form:

- a. A state-issued or United States territory-issued driver's license.
- b. A government-issued identification card.
- c. A United States passport.
- d. A foreign passport with a United States visa, Form I-94 Arrival/Departure Record, or Form I-94W Nonimmigrant Visa Waiver Arrival/Departure Record.
- e. A United States military card, active or retired member.
- f. A United States military dependent's identification card.
- g. A Native American tribal document issued by a tribe recognized by the United States government.

2. If a claimant's current legal name is different from the name at the time of sterilization, the claimant shall provide documentation to prove that he is the same individual who is named on the sterilization records. Proof may be:

- a. A marriage license;
- b. A divorce decree;
- c. A death certificate;
- d. An adoption record;
- e. A court order approving a legal change of name; or
- f. Other legal document indicating an official name change.

3. Claimants may submit additional documents to establish proof of identity. The department may deem in its discretion that one or more documents other than those listed in subdivisions 1 and 2 of this subsection are sufficient to prove a claimant's identity with satisfactory reliability.

4. At the department's discretion, a crossmatch with a federal or state government data system may be used to establish a claimant's identity.

D. To establish proof of involuntary sterilization pursuant to the Act, a copy of one or more of the following shall be submitted with the application:

1. Letter notifying a parent, guardian, or a lawfully authorized representative that the involuntary sterilization procedure was performed on the claimant.
2. Progress notes from the claimant's hospital record documenting that the involuntary sterilization procedure was performed on the claimant.
3. Case summary from the claimant's hospital record documenting that the involuntary sterilization procedure was performed on the claimant.
4. Physician's order for involuntary sterilization from the claimant's hospital record.
5. Operative record of involuntary sterilization from the claimant's hospital record.
6. Involuntary sterilization record summary from the claimant's hospital record.
7. Nurses' notes documenting post-operative care was provided to the individual claimant after involuntary sterilization of the claimant.
8. Other documents that show that the involuntary sterilization procedure was performed on the claimant pursuant to the Act.

E. Any person submitting a claim on behalf of a claimant shall provide documentation that he is the claimant's lawfully authorized representative.

F. All applications shall be notarized by a notary public.

G. The department shall not accept more than one application in a single mailing.

H. Applications shall be submitted to the department through the United States Postal Service. The department shall not accept any application that is submitted in any other manner including by any shipping company, electronically, delivered by courier service, or in person.

I. The department shall send a notice that the application was received to the claimant or his lawfully authorized representative in writing within seven calendar days of receipt of the application.

12VAC35-240-40. Screening.

A. The department shall screen an application and accompanying documentation for completeness according to the date and time the application is received. An application will be considered complete when all required documents have been received by the department.

B. If the department determines an application is incomplete, it shall notify the claimant or his lawfully authorized representative that the application is not complete in writing by certified mail no later than seven calendar days following the screening of the application. The notification

shall specify the additional documentation required to complete the application.

C. If the application is incomplete, the claimant shall have 60 calendar days from the receipt of the notification to submit the required documentation. If the required documentation is not received within 60 calendar days, the application will be closed, and the claimant will be required to submit a new application. The department shall notify the claimant or his lawfully authorized representative in writing that the current application is closed and that a new application may be submitted should the required documentation become available.

D. No application shall be considered by the review panel or otherwise acted on until the department determines it to be complete with all required documentation. Completed applications shall be submitted to the review panel for consideration.

12VAC35-240-50. Review panel.

A. The commissioner shall appoint a review panel to consider applications and verify claimants' eligibility for compensation pursuant to this chapter.

B. The review panel shall consider completed applications in the order in which the applications are determined to be complete according to date and time of receipt of all required documentation.

C. The claimant or his lawfully authorized representative shall be notified of the decision of the review panel in writing by certified mail within seven calendar days of the decision.

12VAC35-240-60. Requests for reconsideration.

A. Any claimant or his lawfully authorized representative who disagrees with the determination of the department's review panel may submit a written request for reconsideration to the commissioner or his designee within 30 calendar days of the date of the written notice of denial of a claim pursuant to this chapter.

B. The commissioner or his designee shall provide an opportunity for the claimant or his lawfully authorized representative to submit for review any additional information or reasons why his claim should be approved as requested.

C. The commissioner or his designee after reviewing all submitted materials shall render a written decision on the request for reconsideration within 30 calendar days of the receipt of the request and shall notify the claimant or his lawfully authorized representative in writing. The commissioner's decision shall be binding.

D. Claimants may obtain further review of the decision in accordance with the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

12VAC35-240-70. Compensation.

A. Compensation per verified claim shall be \$25,000 and shall be contingent on the availability of funding. All verified

claims shall be compensated in the order in which they are verified.

B. Should funding be exhausted prior to the payment of all verified claims, the department shall continue to accept and review applications. Claims verified after funding has been exhausted shall be maintained by the department according to the date and time the claim's eligibility was verified. Any such claim shall not be denied but the claimant shall be notified in writing that the eligibility of his claim for compensation has been verified, that funding has been exhausted, and that his application will be maintained by the department.

C. Should additional program funding become available, the department shall first compensate claims in the order in which they were verified and maintained by the department pursuant to subsection B of this section.

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 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 (12VAC35-240)

[Application for Filing a Claim for Compensation for Victims of the 1924 Eugenical Sterilization Act, VESC Form 1004 \(eff. 3/2017\)](#)

VA.R. Doc. No. R16-4471; Filed February 27, 2017, 8:40 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: **14VAC5-45. Rules Governing Suitability in Annuity Transactions (amending 14VAC5-45-10 through 14VAC5-45-40; adding 14VAC5-45-45, 14VAC5-45-47).**

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

Effective Date: April 1, 2017.

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Agency Contact: Raquel C. Pino, Policy Advisor, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9873, or email raquel.pino@scc.virginia.gov.

Summary:

The amendments incorporate provisions contained in the National Association of Insurance Commissioners' Suitability in Annuity Transactions Model Regulation, including (i) a new definition for suitability information, (ii) additional requirements for providing information to consumers regarding the annuity, (iii) a requirement that agents complete a one-time four-credit continuing education course on annuity products, and (iv) a five-year recordkeeping retention requirement.

AT RICHMOND, FEBRUARY 17, 2017

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2016-00267

Ex Parte: In the matter of
Amending the Rules Governing
Suitability in Annuity Transactions

ORDER ADOPTING REVISIONS TO RULES

On November 18, 2016, the State Corporation Commission ("Commission") issued an Order to Take Notice ("Order") to consider revisions to the Rules Governing Suitability in Annuity Transactions set forth in Chapter 45 of Title 14 of the Virginia Administrative Code ("Rules").

These amendments, which are authorized by § 38.2-3117 C of the Code of Virginia, were proposed by the Bureau of Insurance ("Bureau") to incorporate provisions contained in the National Association of Insurance Commissioners' Suitability in Annuity Transactions Model Regulation ("Model Regulation"). These amendments include a new definition for suitability information, additional requirements for providing information to consumers regarding the annuity, a requirement that agents complete a one-time four-credit continuing education course on annuity products, and a five-year recordkeeping retention requirement.

The Order required that on or before January 23, 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 23, 2017. Thirteen comments were filed, including comments from the Insured Retirement Institute and the American Council of Life Insurers. These comments requested that certain agents be exempt from the one-time four-credit continuing education requirement, and that the effective date of the regulation be changed to July 1, 2017. In addition, commenters sought

clarification on the applicability of the Rules to all annuity products, the applicability of certain Financial Industry Regulatory Authority ("FINRA") requirements, and suggested that the definitions of "replacement" and "annuity" be revised to mirror the definitions contained in the Model Regulation.

