



VIRGINIA

REGISTER OF REGULATIONS

VOL. 33 ISS. 25

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

AUGUST 7, 2017

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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>).

August 2017 through July 2018

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
34:19	April 25, 2018	May 14, 2018
34:20	May 9, 2018	May 28, 2018
34:21	May 23, 2018	June 11, 2018
34:22	June 6, 2018	June 25, 2018
34:23	June 20, 2018	July 9, 2018
34:24	July 3, 2018 (Tuesday)	July 23, 2018

*Filing deadlines are Wednesdays unless otherwise specified.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-870, Virginia Stormwater Management Program (VSMP) Regulation**. The purpose of the proposed action is to provide language in the regulation that would require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. This action is required by Chapters 10 and 163 of the 2017 Acts of Assembly.

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

Statutory Authority: §§ 62.1-44.15:25 and 62.1-44.15:28 of the Code of Virginia.

Public Comment Deadline: October 6, 2017.

Agency Contact: William K. Norris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4019, or email william.norris@deq.virginia.gov.

VA.R. Doc. No. R17-5128; Filed July 18, 2017, 6:26 p.m.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3442.6 of the Code of Virginia.

Public Comment Deadline: September 6, 2017.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4578, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

VA.R. Doc. No. R17-4878; Filed July 7, 2017, 7:32 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

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 Pharmacy intends to consider promulgating **18VAC110-60, Regulations Governing Pharmaceutical Processors**. The purpose of the proposed action is to implement Chapter 613 of the 2017 Acts of Assembly by promulgating regulations governing issuance of a permit for a pharmaceutical processor to manufacture and provide cannabidiol oil and THC-A oil to be used for the treatment of intractable epilepsy in compliance with the conditions and restraints imposed by the statute and in consideration of the need for security of the facility and its contents and the integrity of the dispensed product. This notice initiates the process to promulgate permanent regulations to replace emergency regulations currently in effect.

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 8. EDUCATION

STATE BOARD OF EDUCATION

Proposed Regulation

Title of Regulation: **8VAC20-131. Regulations Establishing Standards for Accrediting Public Schools in Virginia (amending 8VAC20-131-5 through 8VAC20-131-120, 8VAC20-131-140 through 8VAC20-131-220, 8VAC20-131-240 through 8VAC20-131-270; adding 8VAC20-131-51, 8VAC20-131-370 through 8VAC20-131-430; repealing 8VAC20-131-280 through 8VAC20-131-360).**

Statutory Authority: §§ 22.1-16 and 22.1-253.13:3 of the Code of Virginia.

Public Hearing Information:

August 9, 2017 - 6:30 p.m. - Old Donation School, 4633 Honeygrove Road, Virginia Beach, VA 23455

August 23, 2017 - 6:30 p.m. - Park View High School, 205 Park View Circle, South Hill, VA 23970

Public Comment Deadline: October 6, 2017.

Agency Contact: Dr. Cynthia Cave, Assistant Superintendent, Policy and Communications, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2092, FAX (804) 225-2524, or email cynthia.cave@doe.virginia.gov.

Basis: The statutory authority for these regulations is found in §§ 22.1-16 and 22.1-253.13:3 of the Code of Virginia.

In addition, Chapters 720 and 750 of the 2016 Acts of Assembly direct the Board of Education to promulgate regulations to implement the Profile of a Virginia Graduate and associated revised graduation requirements. The legislation further directs the board to submit final regulations to the Registrar of Regulations no later December 1, 2017. Such regulations are incorporated into this regulatory action.

Section 22.1-16 of the Code of Virginia authorizes the Board of Education to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1 of the Code of Virginia.

In addition, § 22.1-253.13:3 of the Code of Virginia authorizes the Board of Education to promulgate regulations establishing standards for accreditation pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), which shall include student outcome measures, requirements and guidelines for instructional programs and for the integration of educational technology into such instructional programs, administrative and instructional staffing levels and positions,

including staff positions for supporting educational technology, student services, auxiliary education programs such as library and media services, requirements for graduation from high school, community relations, and the philosophy, goals, and objectives of public education in Virginia.

Purpose: These regulations provide the foundation for the provision of a quality public education within a system of accountability and continual improvement. They are intended to:

1. Provide an essential foundation of educational programs of high quality in all schools for all students.
2. Encourage and promote school quality and acknowledge achievement and continuous improvements by schools and school divisions in multiple areas.
3. Foster public confidence that graduating students have mastered multiple areas of learning to include academic subjects, workplace skills, career exploration and planning, and civic and community responsibility; that is, that they are college-ready, career-ready, and citizenship-ready.
4. Assure recognition of Virginia's public schools by other institutions of learning.
5. Establish the means of determining the effectiveness of schools as prescribed in the Standards of Quality at § 22.1-253.13:3 of the Code of Virginia, including student learning and progress and student outcomes for multiple areas affecting school quality.

Substance:

Part I. Definitions - Many definitions have been added or revised in the proposed Standards of Accreditation (SOA). Several of these amendments provide additional clarification as to how minimum instructional and planning time is calculated and implement changes to standard and verified unit of credit requirements. Other changes provide consistent definitions for English learner and reporting groups. Definitions for obsolete terms have been deleted. In addition, technical edits have been made throughout the definitions. The purpose of the regulations has been expanded to include the promotion of school quality and continual improvement of schools and school divisions. A new provision specifies that the SOA establishes the foundation of a high quality public education within a system of accountability and continual improvement.

Part II. Philosophy, Goals, and Objectives - The philosophy, goals, and objectives of the regulations have been expanded to address factors affecting school quality and continual improvement and overall goals and objectives for student

learning, achievement, and preparation. Student preparation is expected to include exploration and understanding of the opportunities available and knowledge and abilities needed for the next phase of their lives. Student preparation is also expected to encompass mastery of creative and critical thinking, analysis and problem solving, and the development of personal attributes, such as communication and collaboration skills, dependability, and persistence. Philosophy, goals, and objectives for schools are expected to reflect the means by which Standards of Learning and the SOA are met. The board's objective is established to provide an educational foundation to ensure that students are ready for success in a global economy. The board recognizes stakeholder concerns that students need to be prepared not only in content knowledge, but also with soft skills such as critical thinking, creative thinking, communication, collaboration, and citizenship (the five Cs). Expectations are added for students, as they progress through the public education system, to achieve and apply certain knowledge, skills, qualities, and behaviors related to academic content and technology, and workplace and civic readiness. As students progress through elementary, middle, and secondary schools, it is expected that they will be prepared to be ready for college, career, and to be good citizens at the end of their public school journey.

Part III. Student Achievement - Part III includes those sections that address student achievement expectations, graduation requirements, and graduation requirements and waivers for transfer students. This part requires the school superintendent to certify that the division's policy for dropping courses ensures that student course schedules are not changed to avoid taking an end-of-course Standards of Learning (SOL) test. In addition, students no longer will be required to take an end-of-course SOL test in an academic subject after they have earned the number of verified credits required for that academic content area for graduation unless such test is required to meet federal requirements. Significant changes are made to the graduation requirements for those students who will enroll in the ninth grade as of the 2018-2019 school year. Two separate sections specify the changes in requirements for high school students for those enrolled in the ninth grade prior to the 2018-2019 school year and those enrolled in the ninth grade as of the 2018-2019 school year. For students who enroll in the ninth grade as of the 2018-2019 school year, the number of verified credits required for the Standard and Advanced Studies Diplomas have been reduced to five, and students will be expected to demonstrate competency in each of the following: critical thinking, creative thinking, communication, collaboration, and citizenship. Additional methods of achieving a verified credit are also established, including the use of authentic performance assessments in certain subjects and expansion of the subjects for which a locally awarded verified credit may be offered. For students who transfer into Virginia public schools, amendments clarify whether the existing or proposed

graduation requirements will be applicable. These are all significant changes that will move the focus in Virginia's public schools from standardized testing to continuous improvement and academic progress for all students no matter where they live or their economic status.

Part IV. School Instructional Program - Part IV includes sections referencing instructional programs, standard and verified units of credit, college and career preparatory programs, and standard school year and school day. Language has been added to reflect the Standards of Quality instructional requirements; to reference the Profile of a Virginia Graduate and instructional programs; college and career readiness; and critical thinking, creative thinking, collaboration, communication, and citizenship. Career exploration is expanded in the proposed regulations by requiring the development of academic and career planning portfolios to be established and maintained for each student to document career interests and to be used to develop the academic and career plan in the seventh grade. All middle school students would be required to complete a career investigation course that will be used as the foundation to develop academic and career plans. These are significant changes that will help assure that Virginia students will be prepared when they complete their public secondary school education. Virginia is moving to preparing the whole student to be ready for career, college, and to be good citizens upon graduation.

Part V. School and Instructional Leadership - Significant language has been included to clarify and expand the role of the principal and to clearly lay out what the professional expectations. The principal is expected to foster the success of all students and provide leadership that results in acceptable, measurable student academic progress based on established standards. In addition, language has been added to reflect the Standards of Quality instructional requirements, to reference the Profile of a Virginia Graduate and instructional programs, as well as college-readiness, career-readiness, and citizenship-readiness.

Part VI. School Facilities and Safety - This section addresses school communications and safety. Language in this part has been revised per state requirements to require a fire drill at least twice during the first 20 school days and two additional fire drills during the remainder of the school term. School divisions also must conduct a lock-down drill at least twice during the first 20 school days and at least two additional lock-down drills during the remainder of the school term. The requirements fall outside of the parameters of the Virginia Department of Education and have been required to ensure the safety of school students and staff.

Part VII. School and Community Communications - This part includes those regulations that address school and community communications. The School Performance Report Card is now referred to as the School Quality Profile. In addition, the regulation specifies certain indicators to be included in that

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profile, including accreditation status and absenteeism. These changes give the stakeholders a more complete picture as to how the schools and school divisions are performing.

Part VIII. School Accreditation - In this part, all existing sections have been repealed and replaced. New language establishes the principles and purpose of school accountability and accreditation systems and describes the components of such systems. The proposed school accreditation system is established, which will use several indicators of school quality in addition to academic achievement. For each school quality indicator, a school will be designated as having achieved either Level One, Level Two, or Level Three performance. Each of the three performance levels will correspond to actions required to be taken to address below standard performance and to require all schools to continually improve. For schools with indicators at Level Three, which are those performing below standard, a series of more intensive actions are established, including state interventions. Accreditation status is linked to a school's performance levels, and schools that fail to take the requisite actions for school improvement will be designated "accreditation denied."

These revisions bring major changes to Virginia's accountability concepts and include an enhanced process that will provide that school quality is to be measured for each school using multiple school quality indicators and focusing on continuous improvement.

Issues: These regulations will positively impact the public, private citizens, school divisions, students, parents, school staff, and other constituents.

The advantage of these regulations to the Commonwealth include:

1. Ensuring all students are prepared for success in the twenty-first-century workplace, for realization of personal goals, and for responsible contributions to the quality of civic life in our state, nation, and the world.
2. Implementing the Profile of a Virginia Graduate, to ensure that students not only acquire content knowledge, but also soft skills needed for success in employment and further education including: critical thinking, creative thinking, communication, collaboration, and citizenship.
3. Supporting students with additional career exploration and planning opportunities.
4. Providing an accountability system that will provide a comprehensive picture of school quality for the public, and drive continuous improvement for all schools, including state assistance for low performing schools.

These regulations do not present any disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal: The Every Student Succeeds Act of 2015 (ESSA) was signed into law on December 10, 2015. The new law replaces the No Child Left Behind Act of 2001. Under ESSA, states will develop new

federal accountability systems during the 2016-2017 year, to be implemented during the 2018-2019 school year. That reauthorization presented Virginia with an opportunity to align state requirements with federal requirements.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Education (Board) proposes numerous amendments, most prominently adding several new school quality indicators to be used in determining accreditation. The proposal includes three defined performance levels for each school quality indicator and actions to be taken dependent on each performance level. Additionally, the board proposes to: amend graduation requirements, require that schools provide additional career exposure and exploration, state that some rules may be changed via guidance to school divisions, amend other requirements, and add clarifying language.

Result of Analysis. The benefits likely exceed the costs for most proposed amendments.

Estimated Economic Impact.

School Quality Indicators. Under the current regulation, schools receive their accreditation rating based on the pass rates of their students on statewide examinations, and in the case of high schools their graduation and completion index (GCI).¹ The Board proposes to add the following additional school quality indicators upon which schools would be rated, and which would affect accreditation status: Academic Achievement Gaps, Dropout Rate, Chronic Absenteeism, and the College, Career, and Civic Readiness Index.

Academic Achievement Gaps. The advent of accountability testing has resulted in overall improvements in test scores on national assessments, but has also resulted in some widening in achievement gaps between groups.² Schools, particularly those in higher socioeconomic areas, can maintain relatively high assessment pass rates without devoting extra efforts to helping their most disadvantaged and/or poorest performing students. Schools can most effectively increase their overall pass rates by focusing their efforts on students who are close to passing and just need a small improvement, not those who are farther away from passing. The Board proposes to measure pass rates on English and mathematics exams for separate reporting groups among the test takers at each school. Reporting groups are defined in the proposed regulation as subgroups "of students who are identified as having common characteristics such as: students identified as belonging to major racial and ethnic groups, economically disadvantaged students, students with disabilities, and English language learners." Disaggregating the school population into separate reporting groups who are each assessed independently for a school quality indicator would be beneficial in that there would greater incentive to put forth additional effort in helping a greater range of students, and the performance of separate reporting groups would become more transparent.

Dropout Rate. Dropping out of high school has long-term negative social and economic consequences. One must have a high school diploma to enroll in postsecondary schools and even to obtain many minimum-wage jobs.³ Thus schools that, all other factors being equal, are relatively successful at limiting or reducing dropping out are better serving their students. Including dropout rates as a school quality indicator is thus beneficial. Nevertheless, there currently exists a disincentive for schools to put out effort to retain students at risk of dropping out since those students' dropping out would in most cases boost the school's pass rates.⁴ Students who have dropped out are not included in testing and consequently academic achievement indicators. A school whose worst students drop out would have higher assessment pass rates than a comparable school that has fewer dropouts. Consequently, including the dropout rate as a school quality indicator is also beneficial in helping counteract the above described disincentive.

Chronic Absenteeism.⁵ Research on the technology of skill formation routinely finds evidence of a direct causal relationship between character skills and long-run socioeconomic outcomes.⁶ For example, character skills such as conscientiousness, motivation, and self-discipline predict important socioeconomic outcomes such as educational attainment, employment, earnings, marriage, and crime.⁷ Attendance is an objectively measurable behavior that is correlated with character skills identified by psychologists: attendance is positively associated with conscientiousness⁸ and negatively associated with neuroticism and low levels of agreeableness.⁹ Conscientiousness is a character skill that is valued in the labor market¹⁰ and regular attendance is highly valued by employers.¹¹ Similarly, regular school attendance is positively associated with academic achievement¹² and negatively associated with grade retention,¹³ drug use,¹⁴ and dropping out of school.¹⁵ The overwhelming focus on standardized tests to the exclusion of other measures is potentially problematic for several reasons: It may cause teachers and schools to divert resources away from non-tested topics and skills,¹⁶ and it potentially biases estimates of teacher quality by ignoring teachers' effects on students' character skills and related behaviors (attendance, study habits, etc.).¹⁷ Teachers have been found to have a statistically significant effect on student absences that persist over time.¹⁸ Additionally, character skills and related behaviors have been found to be more malleable than cognitive skills,¹⁹ and consequently have the potential for significant "bang for the buck" in terms of positive impact for time and resources expended. Thus, including chronic absenteeism as a school quality indicator would be beneficial in that attendance is an objectively measurable behavior that can be affected by schools and is correlated with character skills that help produce long-run positive outcomes.

College, Career, and Civic Readiness Index (CCCRI).²⁰ The College, Career, and Civic Readiness Index measures the extent to which a school's students successfully complete

advanced coursework, Career and Technical Education (CTE) coursework and credentialing, and work- and service-based learning. Including the CCCRI as a school quality indicator is beneficial in that it reflects post-graduation preparedness. The currently used school quality indicators are only indicative of competence in high school level knowledge.

Performance Levels. Under the Board's proposal, there are three performance levels for each school quality indicator: Level One for at or above standard, Level Two for near standard, and Level Three for below standard. The specifics for the three performance levels for each school quality indicator are listed in the Appendix. For the most part, Level One is achieved either through exceeding a set benchmark or by improving upon the previous year's Level Two performance by more than a set percentage amount. Positively labeling the performance level for marked improvement can be particularly beneficial for lower socioeconomic and other disadvantaged schools in that it can provide reward for realistic strong improvement that the benchmark alone could not realistically provide in the short run. For the majority of school quality indicators, Level Two is achieved by exceeding a set benchmark (that is lower than the Level One benchmark) or by improving upon the previous year's Level Three performance by more than a set percentage amount. Here again, positively labeling the performance level for marked improvement can be beneficial in that seeing that a realistic goal can be potentially met through improvement may encourage stronger efforts. For most of the indicators, schools cannot receive a Level Two performance designation for more than four consecutive years. Other than for the Academic Achievement Gaps school quality indicators, schools are given the Level Three label if the school does not meet either Level One or Level Two. For the Academic Achievement Gaps school quality indicators, the school is listed as Level Three if it has two or more reporting groups demonstrating Level Three performance.

Accreditation Ratings. Under the proposed regulation, when a school has each of its school quality indicators at Level One or Level Two, it shall be "Accredited." When a school has any school quality indicator at Level Three, it shall be "Accredited with Conditions." If a school is designated "Accredited with Conditions," and the school or school division fails to adopt and implement school division or school corrective action plans with fidelity, it may be designated by the Board as "Accreditation Denied."

Required Actions Based on Performance Levels and Accreditation Ratings. In determining required actions for schools and school divisions, levels of performance would be considered separately for each school quality indicator. If a school quality indicator is at Level One, the school and its school division would continue to monitor the indicator and the multi-year school improvement plan for continuous improvement. If a school quality indicator is at Level Two, the school and its school division would have primary responsibility to revise and implement its multi-year school

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improvement plan. School divisions with indicators at Level Two may request technical assistance from the Department of Education (Department).

If any school quality indicator is at Level Three, the school and school division would be required to work cooperatively and in consultation with the Department to develop a corrective action plan, which would be incorporated as a component of the school's comprehensive, unified, long-range plan. All schools with indicators at Level Three must undergo an academic or other review, as appropriate, conducted by the Department, or under its guidance, to further identify required actions to improve student achievement and the school quality indicators which are at Level Three. The level of direction and intervention from the Department may include requiring the local school division superintendent and the state Superintendent of Public Instruction to enter into an agreement which would delineate the responsibilities for the school division staff, school staff, and department staff and shall also include required essential actions to improve student achievement and to improve performance on school quality indicators.

School divisions that do not demonstrate evidence of progress in adopting or implementing corrective action plans for a school or schools with indicators at Level Three would be required to enter into a Memorandum of Understanding between the local school board and the Board. The Memorandum of Understanding would delineate responsibilities for the local school board, the board, school division staff, school staff, and department staff and shall also include required essential actions to improve student achievement and to improve performance on school quality indicators.

If a school is designated "Accredited with Conditions," and the school or school division fails to adopt and implement corrective action plans with fidelity as specified by this section, the Superintendent of Public Instruction shall review the school for potential designation by the board as "Accreditation Denied" and shall present the results of such review to the board with recommendations. If the Board determines that any such school is at Level Three on any school quality indicator due to its failure to adopt and implement corrective action plans with fidelity as required by this section, the Board shall designate such school as "Accreditation Denied." The local school board would be given an opportunity to correct such failure, and if successful in a timely manner, the school's "Accreditation Denied" designation may be rescinded at the Board's discretion.