The Bureau considered the comments filed and responded to them in its Response to Comments, which the Bureau filed with the Clerk on February 10, 2017. In its Response to Comments, the Bureau recommended that subsection H of 14 VAC 5-45-40 be revised to better align with the Model Regulation and to remove language that inadvertently could be read to require all agents to comply with certain FINRA requirements. The Bureau recommended that the Commission adopt the proposed regulations as modified.

NOW THE COMMISSION, having considered the proposed amendments, the comments filed, and the Bureau's Response to Comments, 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 Suitability in Annuity Transactions at Chapter 45 of Title 14 of the Virginia Administrative Code, which amend the Rules at 14 VAC 5-45-10 through 14 VAC 5-45-40, and add new Rules at 14 VAC 5-45-45 and 14 VAC 5-45-47, and which are attached hereto and made a part hereof, are hereby ADOPTED, to be effective April 1, 2017.

(2) The Bureau forthwith shall give notice of the adoption of the amendments to the Rules to all companies, agencies, and agents licensed by the Commission to sell annuities or variable annuities in Virginia 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 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; 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.

14VAC5-45-10. Purpose and scope.

The purpose of this chapter is to set forth rules and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. This chapter shall apply to any recommendation to purchase ~~or~~, exchange, or replace an annuity made to a consumer by an agent, or insurer where no agent is involved, that results in the purchase ~~or~~, exchange, or replacement recommended.

14VAC5-45-20. Definitions.

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

"Agent" or "insurance agent" means an individual or business entity that sells, solicits, or negotiates contracts of insurance or annuity in this Commonwealth.

"Annuity" means a fixed, variable, or modified guaranteed annuity that is individually solicited, whether the product is classified as an individual annuity or group annuity.

"Commission" means the State Corporation Commission.

"Continuing education credit" or "CE credit" means one continuing education credit as defined in § 38.2-1867 of the Code of Virginia.

"Continuing education provider" or "CE provider" means an individual or entity that is approved to offer continuing education courses pursuant to § 38.2-1867 of the Code of Virginia.

"FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

"Insurer" means an insurance company required to be licensed under the laws of this Commonwealth to provide insurance products, including annuities.

"Recommendation" means advice provided by an agent, or an insurer where no agent is involved, to an individual consumer that results in a purchase ~~or~~, exchange, or replacement of an annuity in accordance with that advice.

"Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing agent, or to the proposing insurer if there is no agent, that by reason of the transaction, an existing policy or contract, has been or is to be:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;
2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
3. Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
4. Reissued with any reduction in cash value; or

5. Used in a financed purchase.

"Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

1. Age;
2. Annual income;
3. Financial situation and needs, including the financial resources used for the funding of the annuity;
4. Financial experience;
5. Financial objectives;
6. Intended use of the annuity;
7. Financial time horizon;
8. Existing assets, including investment and life insurance holdings;
9. Liquidity needs;
10. Liquid net worth;
11. Risk tolerance; and
12. Tax status.

14VAC5-45-30. Exemptions.

Unless otherwise specifically included, this chapter shall not apply to ~~recommendations~~ transactions involving:

1. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this chapter;
2. Contracts used to fund:
 - a. An employee pension or welfare benefit plan that is covered by the Employee Retirement Income Security Act of 1974 (29 USC § 1001 et seq.);
 - b. A plan described by 26 USC §§ § 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code, if established or maintained by an employer;
 - c. A government or church plan defined in 26 USC § 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under 26 USC § 457 of the Internal Revenue Code;
 - d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
 - e. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
 - f. Preneed funeral contracts as defined in § 54.1-2800 of the Code of Virginia.

14VAC5-45-40. Duties of insurers and agents.

A. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the agent, or the insurer where no agent is involved, shall have

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reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his investments and other insurance products and as to his financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

1. The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity; mortality and expense fees; investment advisory fees; potential charges for and features of riders; limitations on interest returns; insurance and investment components; and market risk;

2. The consumer would benefit from certain features of the annuity, such as tax deferred growth, annuitization, or death or living benefit;

3. The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on the consumer's suitability information; and

4. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, including taking into consideration whether:

a. The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living, or other contractual benefits), or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

b. The consumer would benefit from product enhancements and improvements; and

c. The consumer has had another annuity exchange or replacement, and, in particular, an exchange or replacement within the preceding 36 months.

B. Prior to the execution of a purchase or exchange, or replacement of an annuity resulting from a recommendation, an agent, or insurer where no agent is involved, shall make reasonable efforts to obtain the consumer's suitability information concerning:

1. The consumer's financial status;

2. The consumer's tax status;

3. The consumer's investment objectives; and

4. Other information used or considered to be reasonable by the agent, or the insurer where no agent is involved, in making recommendations to the consumer.

C. Except as permitted under subsection D of this section, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the

annuity is suitable based on the consumer's suitability information.

D. 1. Except as provided in subdivision 2 of this subsection, neither an agent, nor an insurer where no agent is involved, shall have any obligation to a consumer under subsection A or C of this section related to any recommendation annuity transaction if a consumer:

a. Refuses No recommendation is made;

b. A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

c. A consumer refuses to provide relevant suitability information requested by the insurer or agent and the annuity transaction is not recommended;

~~b. Decides~~ d. A consumer decides to enter into an insurance annuity transaction that is not based on a recommendation of the insurer or agent; or

~~e. Fails~~ e. A consumer fails to provide complete or accurate information.

2. An insurer or agent's recommendation subject to subdivision 1 of this subsection shall be reasonable under all the circumstances actually known to the insurer or agent at the time of the recommendation.

E. An agent, or where no agent is involved the responsible insurer representative, shall at the time of sale:

1. Make a record of any recommendation subject to subsection A of this section;

2. Obtain a customer signed statement, documenting a customer's refusal to provide suitability information, if any; and

3. Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the agent's or insurer's recommendation.

~~D. F.~~ 1. An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this chapter is established and maintained by complying with subdivisions 3 and 4 of this subsection; or shall establish and maintain such a system, including, but not limited to the following:

a. Maintaining written procedures; and The insurer shall maintain reasonable procedures to inform its agents of the requirements of this chapter and shall incorporate the requirements of this chapter into relevant agent training manuals;

b. Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this chapter. The insurer shall establish standards for agent product training and shall maintain reasonable procedures to require its agents to comply with the requirements of 14VAC5-45-45;

c. The insurer shall provide product-specific training and training materials that explain all material features of its annuity products to its agents;

d. The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

e. The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters, and programs of internal monitoring. Nothing in this subdivision prevents an insurer from complying with this subdivision by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and

f. The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

2. An agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its agents that is reasonably designed to achieve compliance with this chapter; or shall establish and maintain such a system, including, but not limited to:

- a. Maintaining written procedures; and
- b. Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this chapter.

3. An insurer may contract with a third party, including an agent or independent agency, to establish and maintain a system of supervision as required by subdivision 1 of this subsection with respect to agents under contract with or employed by the third party.

4. An insurer shall make reasonable inquiry to assure that the third party contracting under subdivision 3 of this subsection is performing the functions required under subdivision 1 of this subsection and shall take action that is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

a. The insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

b. The insurer, based on reasonable selection criteria, periodically selects third parties contracting under subdivision 3 of this subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

5. An insurer that contracts with a third party pursuant to subdivision 3 of this subsection and that complies with the requirements to supervise in subdivision 4 of this subsection shall have fulfilled its responsibilities under subdivision 1 of this subsection.

6. An insurer, agent, or independent agency is not required by ~~subdivisions~~ subdivision 1 or 2 of this subsection to:

- a. Review, or provide for review of, all agent-solicited transactions; or
- b. Include in its system of supervision an agent's recommendations to consumers of products other than the annuities offered by the insurer, agent, or independent agency.