Amendments through Guidance Documents. The Board proposes to specify in the regulation that it may adjust benchmarks delineating performance levels through guidance sent to school boards, and adopt special provisions related to the measurement and use of a school quality indicator. The board would also be enabled to alter the inclusions and

exclusions from the performance level calculations by providing adequate notice to local school boards.

Changing benchmarks and performance level calculations without going through the process statutorily required to amend regulatory language could potentially be beneficial in that the Board could more quickly make sensible adjustments. On the other hand, the Governor of Virginia would have less direct control over details of education policy. The Governor and his policy staff review and decide on approval of proposed changes of regulations. Changes to benchmarks and performance level calculations in practical effect made through the issuance of guidance documents or other notifications could be done outside of gubernatorial review and with far less public participation than is required by the Administration Process Act for amending regulatory language. Further, changing benchmarks and performance level calculations in practical effect without amending the regulation would cause readers of the regulation to be misinformed concerning the rules used in practice. Thus it is not clear that the benefit of being able to relatively quickly adjust rules and parameters outweigh the disadvantages of doing so outside of the regulatory process.

Graduation requirements for students who enroll in the ninth grade as of the 2018-2019 school year, the number of verified credits required for the Standard and Advanced Studies Diplomas would be reduced to five, and students would be expected to demonstrate competency in each of: critical thinking, creative thinking, communication, collaboration, and citizenship. Additional methods of achieving a verified credit are also established, including the use of authentic performance assessments in certain subjects, and expansion of the subjects for which a locally awarded verified credit may be offered. For students who transfer into Virginia public schools, amendments clarify whether the existing or proposed graduation requirements will be applicable. These are all significant changes which will move the focus in Virginia's public schools from standardized testing to continuous improvement and academic progress.

Career Exposure and Exploration. Career exploration is expanded in the proposed regulation by requiring the development of academic and career planning portfolios to be established and maintained for each student to document career interests, and to be used to develop the academic and career plan in the seventh grade. All middle school students would be required to complete a career investigation course that will be used as the foundation to develop academic and career plans. Exposing students to career options and what is needed to reach career goals is beneficial. Adding additional requirements such as the middle school career investigation course will be an additional time demand on school hours and will necessitate less time on other subject matter.

Other. The Board proposes to require secondary schools to incorporate knowledge of regional workforce needs and opportunities into career and technical education. This is

beneficial in that it may increase the likelihood that CTE students are prepared for open jobs that exist locally. The amended regulation states that: 1) students shall not be required to take an end-of-course Standards of Learning (SOL) test in a subject after they have earned the number of verified credits required for that academic content area for graduation, unless the test is necessary in order for the school to meet federal accountability requirements, and 2) expedited retakes of tests are an exemption to the prohibition of students taking more than one test in any content area in each year. Both of these amendments help students without creating bias in the Academic Achievement Indicator.

The Board also proposes to require that division superintendents certify that division policy prevents changes in students' course schedules to avoid end-of-course SOL assessments. This helps keep the integrity of the Academic Achievement Indicator in that potentially lower-performing students are not kept out of the testing pool.

Businesses and Entities Affected. The proposed amendments affect the more than 1,286,000 students in the Commonwealth's K-12 public schools, the 132 local school divisions, and the Virginia Department of Education.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. In the short run the proposed amendments are unlikely to significantly affect employment. In the long run, the increased focus on school quality indicators other than grades that are linked to long-term success may have a positive impact on the future employability of Virginia students.

Effects on the Use and Value of Private Property. The proposed amendments do not significantly affect the use and value of private property.

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

Small Businesses:

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

Costs and Other Effects. The proposed amendments do not significantly affect small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses: The proposed amendments do not adversely affect businesses.

Localities: The proposed amendments affect local school divisions, but in net do not adversely affect localities.

Other Entities: The proposed amendments do not adversely affect other entities.

¹GCI = [(# of diploma graduates x 100) + (# of high school equivalency recipients x 75) + (# of students not graduating but still in school x 70) + (# of students receiving certificates of completion x 25)] / [(# of students in ninth-grade cohort four years earlier) + (transfers in) - (transfers out, deceased students, and incarcerated students)]

²See Hanushek and Raymond (2004)

³See Glennie et al (2012)

⁴See Figlio and Getzler (2002)

⁵Chronically absent students are defined as those who are enrolled in a given school who miss ten percent or more of the school year. Students receiving homebound instruction are excluded from the chronic absenteeism rate.

⁶See Heckman, Stixrud, and Urzua (2006) and Cunha, Heckman, and Schennach (2010)

⁷See Jacob (2002), Borghans et al (2008), Almlund et al (2011), Lundberg (2012, 2013), Heckman and Kautz (2013), and Jackson (2013)

⁸See Duckworth et al (2007)

⁹See Lounsbury et al (2004)

¹⁰See Heckman and Kautz (2013)

¹¹See Morrison et al (2011), Lerman (2013), and Pritchard (2013)

¹²See Gottfried (2009) and Gershenson, Jackowitz, and Brannegan (2015)

¹³See Nield and Balfanz (2006)

¹⁴See Hallfors et al (2002)

¹⁵See Rumberger and Thomas (2000)

¹⁶See Baker et al (2010) and Harris (2011)

¹⁷See Heckman (2000)

¹⁸See Gershenson (2016)

¹⁹See Cunha and Heckman (2008) and Heckman (2000)

²⁰CCCRI = (unduplicated count of students in graduation cohort who: received credit for advanced coursework, or earned Career and Technical Education credential and completed a CTE sequence, or completed a work-based learning experience, or completed a service-based learning experience) / total number of students in graduation cohort

Agency Response to the Department of Planning and Budget's Economic Impact Analysis: The agency has reviewed the economic impact analysis completed by the Department of Planning and Budget and submits the following corrections and clarifications:

The proposed Academic Achievement school quality indicators are not the same as the pass rates that are used in the current accreditation system. The current system accredits schools based upon a minimum percent of students who pass state assessments. The indicators used in the proposed system for English and mathematics will recognize the number of students in grades three through eight who pass as well as the number of students who do not pass and demonstrate adequate progress toward proficiency in each of those subject areas. These changes will allow schools that are not meeting the current pass rate benchmark to be recognized for making significant gains toward proficiency. The science indicator in the proposed system will continue to use pass rates as provided in the current system because growth cannot be calculated in this subject area because science is not assessed annually. In addition, pass rates for social science and history

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will not be incorporated into the proposed system to allow performance based assessments to be implemented in this subject area.

The proposed College, Career, and Civic Readiness Index school quality indicator will not be incorporated into the accreditation system until the 2021-2022 school year, to align with the 2018-2019 ninth-grade cohort that will be impacted by the revised graduation requirements.

When referring to performance levels, it should be noted that performance levels are designated in each school quality indicator for each school. For example, a school is not designated or labeled "Level Two." Rather, a particular school quality indicator is designated "Level Two" for a school.

If an Academic Achievement school quality indicator is designated Level Two, the school will not only be required to revise and implement school improvement plans, it also will be required to undergo an academic review conducted by the agency.

While the proposed regulations will permit alterations to benchmarks and performance levels without a regulatory action through the Administrative Process Act, there are several reasons to support this arrangement. The existing regulations already authorize the board to make certain adjustments to pass rates and other allowances in certain circumstances. Further, in practice, any proposed changes to proposed benchmarks and performance levels would always be made in consultation with the Secretary of Education and the Governor's office. In addition, the board maintains an overall guidance document as a supplement for these regulations that is available to the public to explain any such adjustments that the board has adopted. Finally, the regulations will require school divisions to be provided adequate notice before adopting any such changes.

The career investigation course that will be required for middle school students can also be delivered through alternative means that are equivalent in content and rigor. This addresses some stakeholder's concerns that adding a new required course for middle school could cause scheduling problems that might prevent students from being able to take electives, fine arts, and foreign language courses. Potential alternative means to provide the course content include: virtual courses, exploratory "wheels," or weaving the course content into other subject areas.

The agency concurs with the remainder of the Department of Planning and Budget's analysis and will continue to examine the economic and administrative impact of the regulations as they progress through the APA process.

Summary:

The proposed amendments provide for the implementation of the Profile of a Virginia Graduate as required by Chapters 720 and 750 of the 2016 Acts of Assembly, as well as further policy changes identified by the board as

part of its comprehensive review. Proposed changes include the following:

- 1. Revising the philosophy, goals, and objectives of individual schools to reflect expectations for preparation of a Virginia public school graduate; recognition of multiple areas affecting school quality; and provision of continuous improvement and support.*
- 2. Expanding the use of performance assessments and reducing the number of credits verified by Standards of Learning tests to satisfy high school graduation requirements.*
- 3. Increasing the emphasis on internships and work-based learning experiences in high school.*
- 4. Increasing career exposure, exploration, and planning in elementary, middle, and high school.*
- 5. Emphasizing critical thinking, creative thinking, collaboration, communication, and citizenship (the five Cs).*
- 6. Implementing the Profile of a Virginia Graduate.*
- 7. Reflecting changes in the School Quality Profile.*
- 8. Establishing a new school accreditation system designed to provide a comprehensive picture of school quality, drive continuous improvement, build on the strengths in the existing accreditation system, and inform areas of technical assistance and support to schools.*

Part I

Definitions and Purpose

8VAC20-131-5. Definitions.

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

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

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

"Authentic performance assessment" means a test that complies with guidelines adopted by the board that requires students to perform a task or create a product that is typically scored using a rubric. An authentic performance assessment may be used to confer verified credit in accordance with the provisions of 8VAC20-131-110 B 4 and B 5.

"Board of Education" or "board" means the board responsible for the general supervision of the public schools system in Virginia as prescribed in Section 4 of Article VIII

of the Constitution of Virginia and § 22.1-8 of the Code of Virginia.

"Class period" means a segment of time ~~in~~ during the school instructional day that is approximately 1/6 of the instructional day allocated to lessons, courses, testing and assessments, or other instructional activities and excludes homeroom.

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

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

"Department" means the Virginia Department of Education.

"Elementary school" means a public school with any grades kindergarten through ~~five~~ 5.

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

"English learner" or "EL" means, as prescribed in the Elementary and Secondary Education Act (P.L. 89-10, as amended), an individual:

1. Who is aged three through 21 years;
2. Who is enrolled or preparing to enroll in an elementary school or secondary school;
3. a. Who was not born in the United States or whose native language is a language other than English;
 - b. (1) Who is a Native American or Alaska native, or a native resident of the outlying areas; and
 - (2) Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
 - c. Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
4. Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual the:
 - a. Ability to meet the challenging state academic standards;
 - b. Ability to successfully achieve in classrooms where the language of instruction is English; or
 - c. Opportunity to participate fully in society.

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

the student's home school or within related schools or programs.

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

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

~~"Graduate" means a student who has earned a Board of Education board recognized diploma, which includes the Advanced Studies Diploma, the Standard Diploma, and the Applied Studies Diploma.~~

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

"Instructional day" means all the time in a standard school day, from the beginning of the first scheduled class period to the end of the last scheduled class period, including passing time for class changes and excluding breaks for meals and recess.

"Instructional hours" means the hours in a standard school day, from the beginning of the first scheduled class period to the end of the last scheduled class period, including passing time for class changes and excluding breaks for meals and recess.

"Locally awarded verified credit" means a verified unit of credit awarded by a local school board in accordance with 8VAC20-131-110 B 3.

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

~~"Planning period" means one class period per day or the equivalent a segment of time in middle and secondary schools during the instructional day that is unencumbered of any teaching or supervisory duties, is not less than 45 minutes or the equivalent of a class period, whichever is greater, and that includes passing time for class changes.~~

"Planning time" means a segment of time for elementary teachers that provides at least an average of 30 minutes per day for planning during the student's school week as provided in § 22.1-291.1 of the Code of Virginia.

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

~~"Reconstitution" means a process that may be used to initiate a range of accountability actions to improve pupil performance, curriculum, and instruction to address deficiencies that caused a school to be rated Accreditation Denied that may include, but not be limited to, restructuring a~~

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~~school's governance, instructional program, staff or student population.~~

"Reporting group" means a subgroup of students who are identified as having common characteristics such as students identified as belonging to major racial and ethnic groups, economically disadvantaged students, students with disabilities, and English learners.

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

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

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

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

"Standard school year" means a school year of at least 180 teaching days or a total of at least 990 ~~teaching instructional~~ hours per year, as specified in § 22.1-98 of the Code of Virginia.

"Standard unit of credit" or "standard credit" means credit awarded for a course in which the student successfully completes 140 clock hours of instruction and the requirements of the course. Local school boards may develop alternatives to the requirement for 140 clock hours of instruction as provided for in 8VAC20-131-110 and in accordance with board guidelines.

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

"Standards of Quality" means the Standards of Quality prescribed in Chapter 13.2 (§ 22.1-253.13:1 et seq.) of Title 22.1 of the Code of Virginia.

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

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

"Verified unit of credit" or "verified credit" means credit awarded for a course in which a student earns a standard unit of credit and (i) achieves a passing score on a corresponding

end-of-course SOL test or; (ii) achieves a passing score on an additional test approved by the Board of Education as defined in this section as part of the Virginia assessment program Assessment Program; (iii) meets the criteria for the receipt of a locally awarded verified credit conferred in accordance with board criteria and guidelines as provided in 8VAC20-131-110 B 3 when the student has not passed a corresponding SOL test in English, mathematics, laboratory science, or history and social science; (iv) meets the criteria for the receipt of a verified credit for history and social science by demonstrating mastery of the content of the associated course on an authentic performance assessment as provided in 8VAC20-131-110 B 4; or (v) meets the criteria for the receipt of a verified credit for English (writing) by demonstrating mastery of the content of the associated course on an authentic performance assessment, as provided in 8VAC20-131-110 B 5.

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

8VAC20-131-10. Purpose.

The foremost purpose of public education in Virginia is to provide children with a high quality education giving them opportunities to meet their fullest potential in life. The standards for the accreditation of public schools in Virginia are designed to ensure that an effective educational program is established and maintained in Virginia's public schools. The mission of the public education system is to educate students in the essential ~~academic~~ knowledge and skills in order that they may be equipped for citizenship, work, and an informed and successful private life that is informed and free. ~~The accreditation standards:~~

The Standards of Accreditation provide the foundation for the provision of a high quality public education within a system of accountability and continuous improvement. They are intended to:

1. Provide an essential foundation of educational programs of high quality in all schools for all students.
2. Encourage and promote school quality and acknowledge achievement and continuous improvement and appraisal of the school program for the purpose of raising student achievement improvements by schools and school divisions in multiple areas.
3. Foster public confidence that graduating students have mastered multiple areas of learning to include academic subjects, workplace skills, career exploration and planning, and civic and community responsibility.
4. Assure recognition of Virginia's public schools by other institutions of learning.
5. Establish a the means of determining the effectiveness of schools as prescribed in the Standards of Quality at § 22.1-

253.13:3 of the Code of Virginia, including student learning and progress and student outcomes for multiple areas affecting school quality.

Section 22.1-253.13:3 ~~B~~ A of the Code of Virginia requires the ~~Virginia Board of Education (hereinafter "board")~~ board promulgate regulations establishing standards for accreditation, which shall include student outcome measures, requirements and guidelines for instructional programs and for the integration of educational technology into such instructional programs, administrative and instructional staffing levels and positions, including staff positions for supporting educational technology, student services, auxiliary education programs such as library and media services, course and credit requirements for graduation from high school, community relations, and the philosophy, goals, and objectives of public education in Virginia.

The statutory authority for ~~these regulations~~ this chapter is delineated in § 22.1-19 of the Code of Virginia, which includes the requirement that the board shall provide for the accreditation of public elementary, middle, and secondary schools in accordance with regulations prescribed by it.

~~These regulations govern~~ This chapter governs public schools operated by local school boards providing instruction to students as defined in 8VAC20-131-5. Other schools licensed under other state statutes are exempt from these requirements.

Part II
Philosophy, Goals, and Objectives

8VAC20-131-20. Philosophy, goals, and objectives.

A. Achieving school quality and continuous improvement are accomplishments dependent upon multiple factors, including instruction, leadership, learning environment, professional staff development, student supports, parent and community engagement, and continual evaluation of outcomes. Goals and objectives to be achieved through these and other areas include student opportunities for learning, closure of achievement gaps, reduction of the dropout rate, increased graduation rates, and student mastery beyond minimum requirements.

Preparation of all students should result in graduates who have explored and understand what opportunities exist for them after high school and have the knowledge and abilities necessary for the next phase of their lives as adults. Students should attain essential knowledge and skills in order that they may be equipped to be responsible citizens, understand and meet expectations for work, gain and apply knowledge, and plan and achieve personal life goals. In addition to academic and technical knowledge, their education should encompass mastery of creative and critical thinking, analysis and problem solving, and the development of personal attributes such as communication and collaboration skills, dependability, and persistence.

The philosophy, goals, and objectives of individual schools should reflect and encompass the means by which the Standards of Learning and Standards of Accreditation are to be achieved.

The board's objective is to provide an educational foundation that ensures students are ready to be successful in a global economy, which includes changing and growing technology. Families, students, employers, representatives from institutions of higher education, and educators have all expressed concerns about adequate preparation of Virginia's students for the future. In addition to appropriate content knowledge, stakeholders have asked that graduates be prepared with skills and attributes such as critical thinking, creative thinking, communication, collaboration, and citizenship in order to be prepared to be successful in life and competitive in the work world. In response, the board is redesigning the public school experience for Virginia's students so that they are adequately prepared for the future challenges they face.

In Virginia, as a student progresses through elementary, middle, and secondary school, the college-ready, career-ready, and citizenship-ready student is expected to achieve and apply appropriate academic and technical knowledge; attain and demonstrate age-appropriate productive workplace skills, qualities, and behavior; align knowledge, skills, and personal interests with career and civic opportunities; and attain and demonstrate knowledge and skills necessary for productive citizenship and participation in communities and governments.

~~A.~~ B. Each school shall have a current philosophy, goals, and objectives that shall serve as the basis for all policies and practices and shall be developed using the following criteria:

1. The philosophy, goals, and objectives shall be developed with the advice of professional and lay people who represent the various populations served by the school and in consideration of the needs of the community and shall serve as a basis for the creation and review of the biennial school plan.
2. The school's philosophy, goals, and objectives shall be consistent with the Standards of Quality.
3. The goals and objectives shall (i) be written in plain language so as to be understandable to noneducators, including parents; (ii) to the extent possible, be stated in measurable terms; and (iii) consist primarily of measurable objectives to raise student and school achievement in the core academic areas of the Standards of Learning (~~SOL~~), to improve student and staff attendance, to reduce student ~~drop-out~~ dropout rates, to increase graduation rates, and to increase the quality of instruction through professional staff development and licensure.
4. The school staff and community representatives shall review annually the extent to which the school has met its prior goals and objectives, analyze the school's student performance data, including data by grade level or

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academic department as necessary, and report these outcomes to the division superintendent and the community in accordance with local school board policy. This report shall be in addition to the school ~~report card~~ quality profile required by 8VAC20-131-270 ~~B~~ A.

~~B~~ C. Copies of the school's philosophy, goals, and objectives shall be available upon request.

Part III Student Achievement

8VAC20-131-30. Student achievement expectations.

A. Each student should learn the relevant grade level/course subject matter before promotion to the next grade. The division superintendent shall certify to the Department of Education that the division's ~~promotion/retention~~ promotion and retention policy does not exclude students from membership in a grade, or participation in a course, in which SOL tests are to be administered. Each school shall have a process, as appropriate, to identify and recommend strategies to address the learning, behavior, communication, or development of individual children who are having difficulty in the educational setting.

B. In kindergarten through eighth grade, where the administration of Virginia ~~assessment program~~ Assessment Program tests are required by the ~~Board of Education board~~, each student shall be expected to take the tests ~~students following instruction. Students~~ who are accelerated shall take the ~~tests of the grade level enrolled or the tests for the grade level of the content received in instruction~~ test aligned with the highest grade level, following instruction in the content. No student shall take more than one test in any content area in each year, except in the case of expedited retakes as provided for in this section. Schools shall use the Virginia ~~assessment program~~ Assessment Program test results in kindergarten through eighth grade as part of a set of multiple criteria for determining the promotion or retention of students. Students promoted to high school from eighth grade should have attained basic mastery of the Standards of Learning in English, history and social science, mathematics, and science and should be prepared for high school work. Students shall not be required to retake the Virginia ~~assessment program~~ Assessment Program tests unless they are retained in grade and have not previously passed the related tests.

~~With such funds as may be appropriated by the General Assembly, the Board of Education~~ The board shall provide the same criteria for eligibility for an expedited retake of any ~~Standards of Learning SOL~~ SOL test, with the exception of the writing ~~Standards of Learning SOL~~ SOL tests, to each student regardless of grade level or course.

C. In kindergarten through grade 12, students may participate in a remediation recovery program as established by the board in English (~~Reading~~) (reading) or mathematics or both.

D. The board recommends that students in kindergarten through grade 8 not be required to attend summer school or weekend remediation classes solely based on failing a SOL test in science or ~~history/social~~ history and social science. However, any student who fails to achieve a passing score on all Standard of Learning assessments for the relevant grade level in grades 3 through 8 shall be required to attend a remediation program or to participate in another form of remediation. Further, any student who fails an end-of-course test required for the award of a verified unit of credit shall be required to attend a remediation program or to participate in another form of remediation.

E. Each student in middle and secondary schools shall take all applicable end-of-course SOL tests following course instruction. The division superintendent shall certify to the Department of Education that the division's policy for dropping courses ensures that students' course schedules are not changed to avoid end-of-course SOL tests. Students who achieve a passing score on an end-of-course SOL test shall be awarded a verified unit of credit in that course in accordance with the provisions of 8VAC20-131-110. Students may earn verified units of credit in any courses for which end-of-course SOL tests are available. Students shall not be required to take an end-of-course SOL test in an academic subject after they have earned the number of verified credits required for that academic content area for graduation, unless such test is necessary in order for the school to meet federal accountability requirements. Middle and secondary schools may consider the student's end-of-course SOL test score in determining the student's final course grade. However, no student who has failed an end-of-course SOL test but passed the related course shall be prevented from taking any other course in a content area and from taking the applicable end-of-course SOL test. The board may approve additional tests to verify student achievement in accordance with guidelines adopted for verified units of credit described in 8VAC20-131-110.

F. Participation in the Virginia ~~assessment program~~ Assessment Program by students with disabilities shall be prescribed by provisions of their Individualized Education Program (IEP) or 504 Plan. All students with disabilities shall be assessed with appropriate accommodations and alternate assessments where necessary.

G. ~~All students~~ Any student identified as ~~limited English proficient (LEP)~~ an English Learner (EL) shall participate in the Virginia ~~assessment program~~ Assessment Program. A school-based committee shall convene and make determinations regarding the participation level of ~~LEP EL~~ EL students in the Virginia ~~assessment program~~ Assessment Program. In kindergarten through eighth grade, ~~limited English proficient EL~~ EL students may be granted a one-time exemption from SOL testing in the areas of writing, ~~science,~~ and history and social science.

H. Students identified as foreign exchange students taking courses for credit shall be required to take the relevant Virginia ~~assessment program~~ Assessment Program tests, as specified in subsection E of this section. Foreign exchange students who are auditing courses are not eligible for academic credit for those courses and ~~who will not receive a standard unit of credit for such courses~~ shall not be required to take the Standards of Learning SOL tests for those courses.

8VAC20-131-50. Requirements for graduation (effective for the students entering ninth grade prior to the 2018-2019 school year).

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

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

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

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

B. Requirements for a Standard Diploma.

1. Beginning with the ninth-grade class of 2013-2014 and ~~beyond through the ninth-grade class of 2017-2018~~, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.
2. Credits required for graduation with a Standard Diploma.

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2
Mathematics ¹	3	1
Laboratory Science ^{2,6}	3	1

History and Social Sciences ^{3,6}	3	1
Health and Physical Education	2	
Foreign Language, Fine Arts or Career and Technical Education ⁷	2	
Economics and Personal Finance	1	
Electives ⁴	4	
Student Selected Test ⁵		1
Career and Technical Education Credential ⁸		
Total ⁹	22	6

¹Courses completed to satisfy this requirement shall include at least two different course selections from among: Algebra I, Geometry, Algebra, Functions, and Data Analysis, Algebra II, or other mathematics courses above the level of Algebra II. The board shall approve courses to satisfy this requirement. Per the Standards of Quality, a computer science course credit earned by students may be considered a mathematics course credit.

²Courses completed to satisfy this requirement shall include course selections from at least two different science disciplines: earth sciences, biology, chemistry, or physics, or completion of the sequence of science courses required for the International Baccalaureate Diploma. The board shall approve courses to satisfy this requirement. Per the Standards of Quality, a computer science course credit earned by students may be considered a science course credit.

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

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

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

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

⁷Pursuant to § 22.1-253.13:4 of the Code of Virginia, credits earned for this requirement shall include one credit in fine or performing arts or career and technical education. Per the Standards of Quality, a computer science course credit earned by students may be considered

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a career and technical education course credit.

⁸Students shall earn a career and technical education credential approved by the Board of Education, except when a career and technical education credential in a particular subject area is not readily available or appropriate or does not adequately measure student competency, in which case the student shall receive satisfactory competency-based instruction in the subject area to satisfy the standard diploma requirements. The career and technical education credential, when required, could include the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness assessment.

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

Beginning with first-time ninth-grade students in the 2016-2017 school year, students shall be trained in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators, including hands-on practice of the skills necessary to perform cardiopulmonary resuscitation. Students with an Individualized Education Program (IEP) or 504 Plan which documents that they cannot successfully complete this training shall be granted a waiver from this graduation requirement, as provided in ~~8VAC20-131-350~~ 8VAC20-131-420 B.

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

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

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

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

C. Requirements for an Advanced Studies Diploma.

1. Beginning with the ninth-grade class of 2013-2014 and ~~beyond~~ through the ninth-grade class of 2017-2018, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.

2. Credits required for graduation with an Advanced Studies Diploma.

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2
Mathematics ¹	4	2
Laboratory Science ²	4	2
History and Social Sciences ³	4	2
Foreign Language ⁴	3	
Health and Physical Education	2	
Fine Arts or Career and Technical Education ⁵	1	
Economics and Personal Finance	1	
Electives	3	
Student Selected Test ⁵⁻⁶		1
Total ⁶⁷	26	9

¹Courses completed to satisfy this requirement shall include at least three different course selections from among: Algebra I, Geometry, Algebra II, or other mathematics courses above the level of Algebra II. The board shall approve courses to satisfy this requirement. Per the Standards of Quality, a computer science course credit earned by students may be considered a mathematics course credit.

²Courses completed to satisfy this requirement shall include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics or completion of the sequence of science courses required for the International Baccalaureate Diploma. The board shall approve additional courses to satisfy this requirement. Per the Standards of Quality, a computer science course credit earned by students may be considered a science course credit.

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

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

⁵Per the Standards of Quality, a computer science course credit earned by students may be considered a career and technical education course credit.

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

⁶⁷Students shall successfully complete one virtual course, which may be a noncredit-bearing course, or may be a course required to earn this diploma that is offered online.

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

Beginning with first-time ninth-grade students in the 2016-2017 school year, students shall be trained in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators, including hands-on practice of the skills necessary to perform cardiopulmonary resuscitation. Students with an ~~Individualized Education Program (IEP)~~ IEP or 504 Plan ~~which that~~ documents that they cannot successfully complete this training shall be granted a waiver from this graduation requirement, as provided in ~~8VAC20-131-350~~ 8VAC20-131-420 B.

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

E. In accordance with the requirements of the Standards of Quality, students who complete prescribed programs of studies defined by the local school board but do not qualify for a Standard Diploma, an Advanced Studies Diploma, or an Applied Studies Diploma shall be awarded Certificates of Program Completion. The requirements for Certificates of Program Completion are developed by local school boards in accordance with the Standards of Quality.

F. In accordance with the provisions of the compulsory attendance law and 8VAC20-30, Regulations Governing Adult High School Programs, students who do not qualify for diplomas may earn a high school equivalency credential.

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

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

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

2. ~~Students~~ The Board of Education Seal shall be awarded to students who complete the requirements for a Standard

Diploma or an Advanced Studies Diploma with an average grade of "A" ~~shall receive a Board of Education Seal on the diploma.~~

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

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

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

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military prior to graduation ~~will~~ shall be deemed to have met this community service requirement.

6. The Board of Education's Seal of Biliteracy ~~will~~ shall be awarded to students who demonstrate proficiency in English and at least one other language and meet additional criteria established by the board. Such seal ~~will~~ shall be awarded to eligible students graduating from public high schools in the Commonwealth beginning in 2016.

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

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

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

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

8VAC20-131-51. Requirements for graduation (effective with the students who enter the ninth grade in the 2018-2019 school year).

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

Both the Standard Diploma and the Advanced Studies Diploma shall provide multiple paths toward college, career, and citizenship readiness for students to follow in the later years of high school. Each such pathway shall provide meaningful and rigorous opportunities tied to instruction to achieve workplace and citizenship skills through internships, externships, credentialing, and blended learning, which may be offered for credit toward high school graduation, in accordance with department guidelines.

In accordance with the Profile of a Virginia Graduate approved by the board, the instructional program leading to a Standard Diploma or Advanced Studies Diploma shall ensure that students (i) attain the knowledge, skills, competencies,

and experiences necessary to be successful in the evolving global economy whether immediately entering the world of work or pursuing a postsecondary education and (ii) acquire and be able to demonstrate foundational skills in critical thinking, creative thinking, collaboration, communication, and citizenship.

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

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

B. Requirements for a Standard Diploma.

1. Beginning with the ninth-grade class of 2018-2019 and beyond, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.

2. Credits required for graduation with a Standard Diploma.

A "standard unit of credit" or "standard credit" is a credit awarded for a course in which the student successfully completes 140 clock hours of instruction and the requirements of the course. Local school boards may develop alternatives to the requirement for 140 clock hours of instruction as provided for in 8VAC20-131-110 and in accordance with board guidelines.

A "verified unit of credit" or "verified credit" is a credit awarded for a course in which a student earns a standard unit of credit and (i) achieves a passing score on a corresponding end-of-course SOL test; (ii) achieves a passing score on an additional test, as defined in 8VAC20-131-5 as part of the Virginia Assessment Program; (iii) meets the criteria for the receipt of a locally awarded verified credit conferred in accordance with board criteria and guidelines as provided in 8VAC20-131-110 B 3 when the student has not passed a corresponding SOL test in English, mathematics, laboratory science, or history and social science; (iv) meets the criteria for the receipt of a verified credit for history and social science by demonstrating mastery of the content of the associated course on an authentic performance assessment, as provided in 8VAC20-131-110 B 4; or (v) meets the criteria for the receipt of a verified credit for English (writing) by demonstrating mastery of the content of the associated course on authentic performance assessments as provided in 8VAC20-131-110 B 5.

No more than one locally awarded verified credit may be used to satisfy these requirements, except as provided in subdivision 3 of this subsection for credit accommodations for students with disabilities.

<u>Discipline Area</u>	<u>Standard Units of Credit Required</u>	<u>Verified Credits Required</u>
<u>English (reading and writing)</u>	<u>4</u>	<u>2</u>
<u>Mathematics</u>	<u>3</u>	<u>1</u>
<u>Laboratory Science</u>	<u>3</u>	<u>1</u>
<u>History and Social Science</u>	<u>3</u>	<u>1</u>
<u>Health and Physical Education</u>	<u>2</u>	
<u>World Language, Fine Arts or Career and Technical Education</u>	<u>2</u>	
<u>Economics and Personal Finance</u>	<u>1</u>	
<u>Electives</u>	<u>4</u>	
<u>Total</u>	<u>22</u>	<u>5</u>

<u>Discipline Area</u>	<u>Specifications</u>
<u>English (reading and writing)</u>	<u>The board shall approve courses to satisfy this requirement.</u>
<u>Mathematics</u>	<u>Courses completed to satisfy this requirement shall include at least two different course selections from among: algebra I, geometry, algebra functions, and data analysis, algebra II, or other mathematics courses approved by the board to satisfy this requirement. Per the Standards of Quality, a computer science course credit earned by students may be considered a mathematics course credit.</u>
<u>Laboratory Science</u>	<u>Courses completed to satisfy this requirement shall include course selection from at least two different science disciplines: earth sciences, biology, chemistry, or physics, or</u>

	<u>completion of the sequence of science courses required for the International Baccalaureate Diploma and shall include interdisciplinary courses that incorporate Standards of Learning content from multiple academic areas. The board shall approve courses to satisfy this requirement. Per the Standards of Quality, a computer science course credit earned by students may be considered a science course credit.</u>
<u>History and Social Science</u>	<u>Courses completed to satisfy this requirement shall include Virginia and U.S. history, Virginia and U.S. government, and one course in either world history or geography or both. The board shall approve courses to satisfy this requirement.</u>
<u>Laboratory Science, and History and Social Science</u>	<u>Students who complete a career and technical education program sequence and pass an examination or occupational competency assessment in a career and technical education field that confers certification or an occupational competency credential from a recognized industry, or trade or professional association, or acquires a professional license in a career and technical education field from the Commonwealth of Virginia may substitute the certification, competency credential, or license for either a laboratory science or history and social science verified credit when the certification, license, or credential confers more than one verified credit. The examination or occupational competency assessment must be approved by the board as an additional test to verify student achievement.</u>
<u>World Language, Fine Arts or Career and Technical Education</u>	<u>Per the Standards of Quality, credits earned for this requirement shall include one credit in fine or performing arts or career and technical education. Per the Standards of Quality, a</u>

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	<u>computer science course credit earned by students may be considered a career and technical course credit.</u>
<u>Electives</u>	<u>Courses to satisfy this requirement shall include at least two sequential electives as required by the Standards of Quality.</u>
<u>Additional Requirements for Graduation</u>	
<u>Advanced Placement, Honors, or International Baccalaureate Course or Career and Technical Education Credential</u>	<u>In accordance with the Standards of Quality, students shall either (i) complete an Advanced Placement, honors, or International Baccalaureate course, or (ii) earn a career and technical education credential approved by the board, except when a career and technical education credential in a particular subject area is not readily available or appropriate or does not adequately measure student competency, in which case the student shall receive satisfactory competency-based instruction in the subject area to satisfy the standard diploma requirements. The career and technical education credential, when required, could include the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness assessment.</u>
<u>Virtual Course</u>	<u>Students shall successfully complete one virtual course, which may be a non-credit-bearing course or a required or elective credit-bearing course that is offered online.</u>
<u>Training in emergency first aid, cardiopulmonary resuscitation (CPR), and the use of automated external defibrillators (AED)</u>	<u>Students shall be trained in emergency first aid, CPR, and the use of AED, including hands-on practice of the skills necessary to perform cardiopulmonary resuscitation. Students with an IEP or 504 Plan that documents that they cannot successfully</u>

	<u>complete this training shall be granted a waiver from this graduation requirement, as provided in 8VAC20-131-420 B.</u>
<u>Demonstration of the five Cs</u>	<u>Students shall acquire and demonstrate foundational skills in critical thinking, creative thinking, collaboration, communication, and citizenship in accordance with the Profile of a Virginia Graduate approved by the board.</u>

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

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

The student's IEP or 504 Plan shall specify any credit accommodations applicable for the student.

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

C. Requirements for an Advanced Studies Diploma.

1. Beginning with the ninth-grade class of 2018-2019 and beyond, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.

2. Credits required for graduation with an Advanced Studies Diploma.

A "standard unit of credit" or "standard credit" is a credit awarded for a course in which the student successfully completes 140 clock hours of instruction and the requirements of the course. Local school boards may develop alternatives to the requirement for 140 clock hours of instruction as provided for in 8VAC20-131-110 and in accordance with board guidelines.

A "verified unit of credit" or "verified credit" is a credit awarded for a course in which a student earns a standard unit of credit and (i) achieves a passing score on a corresponding end-of-course SOL test; (ii) achieves a passing score on an additional test, as defined in 8VAC20-131-5, as part of the Virginia Assessment Program; (iii) meets the criteria for the receipt of a locally awarded

verified credit conferred in accordance with board criteria and guidelines as provided in 8VAC20-131-110 B 3 when the student has not passed a corresponding SOL test in English, mathematics, laboratory science, or history and social science; (iv) meets the criteria for the receipt of a verified credit for history and social science by demonstrating mastery of the content of the associated course on an authentic performance assessment, as provided in 8VAC20-131-110 B 4; or (v) meets the criteria for the receipt of a verified credit for English (writing) by demonstrating mastery of the content of the associated course on an authentic performance assessment, as provided in 8VAC20-131-110 B 5.

No more than one locally awarded verified credit may be used to satisfy these requirements.

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English (reading and writing)	4	2
Mathematics	4	1
Laboratory Science	4	1
History and Social Science	4	1
World Language	3	
Health and Physical Education	2	
Fine Arts or Career and Technical Education	1	
Economics and Personal Finance	1	
Electives	3	
Total	26	5
Discipline Area	Specifications	
English (reading and writing)	The board shall approve courses to satisfy this requirement.	
Mathematics	Courses completed to satisfy this requirement shall include at least three different course selections from among: algebra I, geometry, algebra II, or other mathematics courses above the level of algebra II. The board shall approve courses to satisfy this requirement.	

	Per the Standards of Quality, a computer science course credit earned by students may be considered a mathematics course credit.
Laboratory Science	Courses completed to satisfy this requirement shall include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics or completion of the sequence of science courses required for the International Baccalaureate Diploma and shall include interdisciplinary courses that incorporate Standards of Learning content from multiple academic areas. The board shall approve additional courses to satisfy this requirement. Per the Standards of Quality, a computer science course credit earned by students may be considered a science course credit.
History and Social Science	Courses completed to satisfy this requirement shall include Virginia and U.S. history, Virginia and U.S. government, and two courses in either world history or geography or both. The board shall approve additional courses to satisfy this requirement.
World Language	Courses completed to satisfy this requirement shall include three years of one language or two years of two languages.
Fine Arts or Career and Technical Education	Per the Standards of Quality, a computer science course credit earned by students may be considered a career and technical credit.
Additional Requirements for Graduation	
Advanced Placement, Honors, or International Baccalaureate Course or Career and Technical	In accordance with the Standards of Quality, students shall either (i) complete an Advanced Placement, honors, or International Baccalaureate course or (ii) earn a career and technical education credential approved by the board.