7. An agent or independent agency contracting with an insurer pursuant to subdivision 3 of this subsection, when requested by the insurer pursuant to subdivision 4 of this subsection, shall promptly give a certification as described in subdivision 4 or give a clear statement that it is unable to meet the certification criteria.

8. No person may provide a certification under subdivision 4 a of this subsection unless:

- a. The person is a senior manager with responsibility for the delegated functions; and
- b. The person has a reasonable basis for making the certification.

G. An agent shall not dissuade or attempt to dissuade a consumer from:

- 1. Truthfully responding to an insurer's request for confirmation of suitability information;
- 2. Filing a complaint; or
- 3. Cooperating with the investigation of a complaint.

H. [~~An agent shall comply with the following FINRA requirements: 1.~~] Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this chapter [∴:

- 1.] This subsection applies to FINRA broker-dealer sales of annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the commission's ability to

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enforce (including investigate) the provisions of this chapter.

2. For subdivision 1 of this subsection to apply, an insurer shall:

a. Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

b. Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

E. I. Compliance with the National Association of Securities Dealers Conduct Rules (http://nasd.complinet.com/nasd/display/display.html?rbid=1489&element_id=1159000466) FINRA Rule 2111 (http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=9859) pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the commission's ability to enforce the provisions of this chapter.

14VAC5-45-45. Agent training.

A. An agent shall not solicit the sale of an annuity product unless the agent has adequate knowledge of the product to recommend the annuity and the agent is in compliance with the insurer's standards for product training. An agent may rely on insurer-provided product specific training standards and materials to comply with this subsection.

B. Training requirements are as follows:

1. An agent who engages in the sale of annuity products shall complete a one-time four-credit training course approved as continuing education by the Insurance Continuing Education Board in accordance with § 38.2-1867 of the Code of Virginia and provided by the Insurance Continuing Education Board approved education provider.

2. Agents who hold a life insurance line of authority and who desire to sell annuities shall complete the requirements of this subsection by January 1, 2018. Individuals who obtain a life insurance line of authority on or after January 1, 2018, may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.

3. The minimum length of the training required under this subsection shall be sufficient to qualify for at least four CE credits, but may be longer.

4. The training required under this subsection shall include information on the following topics:

a. The types of annuities and various classifications of annuities;

b. Identification of the parties to an annuity;

c. How product specific annuity contract features affect consumers;

d. The application of income taxation of qualified and nonqualified annuities;

e. The primary uses of annuities; and

f. Appropriate sales practices and replacement and disclosure requirements.

5. Providers of courses intended to comply with this subsection shall cover all topics listed in subdivision 4 of this subsection and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to those in subdivision 4 of this subsection.

6. A provider of an annuity training course intended to comply with this subsection shall register as a CE provider in this Commonwealth and comply with the rules and guidelines applicable to agent continuing education courses as set forth in § 38.2-1867 of the Code of Virginia.

7. Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with § 38.2-1867 of the Code of Virginia.

8. Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with § 38.2-1867 of the Code of Virginia.

9. The satisfaction of the training requirements of another state that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this Commonwealth.

10. An insurer shall verify that an agent has completed the annuity training course required under this subsection before allowing the agent to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commission-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

14VAC5-45-47. Recordkeeping.

A. Insurers, agencies, and agents shall maintain or be able to make available to the commission records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for five years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an agent.

B. Records required to be maintained by this chapter may be maintained in paper, photographic, micro-process, magnetic,

mechanical, or electronic media or by any process that accurately reproduces the actual document.

VA.R. Doc. No. R17-4899; Filed February 21, 2017, 2:05 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulation have been filed by the Common Interest Community Board. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form 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.

Title of Regulation: **18VAC48-60. Common Interest Community Board Management Information Fund Regulations.**

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.virginia.gov.

FORMS (18VAC48-60)

~~Community Association Registration Application, A492-0550REG-v1 (eff. 9/2013)~~

~~Community Association Annual Report, A492-0550ANRPT-v2int (eff. 3/2015)~~

[Community Association Registration Application, A492-0550REG-v2 \(eff. 3/2017\)](#)

[Community Association Annual Report, A492-0550ANRPT-v4 \(eff. 3/2017\)](#)

[Community Association Governing Board Change Form, A492-0550GBCHG-v1 \(eff. 9/2013\)](#)

[Community Association Point of Contact/Management Change Form, A492-0550POCCHG-v1 \(eff. 9/2013\)](#)

VA.R. Doc. No. R17-5045; Filed February 24, 2017, 12:12 p.m.

Final Regulation

Title of Regulation: **18VAC48-70. Common Interest Community Ombudsman Regulations (amending 18VAC48-70-40).**

Statutory Authority: § 55-530 of the Code of Virginia.

Effective Date: May 1, 2017.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.virginia.gov.

Summary:

The amendments clarify that new condominium, cooperative, and property owners associations must establish and adopt complaint procedures within 90 days of filing with the Common Interest Community Board, but that existing associations must have complaint procedures in place when they register with the board.

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

18VAC48-70-40. Establishment and adoption of written association complaint procedure.

~~A. Associations registered with the board before July 1, 2012, shall establish and adopt an association complaint procedure within 90 days of July 1, 2012.~~

~~B. A. Associations filing an initial application for registration pursuant to § 55-79.93:1, 55-504.1, or 55-516.1 of the Code of Virginia must certify that an association complaint procedure has been established and adopted at the date of registering or will be established and adopted by the governing board within 90 days of such filing registering with the board.~~

~~B. An association that has been delinquent in registering the association and filing its required annual reports is still required to have an established and adopted written association complaint procedure. At the time such an association files an application for registration, it must certify that an association complaint procedure has been established and adopted by the governing board.~~

C. The association shall certify with each annual report filing that the association complaint procedure has been adopted and is in effect.

VA.R. Doc. No. R16-4523; Filed February 24, 2017, 12:12 p.m.

BOARD FOR CONTRACTORS

Withdrawal of Proposed Regulation

Title of Regulation: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-10, 18VAC50-22-40, 18VAC50-22-50, 18VAC50-22-60, 18VAC50-22-220, 18VAC50-22-230, 18VAC50-22-310).**

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

The Board of Contractors has WITHDRAWN the proposed regulatory action for 18VAC50-22, Board for Contractors Regulations, which was published in [32:22 VA.R. 2970-2978 June 27, 2016](#). Due to anticipated legislative action resulting from the 2017 Session of the General Assembly, including a statutory amendment to allow contractor applicants the option to demonstrate financial integrity by submitting a surety bond (Senate Bill 1113), several regulatory proposals in this action may no longer be necessary. A new action will be submitted based on revised data at an appropriate time as warranted.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA

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23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractors@dpor.virginia.gov.

VA.R. Doc. No. R15-4414; Filed February 16, 2017, 4:27 p.m.

Withdrawal of Proposed Regulation

Title of Regulation: **18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-20, 18VAC50-30-30, 18VAC50-30-40).**

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

The Board of Contractors has WITHDRAWN the proposed regulatory action for 18VAC50-30, Board for Contractors Regulations, which was published in [32:22 VA.R. 2978-2983 June 27, 2016](#). Due to anticipated legislative action resulting from the 2017 Session of the General Assembly, including a statutory amendment to allow contractor applicants the option to demonstrate financial integrity by submitting a surety bond (Senate Bill 1113), several regulatory proposals in this action may no longer be necessary. A new action will be submitted based on revised data at an appropriate time as warranted.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractors@dpor.virginia.gov.

VA.R. Doc. No. R15-4415; Filed February 16, 2017, 4:28 p.m.

BOARD OF PHARMACY

Fast-Track Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-90, 18VAC110-20-106).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 19, 2017.

Effective Date: May 5, 2017.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Pharmacy to promulgate regulations to administer the regulatory system with a specific mandate enacted by Chapter 82 of the 2016 Acts of Assembly to include provisions for the satisfaction of board-required continuing education through the delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services.