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<p><u>Education Credential</u></p>	<p><u>except when a career and technical education credential in a particular subject area is not readily available or appropriate or does not adequately measure student competency, in which case the student shall receive satisfactory competency-based instruction in the subject area to satisfy the advanced studies diploma requirements. The career and technical education credential, when required, could include the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness assessment.</u></p>
<p><u>Virtual Course</u></p>	<p><u>Students shall successfully complete one virtual course, which may be a non-credit-bearing course or a required or elective credit-bearing course that is offered online.</u></p>
<p><u>Training in emergency first aid, cardiopulmonary resuscitation (CPR), and the use of automated external defibrillators (AED).</u></p>	<p><u>Students shall be trained in emergency first aid, CPR, and the use of AED, including hands-on practice of the skills necessary to perform cardiopulmonary resuscitation. Students with an IEP or 504 Plan that documents that they cannot successfully complete this training shall be granted a waiver from this graduation requirement, as provided in 8VAC20-131-420 B.</u></p>
<p><u>Demonstration of the five Cs</u></p>	<p><u>Students shall acquire and demonstrate foundational skills in critical thinking, creative thinking, collaboration, communication, and citizenship in accordance with the Profile of a Virginia Graduate approved by the board.</u></p>

Studies Diploma at any time during high school. Such students shall not be excluded from courses or tests required to earn these diplomas.

E. Requirements for Certificates of Program Completion. In accordance with the requirements of the Standards of Quality, students who complete prescribed programs of studies defined by the local school board but do not qualify for a Standard Diploma, an Advanced Studies Diploma, or an Applied Studies Diploma shall be awarded Certificates of Program Completion. The requirements for Certificates of Program Completion are developed by local school boards in accordance with the Standards of Quality.

F. In accordance with the provisions of the compulsory attendance law and 8VAC20-30, Regulations Governing Adult High School Programs, students who do not qualify for diplomas may earn a high school equivalency credential. The requirements for the General Achievement Diploma are provided in 8VAC20-20.

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

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

1. The Governor's Seal shall be awarded to students who complete the requirements for an Advanced Studies Diploma with an average grade of "B" or better and successfully complete college-level coursework that shall earn the student at least nine transferable college credits in Advanced Placement (AP), International Baccalaureate (IB), Cambridge, or dual enrollment courses.
2. The Board of Education Seal shall be awarded to students who complete the requirements for a Standard Diploma or an Advanced Studies Diploma with an average grade of "A."
3. The Board of Education's Career and Technical Education Seal shall be awarded to students who earn a Standard Diploma or an Advanced Studies Diploma and complete a prescribed sequence of courses in a career and technical education concentration or specialization that they choose and maintain a "B" or better average in those courses or (i) pass an examination or an occupational competency assessment in a career and technical education concentration or specialization that confers certification or occupational competency credential from a recognized industry, trade, or professional association or (ii) acquire a professional license in that career and technical education field from the Commonwealth of Virginia. The board shall

D. Requirements for an Applied Studies Diploma. In accordance with the requirements of the Standards of Quality, a student with disabilities who completes the requirements of the student's IEP and does not meet the requirements for other diplomas shall be awarded Applied Studies Diplomas in accordance with state and federal laws and regulations regarding special education.

Students who pursue an Applied Studies Diploma shall be allowed to pursue a Standard Diploma or an Advanced

approve all professional licenses and examinations used to satisfy these requirements.

4. The Board of Education's Seal of Advanced Mathematics and Technology shall be awarded to students who earn either a Standard Diploma or an Advanced Studies Diploma and (i) satisfy all of the mathematics requirements for the Advanced Studies Diploma with a "B" average or better and (ii) pass an examination in a career and technical education field that confers certification from a recognized industry, or trade or professional association; acquire a professional license in a career and technical education field from the Commonwealth of Virginia; or pass an examination approved by the board that confers college-level credit in a technology or computer science area. The board shall approve all professional licenses and examinations used to satisfy these requirements.

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

6. The Board of Education's Seal of Bilingual Proficiency shall be awarded to students who demonstrate proficiency in English and at least one other language and meet additional criteria established by the board.

7. The Board of Education's Seal for Excellence in Science and the Environment shall be awarded to students who earn either a Standard Diploma or Advanced Studies Diploma and (i) complete at least three different first-level board-approved laboratory science courses and at least one rigorous advanced-level or postsecondary-level laboratory science course, each with a grade of "B" or higher; (ii) complete laboratory or field-science research and present that research in a formal, juried setting; and (iii) complete at least 50 hours of voluntary participation in community service or extracurricular activities that involve the application of science such as environmental monitoring, protection, management, or restoration.

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

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

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

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

8VAC20-131-60. Transfer students.

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

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

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

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

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

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

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

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

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

Students transferring into a Virginia public school from other than a Virginia public school shall earn no fewer than the number of verified units listed in subdivision G 1 or G 2 of this section. The school division shall accept the following tests from the sending state, country, private school, or Department of Defense Educational Activity school for the purpose of awarding verified units of credit in courses

previously completed at another school or program of study, for the purpose of awarding a Virginia high school diploma:

1. End-of-course tests required for graduation by the sending state;
2. Exit tests required for graduation by the sending state; and
3. National norm-referenced achievement tests. When students transfer to a Virginia public school from a state that requires a national norm-referenced achievement test, and that state education agency has set a "cut score" or passing score for the purpose of graduation, the school division shall accept the test for the purpose of awarding a verified credit if the test includes some content in a subject for which a verified credit may be awarded. If that state education agency has not set a cut score for the norm-referenced test, the test may not be used for the purpose of awarding a verified credit or earning a high school diploma.

Any substitute test approved by the board for verified credit shall be accepted in lieu of the applicable SOL tests if the applicable standard credit has been earned by the student.

The sending state's test must include content in the subjects for which verified credit is awarded. The test does not have to be comparable to a Virginia SOL test, so long as the test includes some content in the subject area. If the test includes some content from more than one subject, verified credits shall be awarded for every subject area covered by the test.

G. Students entering a Virginia public high school for the first time after the tenth grade shall earn as many credits as possible toward the prescribed graduation requirements ~~prescribed in 8VAC20-131-50~~. However, schools may substitute courses required in other states in the same content area if the student is unable to meet the specific content requirements of 8VAC20-131-50 or 8VAC20-131-51, respectively, without taking a heavier than normal course load in any semester, by taking summer school, or by taking courses after the time when he the student otherwise would have graduated. ~~In any event, no such student shall earn fewer than the following number of verified units, nor shall such students be required to take SOL tests or additional tests as defined in 8VAC20-131-110 for verified units of credit in courses previously completed at another school or program of study, unless necessary to meet the requirements listed in subdivisions 1 and 2 of this subsection:~~

The graduation requirements for students transferring into a Virginia high school for the first time shall be as follows:

1. For a Standard Diploma:
 - a. Students entering a Virginia high school for the first time at the beginning of or during the ninth grade or at the beginning of the tenth grade prior to the 2018-2019 school year shall earn credit as meet the graduation requirements prescribed in 8VAC20-131-50; Students entering a Virginia high school for the first time at the

beginning of or during the ninth grade in the 2018-2019 school year or thereafter shall meet the graduation requirements prescribed in 8VAC20-131-51.

b. Students entering a Virginia high school for the first time at the beginning of or during the tenth grade prior to the 2019-2020 school year or at the beginning of the eleventh grade prior to the 2020-2021 school year shall meet the graduation requirements prescribed in 8VAC20-131-50, except that such students shall only be required to earn a minimum of four verified units of credit: one each in English, mathematics, history, and science. Students who complete a career and technical education program sequence may substitute a certificate, occupational competency credential or license for either a science or history and social science verified credit pursuant to 8VAC20-131-50; and entering a Virginia high school for the first time at the beginning of or during the tenth grade in the 2019-2020 school year or thereafter or at the beginning of the eleventh grade in the 2020-2021 school year or thereafter, shall meet the graduation requirements prescribed in 8VAC20-131-51.

c. Students entering a Virginia high school for the first time during the eleventh grade prior to the 2020-2021 school year or at the beginning of the twelfth grade prior to the 2021-2022 school year shall meet the graduation requirements prescribed in 8VAC20-131-50, except that such students shall only be required to earn a minimum of two verified units of credit: one in English and one in mathematics if participation in mathematics testing is required by federal law, otherwise, such verified credit may be of the student's own choosing. Students entering a Virginia high school for the first time during the eleventh grade in the 2020-2021 school year or thereafter, or at the beginning of twelfth grade in the 2021-2022 school year or thereafter, shall meet the graduation requirements prescribed in 8VAC20-131-51, except that such students shall only be required to earn a minimum of two verified units of credit: one in English and one in mathematics if participation in mathematics testing is required by federal law, otherwise, such verified credit may be of the student's own choosing.

d. Students transferring after 20 instructional hours per course of their senior or twelfth grade year shall be given every opportunity to earn a diploma following the graduation requirements prescribed in 8VAC20-131-50 for students entering prior to the 2021-2022 school year, or following the graduation requirements prescribed in 8VAC20-131-51 for students entering in the 2021-2022 school year or thereafter. If it is not possible for the student to meet the requirements for a diploma, arrangements should be made for the student's previous school to award the diploma. If these arrangements cannot be made, a waiver of the verified unit of credit requirements may be available to the student. The Department of Education may grant such waivers upon

request by the local school board in accordance with guidelines prescribed by the board.

2. For an Advanced Studies Diploma:

a. Students entering a Virginia high school for the first time at the beginning of or during the ninth grade ~~or at the beginning of the tenth grade~~ prior to the 2018-2019 school year shall earn credit as prescribed in 8VAC20-131-50; ~~Students entering a Virginia high school for the first time at the beginning of or during the ninth grade in the 2018-2019 school year or thereafter shall earn credit as prescribed in 8VAC20-131-51.~~

b. Students entering a Virginia high school for the first time at the beginning of or during the tenth grade prior to the 2019-2020 school year or at the beginning of the eleventh grade prior to the 2020-2021 school year shall meet the graduation requirements prescribed in 8VAC20-131-50, except that such students shall only be required to earn a minimum of six verified units of credit: two in English and one each in mathematics, history, and science and one of the student's own choosing; ~~and, Students entering a Virginia high school for the first time during the tenth grade in the 2019-2020 school year or thereafter or at the beginning of the eleventh grade in the 2020-2021 school year or thereafter shall earn credit as prescribed in 8VAC20-131-51.~~

c. Students entering a Virginia high school for the first time during the eleventh grade prior to the 2020-2021 school year or at the beginning of the twelfth grade prior to the 2021-2022 school year shall meet the graduation requirements prescribed in 8VAC20-131-50, except that such students shall only be required to earn a minimum of four verified units of credit: one in English ~~and three,~~ one in mathematics if required participation in mathematics testing is required by federal law, otherwise such verified credit may be of the student's own choosing, and two additional verified credits of the student's own choosing. ~~Students entering a Virginia high school for the first time during the eleventh grade in the 2020-2021 school year or thereafter, or at the beginning of the twelfth grade in the 2021-2022 school year or thereafter, shall meet the graduation requirements prescribed in 8VAC20-131-51, except that such students shall only be required to earn a minimum of two verified units of credit: one in English, and one in mathematics if required participation in mathematics testing is required by federal law, otherwise such verified credit may be of the student's own choosing.~~

d. Students transferring after 20 instructional hours per course of their senior or twelfth grade year shall be given every opportunity to earn a diploma following the graduation requirements prescribed in 8VAC20-131-50 for students entering prior to the 2021-2022 school year, or following the graduation requirements prescribed in 8VAC20-131-51 for students entering in the 2021-2022

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school year or thereafter. If it is not possible for the student to meet the requirements for a diploma, arrangements should be made for the student's previous school to award the diploma. If these arrangements cannot be made, a waiver of the verified unit of credit requirements may be available to the student. The Department of Education may grant such waivers upon request by the local school board in accordance with guidelines prescribed by the board.

3. For an Applied Studies Diploma: In accordance with the requirements of the Standards of Quality, students with disabilities who complete the requirements of their Individualized Education Plan and do not meet the requirements for other diplomas shall be awarded Applied Studies Diplomas in accordance with state and federal laws and regulations regarding special education.

Students who pursue an Applied Studies Diploma shall be allowed to pursue a Standard Diploma or an Advanced Studies Diploma at any time during high school. Such students shall not be excluded from courses or tests required to earn these diplomas.

4. For a Certificate of Program Completion: In accordance with the requirements of the Standards of Quality, students who complete prescribed programs of studies defined by the local school board, but do not qualify for a Standard Diploma, an Advanced Studies Diploma, or an Applied Studies Diploma shall be awarded Certificates of Program Completion. The requirements for Certificates of Program Completion are developed by local school boards in accordance with the Standards of Quality.

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

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

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

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

Part IV

School Instructional Program

8VAC20-131-70. Program of instruction and learning objectives.

A. As required by the Standards of Quality, each local school board shall develop and implement a program of instruction for grades kindergarten through 12 that is aligned to the Standards of Learning and meets or exceeds the requirements of the board. The program of instruction shall emphasize reading, writing, speaking, mathematical concepts and computations, proficiency in the use of computers and related technology, computer science and computational thinking, including computer coding, and scientific concepts and processes; essential skills and concepts of citizenship, including knowledge of Virginia history and world and United States history, economics, government, foreign languages, international cultures, health and physical education, environmental issues, and geography necessary for responsible participation in American society and in the international community; fine arts, which may include music and art, and practical arts; knowledge and skills needed to qualify for further education, gainful employment, or training in a career or technical field; and development of the ability to apply such skills and knowledge in preparation for eventual employment and lifelong learning and to achieve economic self-sufficiency.

B. As described in 8VAC20-131-51 and in accordance with the Profile of a Virginia Graduate approved by the board, the instructional program and learning objectives shall ensure that students (i) attain the knowledge, skills, competencies, and experiences necessary to be successful in the evolving global economy whether immediately entering the world of work or pursuing a postsecondary education and (ii) acquire and be able to demonstrate foundational skills in critical thinking, creative thinking, collaboration, communication, and citizenship. Consistent with the Profile of a Virginia Graduate, the instructional program and learning objectives

shall ensure that, as age appropriate, during the kindergarten through grade 12 experience, students achieve and apply appropriate career development and technical knowledge. During the elementary and middle school years, students shall explore personal interests, be exposed to different types of careers, and plan for career development. In the later school years students are to attain and demonstrate productive workplace skills, qualities, and behaviors; align knowledge, skills, and personal interests with career opportunities; and understand and demonstrate civic responsibility and community engagement.

~~A. C.~~ Each school shall provide a program of instruction that promotes individual student academic achievement in the essential academic disciplines and shall provide additional instructional opportunities that meet the abilities, interests, and educational needs of students. Each school shall establish learning objectives to be achieved by students at successive grade levels that meet or exceed the knowledge and skills contained in the Standards of Learning for English, mathematics, science, and ~~history/social~~ history and social science adopted by the board and shall continually assess the progress of each student in relation to the objectives.

~~B. D.~~ Instruction shall be designed to accommodate all students, including those identified with disabilities in accordance with the Individuals with Disabilities Education Act or § 504 of the Rehabilitation Act, as amended, those identified as ~~gifted/talented~~ gifted or talented, and those who ~~have limited English proficiency~~ are ELs. ~~Each school shall provide students identified as gifted/talented with instructional programs taught by teachers with special training or experience in working with gifted/talented students.~~ Students with disabilities shall have the opportunity to receive a full continuum of education services, in accordance with ~~8VAC20-80~~ 8VAC20-81, Regulations Governing Special Education Programs for Children with Disabilities in Virginia and other pertinent federal and state laws and regulations.

8VAC20-131-80. Instructional program in elementary schools.

A. The elementary school shall provide each student a program of instruction that corresponds to the Standards of Learning for English, mathematics, science, and ~~history/social~~ history and social science. In addition, each school shall provide instruction in art, music, and physical education and health and shall require students to participate in a program of physical fitness during the regular school year in accordance with guidelines established by the ~~Board of Education~~ board. In addition, each school shall provide instruction in career exploration in accordance with the provisions of 8VAC20-131-140.

B. In kindergarten through grade 3, reading, writing, spelling, and mathematics shall be the focus of the instructional program. Schools shall maintain an early skills and knowledge achievement record in reading and

mathematics for each student in grades kindergarten through ~~grade~~ 3 to monitor student progress and to promote successful achievement on the third grade SOL tests. This record shall be included with the student's records if the student transfers to a new school.

In accordance with the Standards of Quality, local school boards shall implement early identification, diagnosis, and assistance for students with reading and mathematics problems and provide instructional strategies and reading and mathematics practices that benefit the development of reading and mathematics skills for all students.

C. To provide students with sufficient opportunity to learn, a minimum of 75% of the annual instructional time of 990 hours shall be given to instruction in the disciplines of English, mathematics, science, and ~~history/social~~ history and social science. Students who are not successfully progressing in early reading proficiency or who are unable to read with comprehension the materials used for instruction shall receive additional instructional time in reading, which may include summer school.

In accordance with the Standards of Quality, local school divisions shall provide reading intervention services to students in grades kindergarten through 3 who demonstrate deficiencies based on their individual performance on the SOL reading test or any reading diagnostic test that meets criteria established by the Department of Education. The local school division, in its discretion, shall provide such reading intervention services prior to promoting a student from grade 3 to grade 4.

D. Elementary schools are encouraged to provide instruction in ~~foreign world~~ languages.

8VAC20-131-90. Instructional program in middle schools.

A. The middle school shall provide each student a program of instruction ~~which that~~ corresponds to the Standards of Learning for English, mathematics, science, and ~~history/social~~ history and social science. In addition, each school shall provide instruction in art, music, ~~foreign world~~ language, physical education and health, and career and technical exploration and shall require students to participate in a program of physical fitness during the regular school year in accordance with guidelines established by the ~~Board of Education~~ board. Each middle school shall provide a course in career investigation in accordance with the provisions of 8VAC20-131-140. School divisions may seek alternate means of delivering the career investigation course content provided it is equivalent in content and rigor and provides the foundation students to develop their academic and career plans as described in 8VAC20-131-140 C 2. Possible alternative means to deliver the career investigation course content could include online methods, middle school exploratory course options, and delivering the course content through other courses.

B. The middle school shall provide a minimum of eight courses to students in the eighth grade. English, mathematics,

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science, and ~~history/social~~ history and social science shall be required. Four elective courses shall be available: level one of a ~~foreign world~~ language, one in health and physical education, one in fine arts, and one in career and technical exploration.

C. Level one of a ~~foreign world~~ language and an Algebra I course shall be available to all eighth grade students. For any high school credit-bearing course taken in middle school, parents may request that grades be omitted from the student's transcript and the student not earn high school credit for the course in accordance with policies adopted by the local school board. Notice of this provision must be provided to parents with a deadline and format for making such a request. Nothing in ~~these regulations~~ this chapter shall be construed to prevent a middle school from offering any other credit-bearing courses for graduation.

D. To provide students a sufficient opportunity to learn, each student shall be provided ~~140 clock~~ a total of 560 instructional hours per year of instruction in each of in the four academic disciplines of English, mathematics, science, and ~~history/social~~ history and social science. ~~Sixth-grade students may receive an alternative schedule of instruction provided each student receives at least 560 total clock hours of instruction in the four academic disciplines.~~

E. Each school shall ensure that students who are unable to read with comprehension the materials used for instruction receive additional instruction in reading, which may include summer school.

F. In accordance with the Standards of Quality each school shall ensure that students in grades 6 through 8 who need targeted mathematics remediation and intervention, including remediation or intervention for computational deficiencies as demonstrated by their individual performance on any diagnostic test or grade-level SOL mathematics test, shall receive additional instruction in mathematics, which may include summer school. Students in grades 6 through 8 who are at-risk of failing the algebra I end-of-course test shall be provided algebra readiness intervention services.

8VAC20-131-100. Instructional program in secondary schools.

A. The secondary school, in accordance with the Profile of a Virginia Graduate approved by the board, shall provide a program of instruction to ensure that students (i) attain the knowledge, skills, competencies, and experiences necessary to be successful in the evolving global economy whether immediately entering the world of work or pursuing a postsecondary education and (ii) acquire and be able to demonstrate foundational skills in critical thinking and creative thinking, collaboration, communication, and citizenship in accordance with 8VAC20-131-70 and the Profile of a Virginia Graduate.

The secondary school shall provide each student a program of instruction in the four core academic areas of English, mathematics, science, and ~~history/social~~ history and social

science that identifies the knowledge and skills that students should attain, giving due consideration to critical thinking, creative thinking, collaboration, communication, and citizenship, in the early years of high school and enables each student to meet the prescribed graduation requirements described in 8VAC20-131-50 and. The secondary school shall offer opportunities for students each student to pursue a program of studies in foreign languages, fine arts, and career and technical areas including include:

1. Career and technical education choices that incorporate knowledge of regional workforce needs and opportunities; prepare the student as a career and technical education program completer in one of three or more occupational areas; and that prepare the student for technical or preprofessional postsecondary programs;
2. Coursework and experiences that prepare the student for college-level studies including access to at least three Advanced Placement (AP) courses, college-level courses for degree credit, International Baccalaureate (IB) courses, Cambridge courses, or any combination thereof;
3. Preparation for college admissions tests; ~~and~~
4. ~~Opportunities to study and explore~~ Study and exploration of the fine arts and foreign world languages; ~~and~~
5. Participation in internships, externships, and other work-based learning experiences, and to attaining workforce and career readiness and industry credentials.

B. Minimum course offerings for each secondary school shall provide opportunities for students to meet the graduation requirements stated in ~~8VAC20-131-50~~ this chapter and must include:

English	4
Mathematics	4
Science (Laboratory)	4
History and Social Sciences <u>Science</u>	4
Foreign World Language	3
Electives	4
Career and Technical Education	11
Fine Arts	2
Health and Physical Education	2
Economics and Personal Finance	1
Total Units	39

C. Classroom driver education may count for 36 class periods, or the equivalent in minutes, of health education. Students shall not be removed from classes other than health

and physical education for the in-car phase of driver education.

D. Each school shall ensure that students who are unable to read with comprehension the materials used for instruction receive additional instruction in reading, which may include summer school.

E. In accordance with the Standards of Quality, each school shall ensure that students who need targeted mathematics remediation and intervention, including remediation or intervention for computational deficiencies as demonstrated by their individual performance on any diagnostic test or grade-level SOL mathematics test shall receive additional instruction in mathematics, which may include summer school. Students in grade 9 who are at-risk of failing the algebra I end-of-course test, as demonstrated by their individual performance on any diagnostic test that has been approved by the department, shall be provided algebra readiness intervention services.

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

~~A. The standard unit of credit for graduation shall be based on a minimum of 140 clock hours of instruction and successful completion of the requirements of the course. A "standard unit of credit" or "standard credit" is a credit awarded for a course in which the student successfully completes 140 clock hours of instruction and the requirements of the course. A school division may waive the requirement that a student receive 140 clock hours of instruction to earn a standard credit, effective with students enrolled in the 2015-2016 school year, as prescribed in the Standards of Quality and board guidelines. When credit is awarded in less than whole units, the increment awarded must be no greater than the fractional part of the 140 hours of instruction provided. If a school division elects to award credit on a basis other than the 140 clock hours of instruction required for a standard unit of credit defined in this subsection, the local school division shall provide the Board of Education board with satisfactory proof, based on board guidelines, that the students for whom the 140-clock-hour requirement is waived have learned the content and skills included in the relevant Standards of Learning. In addition, the local school division shall develop a written policy approved by the superintendent and school board that ensures:~~

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

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

~~verified unit of credit by the following methods~~ A "verified unit of credit" or "verified credit" is a credit awarded for a course in which a student earns a standard unit of credit:

1. Achieves a passing score on a corresponding end-of-course SOL test. In accordance with the provisions of the Standards of Quality, students may earn a standard and verified unit of credit for any elective course in which the core academic SOL Standards of Learning course content has been integrated and the student passes the related end-of-course SOL test. Such course and test combinations must be approved by the ~~Board of Education~~ board.

~~2.~~ Upon waiver of the 140-clock-hour requirement according to ~~Board of Education~~ board guidelines, qualified students who have received a standard unit of credit ~~will~~ shall be permitted to sit for the relevant SOL test to earn a verified credit without having to meet the 140-clock-hour requirement.

2. Achieves a passing score on an additional test, as defined in 8VAC20-131-5, as a part of the Virginia Assessment Program.

3. Meets the criteria for the receipt of a locally awarded verified credit when the student has not passed a corresponding SOL test.

a. Students who enter the ninth grade for the first time prior to the 2018-2019 school year and do not pass Standards of Learning SOL tests in science or history and social science may receive locally awarded verified credits from the local school board in accordance with criteria established in guidelines adopted by the Board of Education board. Credit accommodations for students with disabilities may be used to confer locally awarded verified credits as provided in 8VAC20-131-50 B 3.

b. Students who enter the ninth grade for the first time in the 2018-2019 school year or thereafter and do not pass SOL tests in English, mathematics, laboratory science, or history and social science may receive locally awarded verified credits from the local school board in accordance with criteria established in guidelines adopted by the board. No more than one locally awarded verified credit may be used to satisfy graduation requirements, except as provided in 8VAC20-131-51 B 3 for students with disabilities seeking a standard diploma.

4. Meets the criteria for the receipt of a verified credit in history and social science by demonstrating mastery of the content of the associated course on an authentic performance assessment that complies with guidelines adopted by the board. Such students shall not also be required to take the corresponding SOL test in history and social science.

5. Meets the criteria for the receipt of a verified credit in English (writing) by demonstrating mastery of the content of the associated course on an authentic performance assessment, that complies with guidelines adopted by the

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board. Such students shall not also be required to take the corresponding SOL test in English (writing).

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

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

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

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

8VAC20-131-120. Summer school.

A. The courses offered and the quality of instruction in the summer school program shall be comparable to that offered during the regular school term. At the middle and secondary school levels, credit for courses taken for credit toward graduation other than a repeat course shall be awarded in accordance with the requirements of 8VAC20-131-110. Students must also meet the requirements for SOL testing if appropriate.

~~B. At the middle and secondary school levels, credit for repeat courses ordinarily will be granted on the same basis as that for new courses; however, with prior approval of the principal, students may be allowed to enroll in repeat courses to be completed in no less than 70 clock hours of instruction per unit of credit. Students must also meet the requirements for SOL testing if appropriate.~~

~~C. B.~~ Summer school instruction at any level, which is provided as part of a state-funded remedial program, shall be designed to improve specific identified student deficiencies. Such programs shall be conducted in accordance with regulations adopted by the board.

8VAC20-131-140. College and career preparation programs readiness; career exposure, exploration, and planning; and opportunities for postsecondary credit.

~~Each middle and secondary school shall provide for the early identification and enrollment of students in a college preparation program with a range of educational and~~

~~academic experiences in and outside the classroom, including an emphasis on experiences that will motivate disadvantaged and minority students to attend college.~~

~~Beginning in the middle school years, students shall be counseled on opportunities for beginning postsecondary education and opportunities for obtaining industry certifications, occupational competency credentials, or professional licenses in a career and technical education field prior to high school graduation. Such opportunities shall include access to at least three Advanced Placement courses or three college level courses for degree credit pursuant to 8VAC20-131-100. Students taking advantage of such opportunities shall not be denied participation in school activities for which they are otherwise eligible. Wherever possible, students shall be encouraged and afforded opportunities to take college courses simultaneously for high school graduation and college degree credit (dual enrollment), under the following conditions:~~

- ~~1. Written approval of the high school principal prior to participation in dual enrollment must be obtained;~~
- ~~2. The college must accept the student for admission to the course or courses; and~~
- ~~3. The course or courses must be given by the college for degree credits (no remedial courses will be accepted).~~

~~Schools that comply with this standard shall not be penalized in receiving state appropriations.~~

~~Beginning with the 2013-2014 academic year, all schools shall begin development of a personal Academic and Career Plan for each seventh grade student with completion by the fall of the student's eighth grade year. Students who transfer from other than a Virginia public school into the eighth grade shall have the Plan developed as soon as practicable following enrollment. Beginning with the 2014-2015 academic year, students who transfer into a Virginia public school after their eighth grade year shall have an Academic and Career Plan developed upon enrollment. The components of the Plan shall include, but not be limited to, the student's program of study for high school graduation and a postsecondary career pathway based on the student's academic and career interests. The Academic and Career Plan shall be developed in accordance with guidelines established by the Board of Education and signed by the student, student's parent or guardian, and school official(s) designated by the principal. The Plan shall be included in the student's record and shall be reviewed and updated, if necessary, before the student enters the ninth and eleventh grades. The school shall have met its obligation for parental involvement if it makes a good faith effort to notify the parent or guardian of the responsibility for the development and approval of the Plan. Any personal academic and career plans prescribed by local school boards for students in grades 7 through 12 and in effect as of June 30, 2009, are approved to continue without further action by the board.~~

A. Each middle and secondary school shall provide for the early identification and enrollment of students in a program with a range of educational and academic experiences related to college and career readiness in and outside the classroom, including an emphasis on experiences that will motivate disadvantaged and minority students to prepare for a career or postsecondary education.

B. Beginning with the 2013-2014 academic year and through the 2017-2018 academic year:

1. All schools shall begin development of a personal Academic and Career Plan (ACP) for each seventh-grade student with completion by the fall of the student's eighth-grade year. Students who transfer from other than a Virginia public school into the eighth grade shall have the plan developed as soon as practicable following enrollment. Beginning with the 2014-2015 academic year, students who transfer into a Virginia public school after their eighth-grade year shall have an ACP developed upon enrollment. The components of the ACP shall include the student's program of study for high school graduation and a postsecondary career pathway based on the student's academic and career interests. The ACP shall be developed in accordance with guidelines established by the board and signed by the student, student's parent or guardian, and school official or officials designated by the principal. The ACP shall be included in the student's record and shall be reviewed and updated, if necessary, before the student enters the ninth and eleventh grades. The school shall have met its obligation for parental involvement if it makes a good faith effort to notify the parent or guardian of the responsibility for the development and approval of the ACP. Any personal ACPs prescribed by local school boards for students in grades 7 through 12 and in effect as of June 30, 2009, are approved to continue without further action by the board.

2. Beginning in the middle school years, students shall be counseled on opportunities for beginning postsecondary education and opportunities for obtaining industry certifications, occupational competency credentials, or professional licenses in a career and technical education field prior to high school graduation. Such opportunities shall include access to at least three Advanced Placement (AP), International Baccalaureate (IB), or Cambridge courses or three college-level courses for degree credit pursuant to 8VAC20-131-100. Students taking advantage of such opportunities shall not be denied participation in school activities for which they are otherwise eligible. Wherever possible, students shall be encouraged and afforded opportunities to take college courses simultaneously for high school graduation and college degree credit (dual enrollment), under the following conditions:

a. Written approval of the high school principal prior to participation in dual enrollment must be obtained;

b. The college must accept the student for admission to the course or courses; and

c. The course or courses must be given by the college for degree credits (no remedial courses will be accepted).

Schools that comply with this standard shall not be penalized in receiving state appropriations.

C. Beginning with the 2018-2019 academic year:

1. Each elementary, middle, and secondary school shall provide for the identification by all students of personal interests and abilities to support planning for postsecondary opportunities and career preparation. Such support shall include provision of information concerning exploration of career cluster areas in elementary schools, and course information and planning for college preparation programs, opportunities for educational and academic experiences in and outside the classroom, including internships and work-based learning, and the multiple pathways to college and career readiness in middle and high school.

2. Beginning in the elementary school years, students are to explore the different occupations associated with career clusters and select an area or areas of interest. Students shall begin the development of an academic and career plan portfolio (ACPP) in elementary grades to include information about interests, values such as dependability and responsibility, and skills supporting decisions about their future interests and goals. The ACPP is a repository for planning notes, class projects, interest inventory results, awards and recognitions, and other information related to academic and career plans and preparation. The ACPP is student led and updated and revised as the student continues to plan for the student's future throughout school years. The information contained in the ACPP shall serve as the foundation for creating the ACP in grade 7.

In middle school, students are to complete a locally selected career interest inventory and select a career pathway. To support development of the ACP, students shall complete a career investigations course selected from the career and technical education state-approved list, or a school division-provided alternative means of delivering the career investigations course content, provided that the alternative is equivalent in content and academic rigor. The course, or its alternative, shall address, at a minimum, planning for academic courses, work-based learning opportunities, completion of industry certifications, possible independent projects, and postsecondary education. The course, or its alternative, shall include demonstration of personal, professional, and technical workplace readiness skills.

All schools shall continue development of a personal ACP with each seventh-grade student with completion by the end of the student's seventh-grade year. Students who transfer from other than a Virginia public school into the eighth grade shall have the ACP developed as soon as

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practicable following enrollment. Students who transfer into a Virginia public school after their eighth-grade year shall have an ACP developed upon enrollment. The components of the ACP shall include the student's program of study for high school graduation and a postsecondary career pathway based on the student's academic and career interests. In high school, a career-related learning experience shall be chosen by the student and documented in the ACP.

3. The ACP shall be developed in accordance with guidelines established by the board and signed by the student, student's parent or guardian, and school official or officials designated by the principal. The ACP shall be included in the student's record and shall be reviewed and updated annually.

4. Beginning in the middle school years, students shall be counseled on opportunities for beginning postsecondary education and opportunities for obtaining industry certifications, occupational competency credentials, or professional licenses in a career and technical education field prior to high school graduation. Such opportunities shall include access to at least three Advanced Placement (AP), International Baccalaureate (IB), or Cambridge courses or three college-level courses for degree credit pursuant to 8VAC20-131-100. Students taking advantage of such opportunities shall not be denied participation in school activities for which they are otherwise eligible. Wherever possible, students shall be encouraged and afforded opportunities to take college courses simultaneously for high school graduation and college degree credit (dual enrollment), under the following conditions:

- a. Written approval of the high school principal prior to participation in dual enrollment must be obtained;
- b. The college must accept the student for admission to the course or courses; and
- c. The course or courses must be given by the college for degree credits (no remedial courses will be accepted).

8VAC20-131-150. Standard school year and school day.

A. The standard school year shall be 180 instructional days or 990 instructional hours. The standard school day for students in grades 1 through 12 shall average at least 5-1/2 instructional hours, including passing time for class changes and excluding breaks for meals and recess, and a minimum of three hours for kindergarten.

B. All students in grades 1 through 12 shall maintain a full day schedule of classes (5-1/2 hours), unless a waiver is granted in accordance with policies defined by the local school board.

8VAC20-131-170. Family Life Education.

Each school may implement the Standards of Learning for the Family Life Education program promulgated by the Board of Education board or a Family Life Education program

consistent with the guidelines developed by the board, which shall have the goals of reducing the incidence of pregnancy and sexually-transmitted diseases and substance abuse among teenagers.

8VAC20-131-180. Off-site instruction.

A. Homebound instruction shall be made available to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or licensed clinical psychologist. For students eligible for special education or related services, the Individualized Education Program (IEP) committee must revise the IEP, as appropriate. Credit for the work shall be awarded when it is done under the supervision of a licensed teacher, a person eligible to hold a Virginia license, or other appropriately licensed professional employed by the local school board, and there is evidence that the instructional time requirements or alternative means of awarding credit adopted by the local school board in accordance with the provisions of 8VAC20-131-110 have been met.

B. Schools are encouraged to pursue alternative means to deliver instruction to accommodate student needs through virtual courses, emerging technologies, and other similar means. Students may enroll in and receive a standard and verified unit of credit for supervised correspondence courses virtual courses with prior approval of the principal. Standard units of credit shall be awarded for the successful completion of such courses when the course is equivalent to that offered in the regular school program and the work is done under the supervision of a licensed teacher, or a person eligible to hold a Virginia license, approved by the local school board. Verified units of credit may be earned when the student has passed the SOL test associated with the correspondence course completed. The local school board shall develop policies governing this method of delivery of instruction in accordance with that shall include the provisions of 8VAC 20-131-110 8VAC20-131-110 and the administration of required SOL tests prescribed by 8VAC20-131-30. C. Schools are encouraged to pursue alternative means to deliver instruction to accommodate student needs through emerging technologies and other similar means. Standard For courses offered for possible high school credit, standard units of credit shall be awarded for successful completion of such courses when the course is equivalent to that offered in the regular school program and the work is done under the supervision of a licensed teacher, or a person eligible to hold a Virginia teaching license and approved by the local school board. Verified units A verified unit of credit may be earned when the student has successfully completed the requirements and passed the SOL test associated with the course. The local school board shall develop policies governing this method of delivery of instruction that shall include the provisions of 8VAC20-131-110 and the administration of required SOL tests prescribed by 8VAC20-131-30 specified in 8VAC20-131-110.

8VAC20-131-190. Library media, materials, and equipment.

A. Each school shall maintain an organized library media center as the resource center of the school and provide a unified program of media services and activities for students and teachers before, during, and after school. The library media center shall contain hard copy, electronic technological resources, materials, and equipment that are sufficient to meet research, inquiry, and reading requirements of the instructional program and general student interest.

B. Each school shall provide a variety of materials, resources, and equipment to support the instructional program.

8VAC20-131-200. Extracurricular and other school activities; recess.

A. School sponsored extracurricular activities shall be under the direct supervision of the staff and shall contribute to the educational objectives of the school. Extracurricular activities must be organized to avoid interrupting the instructional program. Extracurricular activities shall not be permitted to interfere with the student's required instructional activities. Extracurricular activities and eligibility requirements shall be established and approved by the superintendent and the school board.

B. Competitive sports of a varsity nature (scheduled league games) shall be prohibited as a part of the elementary school program.

C. Each elementary school shall provide students with a daily recess during the regular school year as determined appropriate by the school.

D. A program of physical fitness shall be available to all students with a goal of at least 150 minutes per week on average during the regular school year. Effective beginning with the 2018-2019 school year, local school boards shall provide a program of physical activity for all students in grades kindergarten through 5 consisting of at least 20 minutes per day or an average of 100 minutes per week during the regular school year and available to all students in grades 6 through 12 with a goal of at least 150 minutes per week on average during the regular school year.

Part V

School and Instructional Leadership

8VAC20-131-210. Role of the principal.

A. The principal is recognized as the instructional leader and manager of the school and is responsible for ~~effective school management that promotes positive student achievement, a safe and secure environment in which to teach and learn, and efficient use of resources;~~

1. Fostering the success of all students by facilitating the development, communication, implementation, and evaluation of a shared vision of teaching and learning that leads to student academic progress and school improvement;

2. Fostering the success of all students by developing, advocating, and sustaining an academically rigorous, positive, and safe school climate for all stakeholders;

3. Fostering effective human resources management by appropriately assigning, selecting, inducting, supporting, evaluating, and retaining quality instructional and support personnel;

4. Fostering the success of all students by communicating and collaborating effectively with stakeholders;

5. Fostering the success of all students by demonstrating professional standards and ethics, engaging in continuous professional development, and contributing to the profession;

6. Providing leadership that results in acceptable, measurable student academic progress based on established standards.

As a matter of policy, the board, through these standards, recognizes the critically important role of principals to the success of public schools and the students who attend those schools and recommends that local school boards provide principals with the maximum authority available under law in all matters affecting the school, ~~including, but not limited to, instruction and personnel~~ instructional leadership, school climate, human resources management, organizational management, communication and community relations, and student academic progress, in a manner that allows the principal to be held accountable in a fair and consistent manner for matters under ~~his~~ the principal's direct control.