Purpose: The purpose of the amended regulation is compliance with the mandate of the General Assembly and to

provide an incentive for licensees to volunteer professional services to free clinics or public health centers. While a licensee can satisfy up to two hours of continuing education with six hours of volunteer service, he is still required to have 13 hours of approved continuing education necessary to acquire new knowledge and skills. For pharmacy technicians, one hour of continuing education may be credited for three hours of providing volunteer services. Therefore, public health is served by a potential increase in badly needed volunteer service for pharmacy services, but public safety is not sacrificed by eliminating most or all of the continuing education hours required for renewal.

Rationale for Using Fast-Track Rulemaking Process: The allowance of hours for volunteer service to be counted towards the continuing education requirement is a mandate of the General Assembly. A licensee is not required to provide volunteer service but may be credited with continuing education hours for doing so. The provisions are permissive and neither is controversial.

Substance: The board has adopted amended regulations to allow pharmacists to count up to two hours of the 15 hours required for annual renewal to be satisfied through delivery of pharmacy services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic. Pharmacy technicians are allowed to count up to one hour of continuing education for three hours of volunteer service.

Issues: The advantage to the public is the incentive given for pharmacists and pharmacy technicians to volunteer their services in exchange for credit towards meeting continuing education requirements. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 82 of the 2016 Acts of Assembly,¹ the Board of Pharmacy (Board) proposes to allow six hours of volunteer work to be substituted for up to two hours of continuing education annually for pharmacists and three hours of volunteer work to be substituted for up to one hour of continuing education annually for pharmacy technicians.

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

Estimated Economic Impact. Chapter 82 of the 2016 Acts of Assembly requires all health boards to promulgate regulations to accept volunteer work provided to low-income individuals through local health departments or free clinics in lieu of the required continuing education. Pursuant to the legislative mandate, the Board proposes to accept three hours of

volunteer work in satisfaction of one hour of continuing education from pharmacists and pharmacy technicians. The limit on the continuing education hours that can be satisfied by volunteer work is two hours for pharmacists and one hour for pharmacy technicians every year. Currently, pharmacists and pharmacy technicians are required respectively to take 15 and 5 hours of continuing education every year for annual renewal of their licenses and registrations.

The proposed change will allow affected practitioners to substitute volunteer work for continuing education. The educational value of volunteer services may vary depending on each person's experience. However, the proposed limits on the continuing education hours that can be gained through this method are a relatively small portion of the annually required hours.

Also, it is not clear whether the ratio of required three hours per continuing education hour is sufficient by itself to provide enough incentives to offer volunteer service. It appears easier for affected practitioners to spend one hour acquiring continuing education than to spend three hours providing free services. However, it is reasonable to expect that the additional incentive provided by the proposed regulation would lead to increased volunteer hours by convincing affected practitioners who are indecisive at the margin about providing such services. The proposed regulation will also help those practitioners who have already been providing volunteer services at the qualified locations by allowing them to earn continuing education credit for their charity work.

In any event, the proposed regulation allows substitution of volunteer work for continuing education, but does not mandate it. A practitioner choosing to do volunteer work in lieu of the continuing education reveals that he or she benefits more from doing so.

Businesses and Entities Affected. Currently, there are 14,210 pharmacists and 14,373 pharmacy technicians with current licenses and registrations in Virginia. According to data provided by the Virginia Employment Commission, there are 1,529 establishments in the industry category of the affected entities. All of the 1,529 establishments in that category satisfy the small business criteria. However, most of these establishments are chain stores owned by non-small businesses. The number of continuing education providers is not known.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. The proposed regulation may lead to a decrease in demand for continuing education services. However, the proposed limits on the continuing education hours that can be gained through this method is a relatively small portion of the annually required hours. In addition, the substitution of voluntary work for continuing education hours is voluntary and may not be exercised by all practitioners.

Effects on the Use and Value of Private Property. The potential impact on the asset value of continuing education providers is not known with certainty, but appears to be small.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

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

Costs and Other Effects. Most if not all of the pharmacy establishments are small businesses. However, most are owned by non-small businesses. The proposed amendments do not impose costs on them. Most providers of continuing education services are probably small businesses. The proposed regulation may decrease the demand for their services by a small amount.

Alternative Method that Minimizes Adverse Impact. There is no known alternative that minimizes the potential small adverse impact on providers of continuing education services while achieving the same goals.

Adverse Impacts:

Businesses. The proposed amendments do not have an adverse impact on non-small businesses.

Localities. The proposed amendments will not adversely affect localities.

Other Entities. The proposed amendments will not adversely affect other entities.

¹ <http://leg1.state.va.us/cgi-bin/legp504.exe?l61+ful+CHAP0082>

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

Summary:

Pursuant to Chapter 82 of the 2016 Acts of Assembly, the amendments allow pharmacists to substitute six hours of volunteer work for two hours of continuing education and pharmacy technicians to substitute three hours of volunteer work for one hour of continuing education annually.

18VAC110-20-90. Requirements for continuing education.

A. A pharmacist shall be required to have completed a minimum of 1.5 CEUs or 15 contact hours of continuing pharmacy education in an approved program for each annual renewal of licensure. CEUs or hours in excess of the number required for renewal may not be transferred or credited to another year.

B. A pharmacy education program approved for continuing pharmacy education is:

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1. One that is approved by the Accreditation Council for Pharmacy Education (ACPE);
2. One that is approved as a Category I Continuing Medical Education (CME) course, the primary focus of which is pharmacy, pharmacology, or drug therapy; or
3. One that is approved by the board in accordance with the provisions of 18VAC110-20-100.

C. The board may grant an extension pursuant to § 54.1-3314.1 E of the Code of Virginia. Any subsequent extension shall be granted only for good cause shown.

D. Up to two hours of the 15 hours required for annual renewal may be satisfied through delivery of pharmacy services as a pharmacist, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

~~D. E.~~ Pharmacists are required to attest to compliance with CE requirements in a manner approved by the board at the time of their annual license renewal. Following each renewal period, the board may conduct an audit of the immediate past two years' CE documents to verify compliance with requirements. Pharmacists are required to maintain, for two years following renewal, the original certificates documenting successful completion of CE, showing date and title of the CE program or activity, the number of CEUs or contact hours awarded, and a certifying signature or other certification of the approved provider. Pharmacists selected for audit must provide these original documents to the board by the deadline date specified by the board in the audit notice.

18VAC110-20-106. Requirements for continued competency.

A. A pharmacy technician shall be required to have completed a minimum of 0.5 CEUs or five contact hours of approved continuing education for each annual renewal of registration. Hours in excess of the number required for renewal may not be transferred or credited to another year.

B. An approved continuing education program shall meet the requirements as set forth in subsection B of 18VAC110-20-90 or subsection B of 18VAC110-20-100.

C. Upon written request of a pharmacy technician, the board may grant an extension of up to one year in order for the pharmacy technician to fulfill the continuing education requirements for the period of time in question. The granting of an extension shall not relieve the pharmacy technician from complying with current year requirements. Any subsequent extension shall be granted for good cause shown.

D. Up to one hour of the five hours required for annual renewal may be satisfied through delivery of pharmacy services as a pharmacy technician, without compensation, to low-income individuals receiving health services through a

local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

~~D. E.~~ Original certificates showing successful completion of continuing education programs shall be maintained by the pharmacy technician for a period of two years following the renewal of his registration. The pharmacy technician shall provide such original certificates to the board upon request in a manner to be determined by the board.

V.A.R. Doc. No. R17-4990; Filed February 20, 2017, 11:29 a.m.

BOARD OF PHYSICAL THERAPY

Fast-Track Regulation

Title of Regulation: 18VAC112-20. Regulations Governing the Practice of Physical Therapy (amending 18VAC112-20-131).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 19, 2017.