B. As the instructional leader, the principal is responsible for ensuring that students are provided an opportunity to learn and shall:

~~1. Protect the academic instructional time from unnecessary interruptions and disruptions and enable the professional teaching staff to spend the maximum time possible in the teaching/learning process by keeping to a minimum clerical responsibility and the time students are out of class. Lead the collaborative development and sustainment of a student-centered shared vision for educational improvement and work collaboratively with staff, students, parents, and other stakeholders to develop a mission and programs for effective teaching and learning, consistent with the division's strategic plan and school's goals;~~

~~2. Ensure that the school division's student code of conduct is enforced and seek to maintain a safe and secure school environment. Collaboratively plan, implement, support, monitor, and evaluate instructional programs that enhance teaching and student academic progress, and lead to school improvement;~~

~~3. Analyze the school's test scores annually current academic achievement data and instructional strategies and monitor and evaluate the use of diagnostic, formative, and summative assessment, by grade and by discipline, to:~~

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- a. ~~Direct~~ Make appropriate educational decisions to improve classroom instruction, increase student achievement, and improve overall school effectiveness; provide timely and accurate feedback to students and parents and to inform instructional practices; and direct and require appropriate prevention, intervention, ~~and/or~~ or remediation to those students performing below grade level or not meeting expectations, including passing the SOL tests;
- b. Involve the staff of the school in identifying ~~the types of staff~~ and evaluating professional development needed to improve student achievement and provide professional development opportunities and ensure that the staff participate in those activities; ~~and~~
- c. ~~Analyze~~ Evaluate and improve classroom practices and methods for improvement of instruction; and
- d. Seek to ensure students' successful attainment of knowledge and skills set forth in the Standards of Learning;
4. Ensure that students' records are maintained and that criteria used in making placement and promotion decisions, as well as any instructional interventions used to improve the student's performance, are included in the record;
5. ~~Monitor and evaluate the quality of instruction, provide staff development, provide support that is designed to improve instruction, and seek to ensure the successful attainment of the knowledge and skills required for students by the SOL tests; Protect the academic instructional time from unnecessary interruptions and disruptions and provide collaborative leadership for the design and implementation of effective and efficient schedules that protect and maximize instructional time;~~
6. Involve students, staff, parents, and the community to create and sustain a positive, safe, and healthy learning environment that enforces state, division, and local rules, policies, and procedures and consistently model and collaboratively promote high expectations, mutual respect, care, and concern for students, staff, parents, and the community.
7. Create a culture of shared accountability and continuous school improvement;
8. Involve students, families, staff, and other stakeholders to promote community engagement;
6. 2. Maintain records of students who drop out of school, including their reasons for dropping out and actions taken to prevent these students from dropping out;
7. 10. Notify the parents of rising eleventh-grade and twelfth-grade students of:
- a. The number of standard and verified units of credit required for graduation; and
- b. The remaining number of such units of credit the individual student requires for graduation; and
8. 11. Notify the parent or guardian of students removed from class for disciplinary reasons for two or more consecutive days in whole or in part. The school shall have met its obligation if it makes a good faith effort to notify the parent or guardian.
- C. As the school manager, the principal shall:
1. Support, manage, and oversee the school's organization, operation, and use of resources;
2. Demonstrate and communicate a knowledge and understanding of Virginia public education rules, regulations, laws, and school division policies and procedures;
3. Work with staff to create an atmosphere of mutual respect and courtesy and to facilitate constructive communication by establishing and maintaining a current handbook of personnel policies and procedures;
4. Ensure the use of data systems and technology to support goals;
2. ~~Work~~ 5. Disseminate information to staff, parents, and other stakeholders in a timely manner through multiple channels and sources;
6. Work with the community to involve parents and citizens in the educational program ~~and facilitate;~~
7. Facilitate communication with parents by maintaining and disseminating a current student handbook of policies and procedures that includes the school division's standards of student conduct and procedures for enforcement, along with other matters of interest to parents and students;
8. Manage the supervision and research-based evaluation of staff in accordance with local and state requirements;
3. ~~2.~~ Maintain a current record of licensure, endorsement, staff's licenses and endorsements to ensure compliance and in-service training professional development completed by staff; and
10. Follow local and state laws and policies with regard to finances, school accountability, and reporting;
4. ~~11.~~ Maintain records of receipts and disbursements of all funds handled. These records, which shall be audited annually by a professional accountant approved by the local school board; and
12. Ensure the security of all tests administered to students, including those required by the board and the local school division. This includes:
- a. The requirement that all schools adhere to a policy that prohibits students' cell phones and other electronic devices with texting or camera capabilities to be in the room where a SOL test is being administered;

b. The requirement that, to the extent possible, the teacher should not administer the SOL test associated with the grade level content or class taught;

c. Notification to teachers of the penalties for breaching security on SOL tests, including actions against the teacher's license and civil penalties; and

d. Establishment of penalties for students who breach security on SOL tests.

8VAC20-131-220. Role of professional teaching staff.

The professional teaching staff shall be responsible for providing instruction that is educationally sound in an atmosphere of mutual respect and courtesy, which is conducive to learning, and in which all students are expected to achieve the objectives of the Standards of Learning for the appropriate grade level or course. The staff shall:

1. Serve as role models for effective oral and written communication with special attention to ~~the correct use of language and spelling~~ the use of standard English;
2. Strive to strengthen the basic skills of students in all subjects and to close any achievement gaps among groups of students in the school;
3. Establish teaching objectives to achieve the following:
 - a. Identify what students are expected to learn; and
 - b. Inform students of the achievement expected and keep them engaged in learning tasks;
4. Provide for individual differences of students through the use of differentiated instruction, varied materials, and activities suitable to their interests and abilities; and
5. Assess the progress of students and report promptly and constructively to them and their parents.

8VAC20-131-240. Administrative and support staff; staffing requirements.

A. Each school shall have at a minimum the staff as specified in the Standards of Quality with proper licenses and endorsements for the positions they hold.

B. The principal of each middle and secondary school shall be employed on a 12-month basis.

C. ~~Each elementary, middle, and secondary school with 350 or more students and each middle school with 400 or more students shall employ at least one member of the guidance staff for 11 months~~ school counseling staff as prescribed by the Standards of Quality. Guidance School counseling shall be provided for students to ensure that a program of studies contributing to the student's academic achievement and meeting the graduation requirements specified in 8VAC20-131-50 is this chapter being followed.

D. The counseling program for elementary, middle, and secondary schools shall provide a minimum of 60% of the time for each member of the guidance school counseling staff devoted to counseling of students.

~~E. The middle school classroom teacher's standard load shall be based on teaching no more than 5/6 of the instructional day with no more than 150 student periods per day or 30 class periods per week. A middle school classroom teacher's standard load shall be based on teaching no more than 5/6 of the instructional day~~ minus one planning period per day or the equivalent with no more than 150 ~~student periods per day~~ students or 25 class periods per week. If a middle school classroom teacher teaches more than 150 students or 25 class periods per week, an appropriate contractual arrangement and compensation shall be provided.

F. The secondary classroom teacher's standard load shall be based on teaching no more than ~~5/6 of the instructional day~~ minus one planning period per day or the equivalent with no more than 150 ~~student periods per day~~ students or 25 class periods per week. ~~Teachers of block programs that encompass more than one class period with no more than 120 student periods per day may teach 30 class periods per week. Teachers who teach very small classes may teach 30 class periods per week, provided the teaching load does not exceed 75 student periods per day.~~ If a secondary school classroom teacher teaches ~~30 class periods per week with more than 75 student periods per day~~ more than 150 students or 25 class periods per week, an appropriate contractual arrangement and compensation shall be provided.

G. Middle or secondary school teachers shall teach no more than ~~750 student periods~~ 150 students per week; however, physical education and music teachers may teach ~~1,000 student periods~~ 200 students per week. If a middle or secondary school physical education or music teacher teaches more than 200 students per week, an appropriate contractual arrangement and compensation shall be provided.

H. ~~Notwithstanding the provisions of subsections E, F, and G, each~~ Each elementary classroom teacher shall be provided at least an average of 30 minutes per day during the students' school week as planning time. Each full-time middle and secondary classroom teacher shall be provided one planning period per day or the equivalent, as defined in 8VAC20-131-5, unencumbered of any teaching or supervisory duties.

I. Staff-student ratios in special education and career and technical education classrooms shall comply with regulations of the ~~Board of Education~~ board.

J. Student ~~services personnel~~ support positions as defined in the Standards of Quality shall be available as necessary to promote academic achievement and to provide support services to the students in the school.

Part VI

School Facilities and Safety

8VAC20-131-260. School facilities and safety.

A. Each school shall be maintained in a manner ensuring compliance with the Virginia Statewide Building Code (13VAC5-63). In addition, the school administration shall:

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1. Maintain a physical plant that is accessible, barrier free, safe, and clean;
2. Provide for the proper outdoor display of flags of the United States and of the Commonwealth of Virginia;
3. Provide suitable space for classrooms, administrative staff, pupil personnel services, library and media services, and for the needs and safety of physical education;
4. Provide adequate, safe, and properly-equipped laboratories to meet the needs of instruction in the sciences, technology, fine arts, and career and technical programs;
5. Provide facilities for the adequate and safe administration and storage of student medications; and
6. Carry out the duties of the threat assessment team established by the division superintendent and implement policies established by the local school board related to threat assessment, pursuant to § 22.1-79.4 of the Code of Virginia.

B. Each school shall maintain records of regular safety, health, and fire inspections that have been conducted and certified by local health and fire departments. The frequency of such inspections shall be determined by the local school board in consultation with the local health and fire departments. In addition, the school administration shall:

1. Equip all exit doors with panic hardware as required by the Virginia Statewide Building Code (13VAC5-63);
2. Conduct ~~a fire drills drill~~ at least ~~once a week during the first month~~ twice during the first 20 days of school and ~~conduct~~ at least ~~once each month for two additional fire drills during~~ the remainder of the school term. Evacuation routes for students shall be posted in each room; and
3. Conduct ~~at least two simulated lock-down drills and crisis emergency evacuation activities each school year, one in September and one in January~~ a lock-down drill at least twice during the first 20 days of school and conduct at least two additional lock-down drills during the remainder of the school term.

C. Each school shall have contingency plans for emergencies that include staff certified in cardiopulmonary resuscitation (CPR), the Heimlich maneuver, and emergency first aid.

Each school building with instructional or administrative staff of 10 or more shall have at least three employees with current certification or training in emergency first aid, cardiopulmonary resuscitation, and the use of an automated external defibrillator. If one or more students diagnosed as having diabetes attend such school, at least two employees shall have been trained in the administration of insulin and glucagon.

Each school building with instructional or administrative staff fewer than 10 shall have at least two employees with current certification or training in emergency first aid,

cardiopulmonary resuscitation, and the use of an automated external defibrillator. If one or more students diagnosed as having diabetes attend such school, at least one employee shall have been trained in the administration of insulin and glucagon.

D. In addition, the school administration shall ensure that the school has:

1. Written procedures to follow in emergencies such as fire, injury, illness, allergic reactions, and violent or threatening behavior. This shall include school board policies for the possession and administration of epinephrine in every school, to be administered by any school nurse, employee of the school board, employee of a local governing body, or employee of a local health department who is authorized by a prescriber and trained in the administration of epinephrine to any student believed to be having an anaphylactic reaction. The plan shall be outlined in the student handbook and discussed with staff and students during the first week of each school year;
2. Space for the proper care of students who become ill;
3. A written procedure, in accordance with guidelines established by the local school board, for responding to violent, disruptive, or illegal activities by students on school property or during a school sponsored activity; and
4. Written procedures to follow for the safe evacuation of persons with special physical, medical, or language needs who may need assistance to exit a facility.

Part VII

School and Community Communications

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

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

1. Involve parents, citizens, community agencies, and representatives from business and industry in developing, disseminating, and explaining the biennial school plan; on advisory committees; in curriculum studies; and in evaluating the educational program.
2. Provide annually to the parents and the community the ~~School Performance Report Card~~ Quality Profile in a manner prescribed by the board. ~~The information contained therein will be~~ School Quality Profile shall include designated information for the most recent three-year period. Such information shall be designated by the board to include ~~but not be limited to~~ indicators of the following: accountability, assessments, enrollment and demographics, college and career readiness, finance, learning environment, and teacher quality. Specific indicators shall include:
 - a. Virginia ~~assessment program~~ Assessment Program results by percentage of participation and proficiency and disaggregated by student ~~subgroups~~ reporting groups.

b. ~~The accreditation rating earned by the school~~ Accreditation status.

c. Attendance ~~rates and absenteeism~~ for students.

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

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

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

(1) Advanced Placement (AP) information to include percentage of students who take AP courses and percentage of students who take AP tests;

(2) International Baccalaureate (IB) and Cambridge course information to include percentage of students who are enrolled in IB or Cambridge programs and percentage of students who receive IB or Cambridge Diplomas;

(3) College-level course information to include percentage of students who take college-level courses including dual enrollment courses;

(4) Number and percentage of (i) graduates by diploma type as prescribed by the ~~Board of Education board,~~ (ii) certificates awarded to the senior class including high school equivalency preparation program credentials approved by the board, and (iii) students who do not complete high school;

(5) As a separate category on the ~~school report card~~ School Quality Profile, the number of students obtaining board-approved industry certifications, and passing state licensure examinations, national occupational competency assessments and Virginia workplace readiness skills assessments while still in high school and the number of career and technical education completers who graduated; and

(6) Number and percentage of ~~drop-outs~~ dropouts.

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

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

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

1. The learning objectives developed in accordance with the provisions of 8VAC20-131-70 to be achieved at their child's grade level or, in high school, a copy of the syllabus for each of their child's courses, ~~and a copy of the school division promotion, retention, and a copy of the school division promotion, retention, and~~ remediation policies;

2. The Standards of Learning applicable to the child's grade or course requirements and the approximate date and potential impact of the child's next SOL testing; and

3. An annual notice to students in all grade levels of all requirements for Standard Diploma and Advanced Studies Diploma, and the board's policies on promotion and retention as outlined in 8VAC20-131-30.

The division superintendent shall report to the department compliance with this subsection ~~through the preaccreditation eligibility procedures in 8VAC20-131-290~~ as required by 8VAC20-131-390 A.

Part VIII
School Accreditation

8VAC20-131-280. Expectations for school accountability. (Repealed.)

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

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

~~1. The percentage of students passing the Virginia assessment program tests in the four core academic areas administered in the school with the accreditation rating calculated on a trailing three year average that includes the current year scores and the scores from the two most recent years in each applicable academic area, or on the current year's scores, whichever is higher.~~

~~2. The percentage of students graduating from or completing high school based on a graduation and completion index prescribed by the Board of Education. The accreditation rating of any school with a twelfth grade shall be determined based on achievement of required SOL pass rates and percentage points on the board's graduation and completion index. School accreditation shall be determined by the school's current year index points or a trailing three year average of index points that includes the current year and the two most recent years, whichever is higher. The Board of Education's graduation and completion index shall include weighted points for diploma graduates (100 points), recipients of high school equivalency credentials approved by the board (75 points), students not graduating but still in school (70 points), and students earning certificates of program completion (25 points).~~

~~The graduation and completion index calculation for a school shall be increased by three points for each student who obtains both a diploma and an industry certification, industry pathway certification, a state licensure, or an occupational competency credential in a career and technical education program, when such certification, licensure, or credential is approved by the Board of~~

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Education as student selected verified credit; however, the additional three points shall not be used to obtain a higher accreditation rating.

The Board of Education's graduation and completion index shall account for all students in the graduating class's ninth grade cohort, plus students transferring in, minus students transferring out, deceased students, and students who fail to graduate because they are in the custody of the Department of Corrections, the Department of Juvenile Justice, or local law enforcement. Those students who are not included in one of the preceding categories will also be included in the index.

For the purposes of the Standards of Accreditation, the Board of Education shall use a graduation rate formula that excludes any student who fails to graduate because such student is in the custody of the Department of Corrections, the Department of Juvenile Justice, or local law enforcement.

3. The number of students who successfully complete a remediation recovery program.

4. Schools, with grade configurations that do not house a grade or offer courses for which SOL tests or additional tests approved by the Board of Education as outlined in 8VAC20-131-110 are administered, will be paired with another school in the division housing one or more of the grades in which SOL tests are administered. The pairing of such schools will be made upon the recommendation of the local superintendent. The schools should have a "feeder" relationship and the grades should be contiguous.

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

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

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

1. The scores of LEP students enrolled in Virginia public schools fewer than 11 semesters may be removed from the calculation used for the purpose of school accreditation required by subsection B of this section and 8VAC20-131-300 C. Completion of a semester shall be based on school membership days. Membership days are defined as the days the student is officially enrolled in a Virginia public school, regardless of days absent or present. For a semester to count as a completed semester, a student must have been in membership for a majority of the membership days of the semester. These semesters need not be consecutive.

2. In accordance with the provisions of 8VAC20-131-30, all students who transfer into Virginia public schools are expected to take and pass all applicable SOL tests in the content areas in which they receive instruction.

3. All students who transfer within a school division shall have their scores counted in the calculation of the school's accreditation rating. Students who transfer into a Virginia school from home instruction, or from another Virginia school division, another state, or another country, in grades kindergarten through 8 shall be expected to take all applicable SOL tests or additional tests approved by the board as outlined in 8VAC20-131-110. If the transfer takes place after the 20th instructional day following the opening of school, the scores on these tests may be used in calculating school accreditation ratings.

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

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

E. The Board of Education may adopt special provisions related to the administration and use of any Virginia assessment program test in a content area. The Board of Education may adopt special provisions related to the

administration and use of the graduation and completion index, as prescribed by the board. The Board of Education may also alter the inclusions and exclusions from the accreditation calculations by providing adequate notice to local school boards. The board may add new tests or discontinue the use of existing tests in the Virginia Assessment Program by providing adequate notice to local school boards.

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

8VAC20-131-290. Procedures for certifying accreditation eligibility. (Repealed.)

A. Schools will be accredited under these standards annually based, in part, on compliance with the preaccreditation eligibility requirements described in 8VAC20-131-280 F.

B. To be eligible for accreditation, the principal of each school and the division superintendent shall report to the Department of Education:

1. The extent to which each school continues to meet standards reported as met in the previous year described in 8VAC20-131-280 F.
2. That the SOL have been fully incorporated into the school division's curriculum in all accreditation-eligible schools and the SOL material is being taught to all students eligible to take the SOL tests. This shall be certified by each school division superintendent as part of the preaccreditation eligibility determination process.
3. Actions taken to correct any noncompliance issues cited in the previous year.
4. Compliance with 8VAC20-131-270 B.

The principal of each school and the division superintendent shall submit preaccreditation eligibility reports in a manner prescribed by the board to the Department of Education. Failure to submit the reports on time will constitute grounds for denying accreditation to the school.

C. In keeping with provisions of the Standards of Quality, and in conjunction with the long range comprehensive plan of the division, each school shall prepare and implement a biennial school plan which shall be available to students, parents, staff, and the public. Each biennial school plan shall

be evaluated as part of the development of the next biennial plan. Schools may use other plans to satisfy the requirement for the biennial plan with prior written approval from the Department of Education.

D. With the approval of the local school board, local schools seeking to implement experimental or innovative programs, or both, that are not consistent with these standards shall submit a waiver request, on forms provided, to the board for evaluation and approval prior to implementation. The request must include the following:

1. Purpose and objectives of the experimental/innovative programs;
2. Description and duration of the programs;
3. Anticipated outcomes;
4. Number of students affected;
5. Evaluation procedures; and
6. Mechanisms for measuring goals, objectives, and student academic achievement.

Except as specified below, the board may grant, for a period up to five years, a waiver of these regulations that are not mandated by state or federal law or designed to promote health or safety. The board may grant all or a portion of the request. Waivers of requirements in 8VAC20-131-30, 8VAC20-131-50, 8VAC20-131-70, and 8VAC20-131-280 through 8VAC20-131-340 shall not be granted, and no waiver may be approved for a program which would violate the provisions of the Standards of Quality.

8VAC20-131-300. Application of the standards. (Repealed.)

A. Effective no later than the academic year 2016-2017, schools that meet the preaccreditation eligibility requirements prescribed in 8VAC20-131-280 F shall be assigned one of the following ratings as described in this section:

1. Fully Accredited
2. Conditionally Accredited: New School
3. Partially Accredited according to criteria in one or more of the following categories:
 - a. Approaching Benchmark within specified margins
 - (1) Graduation and Completion Index
 - (2) Pass Rate
 - b. Improving School meets criteria for improvement over previous year or for student growth
 - (1) Graduation and Completion Index
 - (2) Pass Rate
 - c. Warned School
 - (1) Graduation and Completion Index
 - (2) Pass Rate
 - d. Reconstituted School
4. Accreditation Denied

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B. Compliance with the student academic achievement expectations shall be documented to the board directly through the reporting of the results of student performance on SOL tests and other alternative means of assessing student academic achievement as outlined in 8VAC20-131-110. To facilitate accurate reporting of the graduation and completion index, the State Testing Identifier (STI) for students who transfer into a Virginia public school from another Virginia public school shall be retained by the receiving school. Compliance with other provisions of these regulations will be documented in accordance with procedures prescribed by the Board of Education.

C. Accreditation ratings defined. Accreditation ratings awarded in an academic year are based upon Virginia assessment program scores from the academic year immediately prior to the year to which the accreditation rating applies and on graduation and completion indexes (for schools with twelfth grade) established for the current year. Effective no later than the academic year 2016-2017, accreditation ratings are defined as follows:

1. Fully Accredited.

a. A school will be rated Fully Accredited when its eligible students meet the pass rate of 75% in English and the pass rate of 70% in mathematics, science, and history and social science. Additionally, each school with a graduating class shall achieve a minimum of 85 percentage points on the Board of Education's graduation and completion index, as described in 8VAC20-131-280 B 2, to be rated Fully Accredited.

b. For accreditation purposes, the pass rate will be calculated as single rates for each of the four core academic areas by combining all scores of all tests administered in each subject area.

2. Conditionally Accredited: New School. New schools that are comprised of students from one or more existing schools in the division will be awarded a Conditionally Accredited: New School status for one year pending an evaluation of the school's eligible students' performance on SOL tests or additional tests approved by the Board of Education to be rated Fully Accredited.

3. Partially Accredited: A school which meets criteria as prescribed by the Board of Education will be designated as Partially Accredited according to the specific categories shown below.

a. Approaching Benchmark (within specified margins):

(1) Graduation and Completion Index. Based on components of the graduation and completion index as described in 8VAC20-131-280 B 2, a school will be rated as Partially Accredited: Approaching Benchmark Graduation and Completion Index when its eligible students meet pass rates required for full accreditation and its graduation and completion index is within a narrow margin of the minimum threshold as prescribed

by the board. A school may remain in the Partially Accredited: Approaching Benchmark Graduation and Completion Index status for no more than three consecutive years, unless an extension is granted based on criteria established by the board.

(2) Pass Rate. Based on tests administered in the previous academic year, a school will be rated as Partially Accredited: Approaching Benchmark Pass Rate if the school does not meet the requirements for full accreditation in all of the four core academic subject areas but the pass rate in each subject area either (i) meets the pass rate required for full accreditation or (ii) is within a narrow margin of the pass rate required for full accreditation, as defined by the board. A school may remain in the Partially Accredited: Approaching Benchmark Pass Rate status for no more than three consecutive years, unless an extension is granted based on criteria established by the board.

b. Improving School (meets criteria for improvement or student growth, or both, over previous year):

(1) Graduation and Completion Index. Based on components of the graduation and completion index as described in 8VAC20-131-280 B 2, a school will be rated as Partially Accredited: Improving School Graduation and Completion Index when its eligible students meet pass rates required for full accreditation, but its graduation and completion index is not within the established narrow margin of the minimum threshold prescribed by the board; however it has achieved sufficient improvement in its graduation and completion index from the previous year, as prescribed by the board. A school may remain in the Partially Accredited: Improving School Graduation and Completion Index status for no more than three consecutive years, unless an extension is granted based on criteria established by the board.

(2) Pass Rate. Based on tests administered in the previous academic year, a school will be rated as Partially Accredited: Improving School Pass Rate if the school does not meet the requirements for full accreditation or for Partially Accredited: Approaching Benchmark Pass Rate, but in each of the four core academic subject areas, one of the following criteria is met: (i) the pass rate meets the benchmark required for full accreditation; (ii) the pass rate is within a narrow margin of the benchmark required for full accreditation, as defined by the board; (iii) the school has demonstrated sufficient improvement in its pass rate from the previous year as defined by the board; or (iv) the school has demonstrated sufficient student growth, as defined by the board. A school may remain in the Partially Accredited: Improving School Pass Rate status for no more than three consecutive years, unless an extension is granted based on criteria established by the board.

e. ~~Warned School:~~

~~(1) Graduation and Completion Index. A school will be designated as Partially Accredited: Warned School Graduation and Completion Index if it has failed to achieve Fully Accredited, Partially Accredited: Approaching Benchmark Graduation and Completion Index, or Partially Accredited: Improving School Graduation and Completion Index status. Such a school may remain in the Partially Accredited: Warned School Graduation and Completion Index status for no more than three consecutive years.~~

~~(2) Pass Rate. A school will be designated as Partially Accredited: Warned School Pass Rate if it has failed to achieve Fully Accredited, Partially Accredited: Approaching Benchmark Pass Rate, or Partially Accredited: Improving School Pass Rate status. Such a school may remain in the Partially Accredited: Warned School Pass Rate status for no more than three consecutive years.~~

d. ~~Reconstituted School. A Partially Accredited: Reconstituted School rating may be awarded to a school that is being reconstituted in accordance with the provisions of 8VAC20-131-340 upon approval by the Board of Education. A school awarded this rating under those circumstances will revert to a status of Accreditation Denied if it fails to meet the requirements to be rated Fully Accredited by the end of the agreed upon term or if it fails to have its annual application for such rating renewed.~~

4. ~~Accreditation Denied. Based on a school's academic performance or performance for the graduation and completion index, or both, a school shall be rated Accreditation Denied if it fails to meet the requirements to be rated Fully Accredited or Partially Accredited for the preceding three consecutive years or for three consecutive years anytime thereafter.~~

~~In any school division in which one third or more of the schools have been rated Accreditation Denied, the superintendent shall be evaluated by the local school board with a copy of such evaluation submitted to the Board of Education no later than December 1 of each year in which such condition exists. In addition, the Board of Education may take action against the local school board as permitted by the Standards of Quality due to the failure of the local board to maintain accredited schools.~~

~~**8VAC20-131-310. Action requirements for schools that are designated Partially Accredited in the following categories: (i) Improving School Pass Rate; (ii) Improving School Graduation and Completion Index; and (iii) Warned School. (Repealed.)**~~

~~A. With such funds as are appropriated by the General Assembly, the Department of Education shall develop a school academic review process and monitoring plan designed to assist schools rated Partially Accredited in the~~

~~following categories: (i) Improving School Pass Rate; (ii) Improving School Graduation and Completion Index; and (iii) Warned School. All procedures and operations for the academic review process shall be approved and adopted by the board.~~

~~Schools rated Partially Accredited in the following categories: (i) Improving School Pass Rate; (ii) Improving School Graduation and Completion Index; and (iii) Warned School must undergo an academic review in accordance with guidelines adopted by the board and prepare a school improvement plan as required by subsection F of this section.~~

~~B. Any school that is rated Partially Accredited: Warned School Pass Rate because of pass rates in English or mathematics shall adopt a research based instructional intervention that has a proven track record of success at raising student achievement in those areas as appropriate.~~

~~C. The superintendent and principal shall certify in writing to the Board of Education that such an intervention has been adopted and implemented.~~

~~D. The board shall publish a list of recommended instructional interventions, which may be amended from time to time.~~

~~E. Adoption of instructional interventions referenced in subsections B and D of this section shall be funded by eligible local, state, and federal funds.~~

~~F. A three year School Improvement Plan must be developed and implemented, based on the results of an academic review of each school that is rated Partially Accredited in the following categories: (i) Improving School Pass Rate; (ii) Improving School Graduation and Completion Index; and (iii) Warned School, upon receipt of notification of the awarding of this rating and receipt of the results of the academic review. The plan:~~

- ~~1. Shall be developed with the assistance of parents and teachers and made available to the public;~~
- ~~2. Must include the components outlined in subsection G of this section; and~~
- ~~3. Must be approved by the division superintendent and the local school board and be designed to assist the school in meeting the student achievement standard to be Fully Accredited as outlined in 8VAC20-131-300.~~

~~G. The improvement plan shall include the following:~~

- ~~1. A description of how the school will meet the requirements to be Fully Accredited, for each of the years covered by the plan;~~
- ~~2. Specific measures for achieving and documenting student academic improvement;~~
- ~~3. A description of the amount of time in the school day devoted to instruction in the core academic areas;~~
- ~~4. Instructional practices designed to remediate students who have not been successful on SOL tests;~~

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5. Intervention strategies designed to prevent further declines in student performance and graduation rates;
6. Staff development needed;
7. Strategies to involve and assist parents in raising their child's academic performance;
8. The need for flexibility or waivers to state or local regulations to meet the objectives of the plan; and
9. A description of the manner in which local, state, and federal funds are used to support the implementation of the components of this plan.

As part of its approval of the school improvement plan, the board may grant a local school board a waiver from the requirements of any regulations promulgated by the board when such a waiver is available.

H. The school improvement plan and related annual reports submitted to the board shall provide documentation of the continuous efforts of the school to achieve the requirements to become rated Fully Accredited. The board shall adopt and approve all policies and formats for the submission of annual reports under this section. The reports shall be due no later than October 1 of the school year.

8VAC20-131-315. Action requirements for schools that are denied accreditation. (Repealed.)

A. Any school rated Accreditation Denied in accordance with 8VAC20-131-300 shall be subject to actions prescribed by the Board of Education and shall provide parents of enrolled students and other interested parties with the following:

1. Written notice of the school's accreditation rating within 30 calendar days of the notification of the rating from the Department of Education;
2. A copy of the school division's proposed corrective action plan, including a timeline for implementation, to improve the school's accreditation rating; and
3. An opportunity to comment on the division's proposed corrective action plan. Such public comment shall be received and considered by the school division prior to finalizing the school's corrective action plan and a Board of Education memorandum of understanding with the local school board.

B. Any school rated Accreditation Denied in accordance with 8VAC20-131-300 shall be subject to actions prescribed by the Board of Education and affirmed through a memorandum of understanding between the Board of Education and the local school board. The local school board shall submit a corrective action plan to the Board of Education for its consideration in prescribing actions in the memorandum of understanding within 45 days of the notification of the rating. The memorandum of understanding shall be entered into no later than November 1 of the academic year in which the rating is awarded.

The local board shall submit status reports detailing implementation of actions prescribed by the memorandum of understanding to the Board of Education. The status reports shall be signed by the school principal, division superintendent, and the chair of the local school board. The school principal, division superintendent, and the chair of the local school board may be required to appear before the Board of Education to present status reports.

The memorandum of understanding may also include but not be limited to:

1. Undergoing an educational service delivery and management review. The Board of Education shall prescribe the content of such review and approve the reviewing authority retained by the school division.
2. Employing a turnaround specialist credentialed by the state to address those conditions at the school that may impede educational progress and effectiveness and academic success.

C. As an alternative to the memorandum of understanding outlined in subsection B of this section, a local school board may choose to reconstitute a school rated Accreditation Denied and apply to the Board of Education for a rating of Partially Accredited: Reconstituted School. The application shall outline specific responses that address all areas of deficiency that resulted in the Accreditation Denied rating and may include any of the provisions of subsection B of this section.

If a local school board chooses to reconstitute a school, it may annually apply for an accreditation rating of Partially Accredited: Reconstituted School as provided for in 8VAC20-131-300 C 3 d. The Partially Accredited: Reconstituted School rating may be granted for a period not to exceed three years if the school is making progress toward a rating of Fully Accredited in accordance with the terms of the Board of Education's approval of the reconstitution application. The school will revert to a status of Accreditation Denied if it fails to meet the requirements to be rated Fully Accredited by the end of the three year term or if it fails to have its annual application for such rating renewed.

D. The local school board may choose to close a school rated Accreditation Denied or to combine such school with a higher performing school in the division.

E. A local school board that has any school with the status of Accreditation Denied shall annually report each school's progress toward meeting the requirements to be rated Fully Accredited to the Board of Education. The local board shall submit such report in a manner prescribed by the Board of Education no later than October 1 of each year. Such reports on each school's progress shall be included in the Board of Education's annual report on the condition and needs of public education to the Governor and the General Assembly submitted on November 15 of each year.

8VAC20-131-325. Recognitions and rewards for school and division accountability performance. (Repealed.)

A. Schools and divisions may be recognized by the Board of Education in accordance with guidelines it shall establish for the Virginia Index of Performance (VIP) incentive program. In order to encourage school divisions to promote student achievement in science, technology, engineering, and mathematics (STEM), the board shall take into account in its guidelines a school division's increase in enrollments and elective course offerings in these STEM areas. Such recognition may include:

1. Public announcements recognizing individual schools and divisions;
2. Tangible rewards;
3. Waivers of certain board regulations;
4. Exemptions from certain reporting requirements; or
5. Other commendations deemed appropriate to recognize high achievement.

In addition to board recognition, local school boards shall adopt policies to recognize individual schools through public announcements, media releases, participation in community activities for input purposes when setting policy relating to schools and budget development, as well as other appropriate recognition.

B. A school that maintains a passing rate on Virginia assessment program tests or additional tests approved by the board as outlined in 8VAC20-131-110 of 95% or above in each of the four core academic areas for two consecutive years may, upon application to the Department of Education, receive a waiver from annual accreditation. A school receiving such a waiver shall be Fully Accredited for a three-year period. However, such school shall continue to annually submit documentation in compliance with the preaccreditation eligibility requirements described in 8VAC20-131-280 F.

C. Schools may be eligible to receive the Governor's Award for Outstanding Achievement. This award will be given to schools rated Fully Accredited that significantly increase the achievement of students within student subgroups in accordance with guidelines prescribed by the Board of Education.

8VAC20-131-340. Special provisions and sanctions. (Repealed.)

A. Any school in violation of these regulations shall be subject to appropriate action by the Board of Education including, but not limited to, the withholding or denial of a school's accreditation.

B. A school's accreditation rating may be withheld by action of the Board of Education for any school found to be in violation of test security procedures pursuant to § 22.1-19.1 of the Code of Virginia. Withholding of a school's accreditation rating shall not be considered an interruption of

the three consecutive year period for purposes of receiving an Accreditation Denied status pursuant to 8VAC20-131-300.

C. The Board of Education may exercise its authority to seek school division compliance with school laws pursuant to relevant provisions of the Code of Virginia when any school within a division is rated Accreditation Denied.

8VAC20-131-350. Waivers. (Repealed.)

Waivers of some of the requirements of these regulations may be granted by the Board of Education based on submission of a request from the division superintendent and chairman of the local school board. The request shall include documentation of the need for the waiver. In no event shall waivers be granted to the requirements of Part III (8VAC20-131-30 et seq.) of these regulations except that the Board of Education may provide for the waiver of certain graduation requirements in 8VAC20-131-50 (i) upon the board's initiative or (ii) at the request of a local school board on a case by case basis. The board shall develop guidelines for implementing these requirements.

8VAC20-131-360. Effective date. (Repealed.)

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

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

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

D. Accreditation ratings prescribed in 8VAC20-131-300 C-1 a shall become effective with tests administered in 2012-2013 for ratings awarded in 2013-2014 and beyond.

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

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

G. The revision of the graduation rate formula, for purposes of the Standards of Accreditation, as described in 8VAC20-131-280 is effective as of July 1, 2016.

Part VIII
School Accreditation

8VAC20-131-370. Expectations for school accountability and accreditation.

A. The system of school accountability and accreditation provides a means of determining the quality and effectiveness of schools for the purposes of:

1. Building on strengths in schools and addressing specific areas needing improvement;

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2. Driving continuous improvement in school achievement for all schools;

3. Informing areas for technical assistance and the use of school improvement resources; and

4. Providing a comprehensive picture of school quality information to the public.

B. Components of the accountability system, which present expectations and standards for schools and school divisions, include:

1. The Code of Virginia's Standards of Quality, which provide the foundational education program to be offered by school divisions, including priorities for instructional programs supporting the Standards of Learning and encompassing requirements for assessments and school accreditation;

2. The School Quality Profile, as referenced in 8VAC20-131-270 A 2, which provides information to parents, citizens, the community, businesses and other agencies, and the general public about school characteristics and about a comprehensive range of school indicators;

3. The federal accountability provisions required under the Every Student Succeeds Act of 2015 (P.L. 114-95, as amended) and the Individuals with Disabilities Education Act (20 USC § 1400 et seq.); and

4. The state accreditation provisions for schools and school divisions as presented in this part.

C. Each school shall be accredited based on achievement of the conditions specified in 8VAC20-131-400 and on continuous improvement of performance levels on measures of selected school quality indicators as described in 8VAC 20-131-380.

8VAC20-131-380. Measurement of school quality for accreditation.

A. School quality for the purposes of accreditation shall be measured for each school using multiple indicators as provided for in this part. School quality indicators include student academic outcomes and other factors that are associated with student learning.

Designation of school quality indicators for accreditation purposes by the board is based on the following criteria:

1. Research demonstrates that the indicator is related to academic performance;

2. Standardized procedures exist across schools and school divisions for collection of data used for the indicator;

3. The data about the indicator is reliable and valid;

4. Performance in the indicator can be positively impacted through division and school-level policies and procedures;

5. The measure meaningfully differentiates among schools based on progress of all students and student reporting groups;

6. The indicator does not unfairly impact one type or group of schools or students; and

7. The indicator is moderately to strongly correlated with school-level pass rates on state assessments.

B. Specific indicators designated by the board for accreditation purposes and defined in subsection F of this section include the following:

1. Academic achievement for all students in English (reading and writing), mathematics, and science as measured through board-approved assessments, including measures of student growth in English (reading), mathematics, and English learner (EL) progress;

2. Academic achievement gaps in English (reading and writing) and mathematics for designated reporting groups, as determined through the performance of each reporting group against the state standard;

3. Graduation and school progress for schools with a graduating class as measured by the Graduation Completion Index;

4. Dropout rates in schools with a graduating class;

5. Student participation and engagement as measured by chronic absenteeism in schools; and

6. College, career, and civic readiness in schools with a graduating class.

C. When calculating passing rates and student growth on Virginia Assessment Program tests to measure academic achievement school quality indicators for the purpose of school accreditation, the following tolerances for EL and transfer students shall apply:

1. The scores of EL students enrolled in Virginia public schools fewer than 11 semesters may be removed from the calculation used to measure academic achievement school quality indicators applied to accreditation. Completion of a semester shall be based on school membership days. Membership days are defined as the days the student is officially enrolled in a Virginia public school, regardless of days absent or present. For a semester to count as a completed semester, a student must have been in membership for a majority of the membership days of the semester. These semesters need not be consecutive.