Effective Date: May 5, 2017.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4674, FAX (804) 527-4413, or email ptboard@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Physical Therapy to promulgate regulations to administer the regulatory system with a specific mandate enacted by Chapter 82 of the 2016 Acts of Assembly to include provisions for the satisfaction of board-required continuing education through the delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or free clinic organized in whole or primarily for the delivery of those health services.

Purpose: The purpose of the amended regulation is to comply with the mandate of the General Assembly and provide an incentive for licensees to volunteer professional services to free clinics or public health centers. While a licensee can satisfy two hours of Type 2 continuing education with two hours of volunteer service, he is still required to have 20 Type 1 hours of approved continuing education for physical therapists and 15 Type 1 hours of approved continuing education for physical therapist assistants necessary to acquire new knowledge and skills. Therefore, public health is served by a potential increase in badly needed volunteer service for health care, but public safety is not sacrificed by eliminating most or all of the continuing education hours required for renewal.

Rationale for Using Fast-Track Rulemaking Process: The allowance of hours for volunteer service to be counted towards the continuing education requirement is a mandate of the General Assembly. A licensee is not required to provide volunteer service but may be credited with continuing education hours for doing so. The provision is permissive and not controversial.

Substance: The board adopted amended regulations to allow physical therapists and physical therapist assistants to count two hours of the Type 2 hours allowed for renewal to be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services.

Issues: The advantage to the public is the incentive given for licensees to volunteer their services in exchange for credit towards meeting continuing education requirements. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 82 of the 2016 Acts of Assembly,¹ the Board of Physical Therapy (Board) proposes to allow two hours of volunteer work to be substituted for up to two hours of continuing education biennially for physical therapists and physical therapy assistants.

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

Estimated Economic Impact. Chapter 82 of the 2016 Acts of Assembly requires all health boards to promulgate regulations to accept volunteer work provided to low-income individuals through local health departments or free clinics in lieu of the required continuing education. Pursuant to the legislative mandate, the Board proposes to accept one hour of volunteer work in satisfaction of one hour of continuing education from physical therapists and physical therapy assistants. The limit on the continuing education hours that can be satisfied by volunteer work is two hours every two years. Currently, physical therapists and physical therapy assistants are required to take 30 hours of continuing education every two years for biennial renewal of their licenses.

The proposed change will allow affected practitioners to substitute volunteer work for continuing education. The educational value of volunteer services may vary depending on each person's experience. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the biennially required 30 hours.

Also, it is not clear whether the ratio of required one hour per continuing education hour is sufficient by itself to provide enough incentives to offer volunteer service. It appears easier

for practitioners to spend one hour acquiring continuing education than to spend one hour providing free services. However, it is reasonable to expect that the additional incentive provided by the proposed regulation would lead to increased volunteer hours by convincing practitioners who are indecisive at the margin about providing such services. The proposed regulation will also help those practitioners who have already been providing volunteer services at the qualified locations by allowing them to earn continuing education credit for their charity work.

In any event, the proposed regulation allows substitution of volunteer work for continuing education, but does not mandate it. A practitioner choosing to do volunteer work in lieu of the continuing education reveals that he or she benefits more from doing so.

Businesses and Entities Affected. Currently, there are 7,957 physical therapists and 3,178 physical therapy assistants licensed in Virginia. According to data provided by the Virginia Employment Commission, there are 898 establishments in the industry category of the affected entities that includes establishments of other health practitioners (e.g., offices of audiologists, pathologists, occupational therapists, etc.) not directly affected by the proposed regulation. All of the 898 establishments in that category satisfy the small business criteria. The number of continuing education providers is not known.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. The proposed regulation may lead to a decrease in demand for continuing education services. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the biennially required 30 hours. In addition, the substitution of voluntary work for continuing education hours is voluntary and may not be exercised by all practitioners.

Effects on the Use and Value of Private Property. The potential impact on the asset value of continuing education providers is not known with certainty, but appears to be small.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

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

Costs and Other Effects

All of the physical therapy establishments are small businesses. The proposed amendments do not impose costs on them. Most providers of continuing education services are probably small businesses as well. The proposed regulation

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may decrease the demand for their services by a small amount.

Alternative Method that Minimizes Adverse Impact

There is no known alternative that minimizes the potential small adverse impact on providers of continuing education services while achieving the same goals.

Adverse Impacts:

Businesses. The proposed amendments do not have an adverse impact on non-small businesses.

Localities. The proposed amendments will not adversely affect localities.

Other Entities. The proposed amendments will not adversely affect other entities.

¹ <http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0082>

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

Summary:

Pursuant to Chapter 82 of the 2016 Acts of Assembly, the amendments allow physical therapists and physical therapist assistants to substitute two hours of volunteer work for two hours of Type 2 continuing education annually.

18VAC112-20-131. Continued competency requirements for renewal of an active license.

A. In order to renew an active license biennially, a physical therapist or a physical therapist assistant shall complete at least 30 contact hours of continuing learning activities within the two years immediately preceding renewal. In choosing continuing learning activities or courses, the licensee shall consider the following: (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.

B. To document the required hours, the licensee shall maintain the Continued Competency Activity and Assessment Form that is provided by the board and that shall indicate completion of the following:

1. A minimum of 20 of the contact hours required for physical therapists and 15 of the contact hours required for physical therapist assistants shall be in Type 1 courses. For the purpose of this section, "course" means an organized program of study, classroom experience or similar educational experience that is directly related to the clinical practice of physical therapy and approved or provided by one of the following organizations or any of its components:

- a. The Virginia Physical Therapy Association;
- b. The American Physical Therapy Association;

c. Local, state or federal government agencies;

d. Regionally accredited colleges and universities;

e. Health care organizations accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation;

f. The American Medical Association - Category I Continuing Medical Education course; and

g. The National Athletic Trainers' Association.

2. No more than 10 of the contact hours required for physical therapists and 15 of the contact hours required for physical therapist assistants may be Type 2 activities or courses, which may or may not be offered by an approved organization but which shall be related to the clinical practice of physical therapy. Type 2 activities may include but not be limited to consultation with colleagues, independent study, and research or writing on subjects related to practice. Up to two of the Type 2 continuing education hours may be satisfied through delivery of physical therapy services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services.

3. Documentation of specialty certification by the American Physical Therapy Association may be provided as evidence of completion of continuing competency requirements for the biennium in which initial certification or recertification occurs.

4. Documentation of graduation from a transitional doctor of physical therapy program may be provided as evidence of completion of continuing competency requirements for the biennium in which the physical therapist was awarded the degree.

5. A physical therapist who can document that he has taken the PRT may receive 10 hours of Type 1 credit for the biennium in which the assessment tool was taken. A physical therapist who can document that he has met the standard of the PRT may receive 20 hours of Type 1 credit for the biennium in which the assessment tool was taken.

C. A licensee shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure by examination in Virginia.

D. The licensee shall retain his records on the completed form with all supporting documentation for a period of four years following the renewal of an active license.

E. The licensees selected in a random audit conducted by the board shall provide the completed Continued Competency Activity and Assessment Form and all supporting documentation within 30 days of receiving notification of the audit.

F. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

G. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

H. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

VA.R. Doc. No. R17-4962; Filed February 20, 2017, 11:32 a.m.

BOARD OF VETERINARY MEDICINE

Fast-Track Regulation

Title of Regulation: 18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (amending 18VAC150-20-70).

Statutory Authority: §§ 54.1-2400 and 54.1-3805.2 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 19, 2017.

Effective Date: May 5, 2017.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4468, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Veterinary Medicine to promulgate regulations to administer the regulatory system with a specific mandate enacted by Chapter 82 of the 2016 Acts of Assembly to include provisions for the satisfaction of board-required continuing education through the delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or free clinic organized in whole or primarily for the delivery of those health services.

Purpose: The purpose of the amended regulation is to comply with the mandate of the General Assembly and provide an incentive for licensees to volunteer professional services to free clinics or public health centers. While a licensee can satisfy up to two hours of continuing education with six hours of volunteer service, he is still required to have 13 hours of approved continuing education necessary to acquire new knowledge and skills. For veterinary technicians, one hour could be credited for volunteering with seven hours of continuing education still required. Therefore, public health is served by a potential increase in volunteer service for veterinary services (such as rabies clinics scheduled through the local health department), but public safety is not sacrificed by eliminating most or all of the continuing education hours required for renewal.

Rationale for Using Fast-Track Rulemaking Process: The allowance of hours for volunteer service to be counted towards the continuing education requirement is a mandate of the General Assembly. A licensee is not required to provide volunteer service but may be credited with continuing education hours for doing so. The provisions are permissive and neither is controversial.

Substance: The board adopted amended regulations to allow veterinarians to count up to two hours of the 15 hours required for annual renewal to be satisfied through delivery of veterinary services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. Veterinary technicians will be allowed to count up to one hour of the eight hours required for annual renewal of volunteer service. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

Issues: The advantage to the public is the incentive given for veterinarians and veterinary technicians to volunteer their services in exchange for credit towards meeting continuing education requirements. There are no disadvantages. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 82 of the 2016 Session of the General Assembly,¹ the Board of Veterinary Medicine (Board) proposes to allow six hours of volunteer work to be substituted for up to two hours of continuing education annually for veterinarians and three hours of volunteer work to be substituted for up to one hour of continuing education annually for veterinary technicians.

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

Estimated Economic Impact. Chapter 82 of the 2016 Session of the General Assembly requires all health boards to promulgate regulations to accept volunteer work provided to low-income individuals through local health departments or free clinics in lieu of the required continuing education. Pursuant to the legislative mandate, the Board proposes to accept three hours of volunteer work in satisfaction of one hour of continuing education from veterinarians and veterinary technicians. The limit on the continuing education hours that can be satisfied by volunteer work is two hours for veterinarians and one hour for veterinary technicians every year. Currently, veterinarians and veterinary technicians are required respectively to take 15 and 8 hours of continuing education every year for annual renewal of their licenses and registrations.

The proposed change will allow affected practitioners to substitute volunteer work for continuing education. The

Regulations

educational value of volunteer services may vary depending on each person's experience. However, the proposed limits on the continuing education hours that can be gained through this method are a relatively small portion of the annually required hours.

Also, it is not clear whether the ratio of required three hours per continuing education hour is sufficient by itself to provide enough incentives to offer volunteer service. It appears easier for affected practitioners to spend one hour acquiring continuing education than to spend three hours providing free services. However, it is reasonable to expect that the additional incentive provided by the proposed regulation would lead to increased volunteer hours by convincing affected practitioners who are indecisive at the margin about providing such services. The proposed regulation will also help those practitioners who have already been providing volunteer services at the qualified locations by allowing them to earn continuing education credit for their charity work.

In any event, the proposed regulation allows substitution of volunteer work for continuing education, but does not mandate it. A practitioner choosing to do volunteer work in lieu of the continuing education reveals that he or she benefits more from doing so.

Businesses and Entities Affected. Currently, there are 4,279 veterinarians and 2,073 veterinary technicians with current licenses in Virginia. According to data provided by the Virginia Employment Commission, there are 870 establishments in the industry category of the affected entities. All of the 870 establishments in that category satisfy the small business criteria. The number of continuing education providers is not known.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. The proposed regulation may lead to a decrease in demand for continuing education services. However, the proposed limits on the continuing education hours that can be gained through this method is a relatively small portion of the annually required hours. In addition, the substitution of voluntary work for continuing education hours is voluntary and may not be exercised by all practitioners.

Effects on the Use and Value of Private Property. The potential impact on the asset value of continuing education providers is not known with certainty, but appears to be small.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

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

Costs and Other Effects. All of the veterinary establishments are small businesses. The proposed amendments do not impose costs on them. Most providers of continuing education services are probably small businesses as well. The proposed regulation may decrease the demand for their services by a small amount.

Alternative Method that Minimizes Adverse Impact. There is no known alternative that minimizes the potential small adverse impact on providers of continuing education services while achieving the same goals.

Adverse Impacts:

Businesses. The proposed amendments do not have an adverse impact on non-small businesses.

Localities. The proposed amendments will not adversely affect localities.

Other Entities. The proposed amendments will not adversely affect other entities.

¹ <http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0082>

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

Summary:

Pursuant to Chapter 82 of the 2016 Acts of Assembly, the amendments allow veterinarians to substitute six hours of volunteer work for two hours of continuing education and veterinary technicians to substitute three hours of volunteer work for one hour of continuing education annually.

18VAC150-20-70. Licensure renewal requirements.

A. Every person licensed by the board shall, by January 1 of every year, submit to the board a completed renewal application and pay to the board a renewal fee as prescribed in 18VAC150-20-100. Failure to renew shall cause the license to lapse and become invalid, and practice with a lapsed license may subject the licensees to disciplinary action by the board. Failure to receive a renewal notice does not relieve the licensee of his responsibility to renew and maintain a current license.

B. Veterinarians shall be required to have completed a minimum of 15 hours, and veterinary technicians shall be required to have completed a minimum of eight hours, of approved continuing education for each annual renewal of licensure. Continuing education credits or hours may not be transferred or credited to another year.

1. Approved continuing education credit shall be given for courses or programs related to the treatment and care of patients and shall be clinical courses in veterinary medicine or veterinary technology or courses that enhance patient safety, such as medical recordkeeping or compliance with requirements of the Occupational Health and Safety Administration (OSHA).

2. An approved continuing education course or program shall be sponsored by one of the following:

- a. The AVMA or its constituent and component/branch associations, specialty organizations, and board certified specialists in good standing within their specialty board;
- b. Colleges of veterinary medicine approved by the AVMA Council on Education;
- c. International, national, or regional conferences of veterinary medicine;
- d. Academies or species-specific interest groups of veterinary medicine;
- e. State associations of veterinary technicians;
- f. North American Veterinary Technicians Association;
- g. Community colleges with an approved program in veterinary technology;
- h. State or federal government agencies;
- i. American Animal Hospital Association (AAHA) or its constituent and component/branch associations;
- j. Journals or veterinary information networks recognized by the board as providing education in veterinary medicine or veterinary technology; or
- k. An organization or entity approved by the Registry of Approved Continuing Education of the American Association of Veterinary State Boards.

3. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following his initial licensure by examination.

4. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

5. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such an extension shall not relieve the licensee of the continuing education requirement.

6. Licensees are required to attest to compliance with continuing education requirements on their annual license renewal and are required to maintain original documents verifying the date and subject of the program or course, the number of continuing education hours or credits, and certification from an approved sponsor. Original documents must be maintained for a period of two years following renewal. The board shall periodically conduct a random audit to determine compliance. Practitioners selected for the audit shall provide all supporting documentation within 10 days of receiving notification of the audit.

7. Continuing education hours required by disciplinary order shall not be used to satisfy renewal requirements.

8. Up to two hours of the 15 hours required for annual renewal of a veterinarian license and up to one hour of the eight hours required for annual renewal of a veterinary technician license may be satisfied through delivery of veterinary services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

C. A licensee who has requested that his license be placed on inactive status is not authorized to perform acts that are considered the practice of veterinary medicine or veterinary technology and, therefore, shall not be required to have continuing education for annual renewal. To reactivate a license, the licensee is required to submit evidence of completion of continuing education hours as required by § 54.1-3805.2 of the Code of Virginia equal to the number of years in which the license has not been active for a maximum of two years.

VA.R. Doc. No. R17-5016; Filed February 20, 2017, 11:31 a.m.

GENERAL NOTICES/ERRATA

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Provision of Independent Living Rehabilitation Services

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department for Aging and Rehabilitative Services is conducting a periodic review and small business impact review of **22VAC30-30, Provision of Independent Living Rehabilitation Services**. The review of this regulation will be guided by the principles in Executive Order 17 (2014).

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

The comment period begins March 20, 2017, and ends April 20, 2017.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Vanessa S. Rakestraw, Ph.D., CRC, Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7612, FAX (804) 662-7663, or email vanessa.rakestraw@dars.virginia.gov.

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

AIR POLLUTION CONTROL BOARD

State Implementation Plan Revision - Municipal Solid Waste Landfills

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia's § 111(d) plan for municipal solid waste landfills (MSWLs). A § 111(d) plan is developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to implement and enforce emissions guidelines for MSWLs. The Commonwealth intends to submit the plan to the U.S.

Environmental Protection Agency (EPA) in accordance with the requirements of the federal Clean Air Act.

Regulations affected: The regulations of the board affected by this action are as follows: Documents Incorporated by Reference, 9VAC5-20-21, of 9VAC5-20 (General Provisions) and Emission Standards for Municipal Solid Waste Landfills for which Construction, Reconstruction, or Modification was Commenced on or before July 17, 2014, Article 4-43.1 (9VAC5-40-5925 et seq.), of 9VAC5-40 (Existing Stationary Sources), Revision H16.

Purpose of notice: DEQ is seeking comment on the overall plan and on the issue of whether any regulations or inventory information included in the plan should be submitted to EPA as part of the plan.

Public comment period: March 20, 2017, to May 1, 2017.

Public hearing: A public hearing will be held in Second Floor Conference Room A, Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, at 10 a.m. on April 19, 2017, to accept comments concerning the proposed plan. Using the procedures explained in this notice, DEQ will also accept written comments through May 1, 2017.

Public comment stage: The public comment period and hearing are being conducted to satisfy the public participation requirements of federal regulations at 40 CFR 60.23(c) and (d). The regulations included in this plan have been adopted by the State Air Pollution Control Board in accordance with the Code of Virginia and with public participation as required by the Code of Virginia, the federal Clean Air Act, and the Code of Federal Regulations. Because the regulations have been adopted, DEQ is accepting comment only on the issues cited in this notice and not on the content of the regulations.

Description of proposal: EPA amended the designated pollutant emission guidelines for MSWLs on August 29, 2016 (81 FR 59276). In order to implement the guidelines, it was necessary for Virginia to adopt a new Article 43.1 containing the federal provisions and update the most current version of 40 CFR Part 60 listed in 9VAC5-20-21, Documents incorporated by reference. In addition to relevant regulations, the proposed plan revision contains an inventory of affected facilities.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations and not any provision of state law. The proposal will be submitted as a § 111(d) plan revision under §§ 111(d) of the federal Clean Air Act in accordance with 40 CFR 60.23(c) and (d). It is planned to submit all provisions of the proposal as a Commonwealth of Virginia § 111(d) plan with the exception of state-only enforceable provisions and provisions relevant to § 110 ozone controls. These affected provisions are specifically identified in the plan.

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. Both oral and written comments are accepted at the public hearing. DEQ prefers that comments be provided in writing, along with any supporting documents or exhibits. All materials received are part of the public record.

To review plan documents: The proposal is available on the DEQ Air Public Notices for Plans website at <http://www.deq.virginia.gov/Programs/Air/PublicNotices/airplansandprograms.aspx>.

The documents may also be obtained by contacting the DEQ representative named below. 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 Department of Environmental Quality, Main Street Office, 629 East Main Street, 8th Floor, Richmond, VA 23218, telephone (804) 698-4070.

Contact Information: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

State Implementation Plan Revision - Northern Virginia Ozone Nonattainment Area

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed plan to attain and maintain the national ambient air quality standard for ozone in the Northern Virginia Ozone Nonattainment Area. The Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia State Implementation Plan (SIP) in accordance with the requirements of § 110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air 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 comments on the overall plan and on the issue of whether the plan demonstrates Virginia's ability to implement EPA's new source review permitting program for ozone nonattainment areas.

Public comment period: March 20, 2017, to April 20, 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, address, and telephone number 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 certification that Virginia's existing Nonattainment New Source Review Program, covering the Washington, DC-MD-VA nonattainment area for the 2008 ozone NAAQS, is at least as stringent as the requirements at 40 CFR 51.165 for ozone and its precursors, as amended by the March 6, 2015 final rule, "Implementation of the 2008 National Ambient Air Quality Standard for Ozone: State Implementation Plan Requirements" (80 FR 12264). The nonattainment area consists of the Counties of Arlington, Fairfax, Loudoun, and Prince William; and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia 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 on the last day of the comment period. All materials received are 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 below. 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, and
- 2) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800.

Contact Information: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Briel Farm Solar LLC Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Henrico County

Briel Farm 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 Henrico County pursuant to 9VAC15-60. The project is located in eastern Henrico

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County, immediately northeast of the I-295 and I-64 interchange. The project will have a maximum capacity of 20 megawatts alternating current. The solar panels will be sited across multiple parcels of land totaling approximately 230 acres. Proposed improvements include solar arrays and related infrastructure, access roads, fencing, possible stormwater management best management practices, and temporary erosion controls. The site is currently agricultural land and was previously rezoned to M-1c by the property owner.

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.

DEPARTMENT OF GENERAL SERVICES

Request for Comments on Revision to Fees for Drinking Water Laboratory Certification - Effective May 1, 2017 - April 30, 2018

Purpose of notice and background information: The Division of Consolidated Laboratory Services (DCLS) is seeking comment on the revision to fees charged for certifying drinking water laboratories under 1VAC30-41-270.

1VAC30-41-270 I 2 requires DCLS to increase or decrease annually the fees charged for certifying drinking water laboratories using the Consumer Price Index-Urban percentage change, average-average for the previous calendar year published by the U.S. Bureau of Labor Statistics in February. For 2016, the percentage change, average-average is an additional 1.3%. See Table 24, page 74 in <https://www.bls.gov/cpi/cpid1701.pdf>.

This fee revision is exempt from the requirements of the Administrative Process Act. The Budget of the Commonwealth of Virginia (Chapter 780 of the 2016 Acts of Assembly, effective July 1, 2016) in Item 77 C 3a requires DCLS to provide notice and an opportunity to submit written comments on the revised fees.

The notice of fees for May 1, 2017, through April 30, 2018, will be published on the DCLS drinking water laboratory certification webpage after consideration of submitted comments.

Public comment period: March 20, 2017, to April 20, 2017.

How to comment: DCLS 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 DCLS by the last day of the comment period. All materials received are part of the public record. Email comments should be sent to rhonda.bishton@dgs.virginia.gov. The number for faxed comments is (804) 371-8305. Written comments should be sent to Rhonda Bishton, Regulatory Coordinator, Department

of General Services, Attention: DCLS DW Fee Comments, 1100 Bank Street, Suite 420, Richmond, VA 23219. Agency contact: Rhonda Bishton, telephone (804) 786-3311.

Notice of fees for May 1, 2017 - April 30, 2018: DCLS requests comments on the revised fees in the notice below.

Virginia Division of Consolidated Laboratory Services Fees for Drinking Water Laboratory Certification (1VAC30-41-270)

Effective May 1, 2017 - April 30, 2018

TESTING CATEGORY	FEE
Microbiological testing	
1 - 2 methods	\$619
3 - 5 methods	\$721
6+ methods	\$825
Inorganic chemistry, nonmetals testing	
1 - 2 methods	\$670
3 - 5 methods	\$876
6 - 8 methods	\$1082
9+ methods	\$1288
Inorganic chemistry, metals testing	
1 - 2 methods	\$1030
3 - 5 methods	\$1236
6+ methods	\$1441
Organic chemistry	
1 - 2 methods	\$1082
3 - 5 methods	\$1288
6 - 8 methods	\$1493
9+ methods	\$1700
Radiochemistry	
1 - 2 methods	\$1134
3 - 5 methods	\$1339
6+ methods	\$1546
Asbestos	
1 - 2 methods	\$927
3 - 5 methods	\$1134
6+ methods	\$1339

How fees are calculated: DCLS calculates a laboratory's total fee by adding the fees for the number of test methods in each

category in the fee table for which the laboratory is certified or applies to be certified. Contact Lab_Cert@dgs.virginia.gov for more information about the fee category for a specific method.

Additional fees apply when a laboratory:

- Applies for modification of certification under 1VAC30-41-110,
- Is moving its location when the move requires DCLS to perform an onsite assessment,
- Requests reinstatement of certification when DCLS requires an onsite assessment, or

Hourly fee for reviewers and calculation of total fee. The fee to be charged is the sum of the total hourly charges for all reviewers plus any onsite assessment costs incurred. The hourly charge per reviewer is \$63. The charge per reviewer is determined by multiplying the number of hours expended in the review by \$63.

Onsite review and travel expenses. If an onsite review is required, travel time and onsite review time will be charged at the same hourly rate of \$63 and any travel expenses will be added.

When to pay: Payment is due at the time the application is made or annually thereafter upon receipt of the invoice from DCLS. Annual billing precedes the expiration of the current certificate.

How to pay: Pay fees by check, draft, or postal money order payable to the Treasurer, Commonwealth of Virginia, or submit electronically, if available. Payment must be in United States currency, with the exception that agencies and institutions of the Commonwealth of Virginia may submit interagency transfers for the amount of the fee. Laboratories may also pay fees using credit cards. All fees must be sent to the following address, or submitted electronically, if available: DCLS, Attn: Lab Certification, 600 North 5th Street, Richmond, VA 23219. A fee payment form is available on the Drinking Water page of the DCLS website at www.dgs.virginia.gov/dcls.

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on March 1, 2017. The orders may be viewed at the Virginia Lottery, 900 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 201 North 9th Street, 2nd Floor, Richmond, Virginia.

Director's Order Number Nine (17)

Virginia Lottery's "Power Cruise" Final Rules for Operation (this Director's Order becomes effective on February 5, 2017,

and shall remain in full force and effect through the end Promotion date unless amended or rescinded by further Director's Order)

Director's Order Number Twenty (17)

Virginia Lottery's Scratch Game 1772 "2X THE MONEY" Final Rules for Game Operation (effective February 7, 2017)

Director's Order Number Twenty-One (17)

Virginia Lottery's Scratch Game 1764 "777" Final Rules for Game Operation (effective February 7, 2017)

Director's Order Number Twenty-Two (17)

Virginia Lottery's Scratch Game 1766 "Tripling Crossword" Final Rules for Game Operation (effective February 10, 2017)

Director's Order Number Twenty-Three (17)

Certain Virginia Promotion; Promotion Amendment and End of Promotion - Virginia Lottery's We're Game for Education Promotion_FY17 (148 16) (effective February 10, 2017)

Director's Order Number Twenty-Four (17)

Certain Virginia Promotion; Promotion Start Date Correction and Promotion End Date Correction - Farm Fresh Big Money Super Ticket Promotion (164 16) is amended as follows in order to correct the all occurrences of the Promotion title to: Farm Fresh Super Ticket Big Money Promotion (164 16) (effective February 3, 2017)

Director's Order Number Thirty-Four (17)

Certain Virginia Game: Prize Structure Correction - \$40,000 Taxes Paid (1743) (174 16) (effective February 17, 2017)

DEPARTMENT OF MINES, MINERALS AND ENERGY

Review of State Minerals Management Plan

A [57-day comment forum](#) began on February 22, 2017, and ends April 20, 2017.

The Department of Mines, Minerals and Energy (DMME) is reviewing the State Minerals Management Plan (SMMP) pursuant to § 2.2-1157 of the Code of Virginia. As part of this process, DMME is accepting public comment on ways the SMMP can be improved. DMME is particularly interested in comments related to barriers, if any, that hinder development under the SMMP. Please submit comments via email to Michael Skiffington, Department of Mines, Minerals and Energy, Policy and Program Manager, email michael.skiffington@dmme.virginia.gov. Comments may also be sent via mail to Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219, telephone (804) 692-3212, FAX (804) 692-3237.

Contact Information: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402,

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telephone (804) 692-3212, FAX (804) 692-3237, TDD (800) 828-1120, or email mike.skiffington@dmme.virginia.gov.

SAFETY AND HEALTH CODES 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 Safety and Health Codes 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.

16VAC25-20, Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees

16VAC25-30, Regulations for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of Asbestos-Containing Construction Wastes-Incorporation by Reference, 40 CFR 61.140 through 61.156

16VAC25-40, Standard for Boiler and Pressure Vessel Operator Certification

16VAC25-70, Virginia Confined Space Standard for the Telecommunications Industry

16VAC25-97, Reverse Signal Operation Safety Requirements for Motor Vehicles, Machinery and Equipment in General Industry and the Construction Industry

The comment period begins March 20, 2017, and ends April 14, 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: Holly Raney, Regulatory Coordinator, Virginia Department of Labor and Industry, 600 East Main Street, Richmond, VA 23219, email holly.raney@doli.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Special Order for Boi Nae, LLC

An enforcement action has been proposed with Boi Nae, LLC for violations in Franklin County, Virginia. The special order by consent will address and resolve violations of environmental law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jerry Ford, Jr. will accept comments by email at jerry.ford@deq.virginia.gov, or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from March 20, 2017, to April 19, 2017.

Proposed Enforcement Action for Stoney Glen, LLC and Gibraltar, LLC

An enforcement action has been proposed for Stoney Glen, LLC and Gibraltar, LLC for violations of State Water Control Law that occurred in Chesterfield County, Virginia. A description of the proposed action is available online at www.deq.virginia.gov. Justin Brown will accept comments by email at justin.brown@deq.virginia.gov or postal mail at Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23219, from March 20, 2017, through April 19, 2017.

Proposed Enforcement Action for Tyson Farms, Inc.

An enforcement action has been proposed for Tyson Farms, Inc. for violations of the State Water Control Law in Temperanceville, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jennifer Coleman, Esq. will accept comments by email at jennifer.coleman@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from March 20, 2017, to April 19, 2017.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; *Email:* varegs@dls.virginia.gov.

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

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

Title of Regulation: **18VAC160-30. Waterworks and Wastewater Works Operators Licensing Regulations.**

Publication: 33:11 VA.R. 1262-1293 January 23, 2017.

Correction to Final Regulation:

Page 1273, 18VAC160-30-360, subdivision B 1, clause (iv), after "growth" replace "contractors" with "contactors"

VA.R. Doc. No. R15-4114; Filed March 2, 2017, 4:08 p.m.

Title of Regulation: **18VAC160-40. Onsite Sewage System Professionals Licensing Regulations.**

Publication: 33:11 VA.R. 1262-1293 January 23, 2017.

Correction to Final Regulation:

Page 1285, 18VAC160-40-260, first paragraph, after "has been" replace "meet" with "met"

Page 1290, 18VAC160-40-390, subdivision B 1, line 4, after "functions" insert a comma

VA.R. Doc. No. R15-4114; Filed March 7, 2017, 9:38 a.m.