2. In accordance with the provisions of 8VAC20-131-30, all students who transfer into Virginia public schools are expected to take and pass all applicable SOL tests in the content areas in which they receive instruction.

3. All students who transfer within a school division shall have their scores counted in the calculation of the school's academic achievement school quality indicators. Students who transfer into a Virginia school from home instruction or from another Virginia school division, another state, or another country in grades kindergarten through 8 shall be expected to take all applicable SOL tests or additional tests approved by the board as outlined in 8VAC20-131-110. If

the transfer takes place after the 20th instructional day following the opening of school, the scores on these tests may be used in calculating academic achievement school quality indicators applied to school accreditation.

4. Students who transfer into a Virginia middle or high school from home instruction or from another Virginia school division, another state, or another country and enroll in a course for which there is an end-of-course SOL test shall be expected to take the test or additional tests for that course approved by the board as outlined in 8VAC20-131-30 and 8VAC20-131-110. If the transfer takes place after 20 instructional hours per course have elapsed following the opening of school or beginning of the semester, if applicable, the scores on those tests may be used in calculating academic achievement school quality indicators applied to school accreditation in the year the transfer occurs.

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

D. Performance benchmarks. Each school shall be held accountable for attainment on each of the school quality indicators adopted by the board for accreditation purposes, based on measurement against performance benchmarks. Benchmarks measure actual performance or improvement or decline in performance over time, or a combination of the two, for each school quality indicator used for accreditation.

In establishing performance benchmarks, the board shall use standard analytic protocols to assess the impact on schools. Consideration is to be given to whether a proposed benchmark reflects the board's values and expectations, or if the proposed benchmark results in consequences that were not anticipated.

The board may incorporate additional indicators of school quality used for accreditation into this chapter according to the criteria in subsection A of this section, provided that when the board incorporates additional indicators, the board shall also establish performance benchmarks to assign performance levels.

E. Performance levels. Performance levels on school quality indicators are determined through the definition and application of board-established benchmarks. Performance levels shall be designated for each indicator as one of the following: (i) Level One: At or Above Standard; (ii) Level Two: Near Standard; or (iii) Level Three: Below Standard.

The performance levels are described as follows:

1. Level One: At or Above Standard. A school's achievement on the specific indicator demonstrates acceptable performance or performance above the benchmark or adequate improvement on the indicator.

2. Level Two: Near Standard. A school's achievement on the specific indicator, although below Level One: At or Above Standard, is within specified ranges of performance that either represent: (i) achievement near Level One or (ii) improvement from Level Three: Below Standard, within a specified range.

A school quality indicator within the Level Two: Near Standard range that does not improve to the Level One: At or Above Standard at the end of four years, with progress evaluated by the end of the second year as specified in 8VAC20-131-400 C 5, shall be designated as Level Three: Below Standard, at the end of the four-year period.

3. Level Three: Below Standard. A school's achievement on the specific indicator is below the performance benchmarks for Level One and Level Two.

Performance levels illustrate a school's standing for each school quality indicator. Displaying accountability information in this manner provides a comprehensive picture of a school's areas of strength, as well as specific areas where improvement is needed. Areas needing improvement shall be addressed through a multi-year school improvement plan or corrective action plan as provided in 8VAC20-131-400 D, which shall include specific interventions and strategies.

F. School quality indicators for accreditation purposes. Effective with the 2018-2019 school year, the board shall measure performance levels on the school quality indicators and apply them to accreditation. As described in 8VAC20-131-390 B, the year 2018-2019 shall be considered a transition year, with school accreditation designations evaluated using both the 2017-2018 criteria and the application of performance levels to school quality indicators according to board guidelines. For 2018-2019 only, a school may achieve accreditation by meeting the criteria of either the 2017-2018 year or the criteria effective 2018-2019, whichever benefits it the most.

1. The school quality indicators and performance levels for each are described in this subdivision:

School Quality Indicator	Performance Levels
<u>a. Academic achievement indicator for all students for English (reading and writing): the academic indicator shall be calculated based on the rate of (i) students who passed board-approved assessments, (ii) any</u>	<u>Level One: Schools with a current year or three-year average rate of at least 75%, or schools that were at Level Two the prior year and decrease the failure rate by 10% or more from the prior year.</u> <u>Level Two: Schools not meeting Level One performance with a current year or three-year</u>

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<p><u>additional students who showed growth using board-approved measures, and (iii) any additional students who are English learners who showed growth toward English proficiency using board-approved measures.</u></p>	<p><u>average rate of at least 66%, or schools with a prior year rate of at least 50% that decrease the failure rate by 10% or more from the prior year. A school shall not receive a Level Two performance designation for more than four consecutive years.</u> <u>Level Three: Schools not meeting Level One or Level Two performance.</u></p>		<p><u>Level Three: Schools not meeting Level One or Level Two performance.</u></p>
<p><u>b. Academic achievement indicator for all students for mathematics: the academic indicator shall be calculated based on the rate of (i) students who passed board-approved assessments and (ii) any additional students who showed growth using board-approved measures.</u></p>	<p><u>Level One: Schools with a current year or three-year average rate of at least 70%, or schools that were at Level Two the prior year and decrease the failure rate by 10% or more from the prior year.</u> <u>Level Two: Schools not meeting Level One performance with a current year or three-year average rate of at least 66%, or schools with a prior year rate of at least 50% that decrease the failure rate by 10% or more from the prior year.</u> <u>Level Three: Schools not meeting Level One or Level Two performance.</u></p>	<p><u>d. Academic achievement gaps for English (reading and writing): A single performance level is assigned for academic achievement gaps for English (reading and writing), based upon the composite of performance levels calculated individually for each reporting group using the same methodology and benchmarks as provided for in the academic achievement indicators for all students, as provided in subdivision F 1 a of this subsection.</u></p>	<p><u>Level One: Schools with no more than one reporting group demonstrating Level Two performance.</u> <u>Level Two: Schools with two or more reporting groups demonstrating Level Two performance and no more than one reporting group demonstrating Level Three performance.</u> <u>Level Three: Schools with two or more reporting groups demonstrating Level Three performance.</u></p>
<p><u>c. Academic achievement indicator for all students for science: the academic indicator shall be calculated based on the rate of students who passed board-approved assessments.</u></p>	<p><u>Level One: Schools with a current year or three-year average rate of at least 70%, or schools that were at Level Two the prior year and decrease the failure rate by 10% or more from the prior year.</u> <u>Level Two: Schools not meeting Level One performance with a current year or three-year average rate of at least 66%, or schools with a prior year rate of at least 50% and decrease the failure rate by 10% or more from the prior year. A school shall not receive a Level Two performance designation for more than four consecutive years.</u></p>	<p><u>e. Academic achievement gaps for mathematics. A single performance level is assigned for academic achievement gaps for mathematics, based upon the composite of performance levels calculated individually for each reporting group using the same methodology and benchmarks as provided for in the academic achievement indicators for all students, as provided in subdivision F 1 b of this subsection.</u></p>	<p><u>Level One: Schools with no more than one reporting group demonstrating Level Two performance.</u> <u>Level Two: Schools with two or more reporting groups demonstrating Level Two performance and no more than one reporting group demonstrating Level Three performance.</u> <u>Level Three: Schools with two or more reporting groups demonstrating Level Three performance.</u></p>
		<p><u>f. Graduation and completion index (GCI) for schools with a graduating class: The GCI is the percentage of students graduating from or completing high school based upon a graduation and</u></p>	<p><u>Level One: Schools with a current year or three-year average index of at least 88, or schools that were at Level Two the prior year and increase the index by 2.5% or more from the prior year.</u> <u>Level Two: Schools not</u></p>

<p><u>completion index prescribed by the board. The board's GCI shall include weighted points for diploma graduates, recipients of high school equivalency credentials approved by the board, students not graduating but still in school, and students earning certificates of program completion.</u></p>	<p><u>meeting Level One performance with a current year or three-year average index of at least 81, or schools that were at Level Three the prior year and increase the index by 2.5% or more from the prior year. A school shall not receive a Level Two performance designation for more than four consecutive years.</u> <u>Level Three: Schools not meeting Level One or Level Two performance.</u></p>		<p><u>for more than four consecutive years.</u> <u>Level Three: Schools not meeting Level One or Level Two performance.</u></p>
<p><u>g. Dropout rate for schools with a graduating class.</u></p>	<p><u>Level One: Schools with a current year or three-year average rate of no more than 6.0%, or schools that were at Level Two the prior year and decrease the rate by 10% or more from the prior year.</u> <u>Level Two: Schools not meeting Level One performance with a current year or three-year average rate of no more than 9.0%, or schools that were at Level Three the prior year and decrease the rate by 10% or more from the prior year. A school shall not receive a Level Two performance designation for more than four consecutive years.</u> <u>Level Three: Schools not meeting Level One or Level Two performance.</u></p>	<p><u>i. College, career, and civic readiness index for schools with a graduating class: The college, career, and civic readiness index measures the extent to which a school's students successfully complete advanced coursework, career and technical education (CTE) coursework and credentialing, and work-based and service-based learning. Application of the college, career, and civic readiness index indicator to performance levels for accreditation purposes shall occur no later than the 2021-2022 school year.</u></p>	<p><u>Level One: Schools with a current year index of at least 85.</u> <u>Level Two: Schools not meeting Level One performance with a current year index of at least 71. A school shall not receive a Level Two performance designation for more than four consecutive years.</u> <u>Level Three: Schools not meeting Level One or Level Two performance.</u></p>
<p><u>h. Chronic absenteeism: Chronically absent students are defined as those who are enrolled in a given school who miss 10% or more of the school year, regardless of reason. Students receiving homebound instruction, as defined in 8VAC20-131-5, shall be excluded from the chronic absenteeism rate.</u></p>	<p><u>Level One: Schools with a current year or three-year average rate of no more than 15%, or schools that were at Level Two the prior year and decrease the rate by 10% or more from the prior year.</u> <u>Level Two: Schools not meeting Level One performance with a current year or three-year average rate of no more than 25%, or schools that were at Level Three the prior year and decrease the rate by 10% or more from the prior year. A school shall not receive a Level Two performance designation</u></p>	<p><u>2. To focus on continuous improvement for all schools, the benchmarks delineating the performance levels provided in subdivision 1 of this subsection may be adjusted as provided in subsection D of this section, through board-approved guidance. Adequate notice shall be provided to local school boards of any such adjustment.</u> <u>3. The board may adopt special provisions related to the measurement and use of a school quality indicator as prescribed by the board. The board may also alter the inclusions and exclusions from the performance level calculations by providing adequate notice to local school boards.</u> <u>4. The board may add new assessments or discontinue the use of existing assessments in the Virginia Assessment Program by providing adequate notice to local school boards. As specified in the Standards of Quality, the board may adopt special provisions related to the administration and use of any SOL tests as applied to school quality indicators for any period during which the Standards of Learning content or assessments in that area are being revised and phased in. Notice shall be provided to local school boards regarding the special provisions prior to statewide administration of such tests.</u></p>	

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5. The board may adopt valid and reliable measures of student growth to be used in calculating the Academic Achievement Indicators for English and mathematics and in determining the progress of English learners toward English proficiency.

6. The board shall provide a process for a local school board to appeal the performance level designation for a specific school quality indicator for any school in the division. The board shall grant such appeals only in limited circumstances that warrant special consideration in designating performance levels. In order to appeal such designation the local school board shall submit a request to the board, signed by the chairman of the school board and the school superintendent, explaining why the school board is appealing the designation and shall include documentation supporting the request to change the performance level designation.

7. The board may designate and approve additional school quality indicators, according to its criteria as specified in subsection A of this section, provided that when the board incorporates additional indicators, the board shall also establish performance benchmarks to assign performance levels.

G. To establish performance levels for any of the school quality indicators that are based on Virginia Assessment Program outcome data in schools with grade configurations that do not house a grade or offer courses for which SOL tests or additional tests approved by the board as outlined in 8VAC20-131-110 are administered, such schools shall be paired with another school in the division housing one or more of the grades in which SOL tests are administered. The pairing of such schools shall be made upon the recommendation of the division superintendent. The schools should have a "feeder" relationship and the grades should be contiguous.

8VAC20-131-390. Accreditation.

A. The board shall accredit schools based on achievement of the school accountability requirements of this chapter.

The principal of each new or existing school and the division superintendent shall annually document and report to the Department of Education, in a manner prescribed by the board, the following:

1. The division's promotion and retention policies have been developed in accordance with the requirements of 8VAC20-131-30;

2. Compliance with the requirements to offer courses that shall allow students to complete the graduation requirements in 8VAC20-131-50 and 8VAC2021-131-51, as applicable;

3. The school and school division's ability to offer the instructional program prescribed in 8VAC20-131-70 through 8VAC20-131-100;

4. The school and school division's offering of history and social science and English, to include writing, as prescribed in 8VAC20-131-70 C;

5. Compliance with the leadership and staffing requirements of 8VAC20-131-210 through 8VAC20-131-240;

6. Compliance with the facilities and safety provisions of 8VAC20-131-260;

7. Compliance with the parental notification provisions of 8VAC20-131-270 B;

8. The Standards of Learning have been fully incorporated into the school division's curriculum in all accreditation-eligible schools, and the Standards of Learning material is being taught to all students eligible to take the SOL tests;

9. A comprehensive school plan has been prepared and implemented as required by the Standards of Quality, in conjunction with the long-range comprehensive plan of the division. Such plan shall be available to students, parents, staff, and the public. Each school plan shall be evaluated as part of the development of the next plan. Schools may use other plans to satisfy this requirement with prior written approval from the Department of Education.

10. Actions prescribed by 8VAC20-131-400 have been completed.

11. Each school continues to meet the standards in this chapter that the school reported that it met in the previous year, and actions taken to correct any noncompliance issues that the school reported in the previous year.

B. Accreditation ratings. Effective no later than the academic year 2018-2019, schools that meet the conditions described in subsection A of this section shall be assigned one of the following accreditation designations as described in this section.

1. Accredited: When a school has each of its school quality indicators at Level One or Level Two, it shall be "Accredited." For the transition year of 2018-2019, when a school meets the accreditation standards for designation as accredited under either the 2017-2018 accreditation calculation rules or the 2018-2019 rules for multiple school quality indicators, it shall be designated "Accredited."

2. Accredited with Conditions: When a school has any school quality indicator at Level Three, it shall be "Accredited with Conditions."

3. Accreditation Denied: If a school is designated "Accredited with Conditions," and the school or school division fails to adopt and implement school division or school corrective action plans with fidelity as specified by 8VAC20-131-400 D, it may be designated by the board as "Accreditation Denied" as provided in 8VAC20-131-400 D

4.

C. Any school in violation of this chapter shall be subject to appropriate action by the board including withholding the school's accreditation rating.

D. A school's accreditation rating may be withheld by action of the board for any school found to be in violation of test security procedures pursuant to § 22.1-19.1 of the Code of Virginia.

E. Review cycles.

1. The board shall review annually the status of the performance levels for school quality indicators applied to accreditation for all schools in the Commonwealth.

2. If a school has been designated "Accredited" for three consecutive years, the board shall review the accreditation status of the school every three years. However, the board shall review the status of each school quality indicator used for accreditation each individual year within that triennial period. If the board finds that the school would have been accredited every year of the triennial review period, the board shall accredit the school for another three years. A multi-year accreditation status shall not relieve any school or division of annual reporting requirements, nor shall it relieve any school or division of annual review of school quality indicators used for school accreditation and subsequent actions as appropriate and provided for in 8VAC20-131-400, depending on performance level.

8VAC20-131-400. Application of the school quality indicator performance levels to actions.

A. In accordance with the Standards of Quality at § 22.1-253.13:6 D of the Code of Virginia, all schools shall develop a comprehensive, unified, long-range plan. To develop such plans, schools shall conduct a comprehensive needs assessment, in collaboration with their school division staff, to identify needed actions to ensure continuous improvement for their students. Results of the comprehensive needs assessment shall be used to develop a multi-year improvement plan, which shall be a component of the school's comprehensive, unified, long-range plan. The multi-year improvement plan shall be reviewed and updated as needed on an annual basis. Confirmation of completion of the actions required by this section shall be provided to meet requirements of 8VAC20-131-390 A 10.

In determining required actions for schools and school divisions, levels of performance shall be considered separately for each school quality indicator. Responses and actions to be taken by school divisions and schools, under the leadership of division superintendents and school principals, according to the performance level of each school quality indicator are as prescribed in subsections B, C, and D of this section.

B. Level One. If a school quality indicator is at Level One, the school and its school division shall continue to monitor the indicator and the multi-year school improvement plan for continuous improvement.

C. Level Two. If a school quality indicator is at Level Two, the school and its school division shall have primary responsibility to revise and implement its multi-year school improvement plan.

In developing such plan, the school and its school division shall determine the issues and conditions that are likely contributing to the school's performance on the indicator and plan and implement essential actions and research-based strategies designed to improve performance on the indicator to achieve the Level One standard.

School division and school staff shall:

1. Identify factors related to the school's performance on the indicator as part of the school's comprehensive needs assessment;

2. Use the results of the comprehensive needs assessment to develop a multi-year school improvement plan that addresses the factors identified in the needs assessment that are related to the performance on the indicator. The school's multi-year improvement plan shall be approved by the local school board. The department may implement an audit process to ensure compliance with this provision;

3. Implement the essential actions and research-based strategies with fidelity;

4. Regularly evaluate evidence of the school's progress in implementing the plan, monitor changes on the school quality indicator, and make adjustments as warranted; and

5. Evaluate the progress of the school quality indicators at Level Two at the end of each year, and assess the results of the school improvement plan actions at the end of two years. If no progress is made within the two-year period on such school quality indicators, the plan shall be revised.

If any of the academic achievement indicators for all students, as provided in 8VAC20-131-380 F 1 a, 1 b, or 1 c is at Level Two, the school must undergo an academic review conducted by the department, or under its guidance, to further identify required actions to improve student achievement. Review of other indicators by the department, or under its guidance, may occur based on the school's multi-year school improvement plan. School improvement plans developed for academic achievement indicators for all students that are at Level Two shall be reviewed through a department-established process, which may include peer review by staff from other school divisions.

School divisions with indicators at Level Two may request technical assistance from the department.

D. Level Three.

1. Corrective action plans. If any school quality indicator is at Level Three, the school and school division shall work cooperatively and in consultation with the department to develop a corrective action plan, which shall be incorporated as a component of the school's comprehensive, unified, long-range plan.

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In developing such plan, the school and school division, in consultation with the department, shall determine the issues and conditions that are likely contributing to the school's performance on the indicator and plan and implement essential actions and research-based strategies to achieve improvement to the Level One standard.

All schools with indicators at Level Three must undergo an academic or other review, as appropriate, conducted by the department, or under its guidance, to further identify required actions to improve student achievement and the school quality indicators that are at Level Three.

a. Considerations for the level of direction and intervention from the department include:

(1) Specific characteristics of the school and school division;

(2) The number of school quality indicators at Level Three for the school;

(3) A school's trajectory on the indicators at Level Three;

(4) The length of time the school indicator has been at Level Three; and

(5) The number of schools in the division with multiple school quality indicators at Level Three.

b. In consultation with department staff, school division and school staff shall:

(1) Identify factors related to the school's performance on the indicators at Level Three as part of the school's comprehensive needs assessment;

(2) Use the results of the comprehensive needs assessment to develop a multi-year corrective action plan which addresses the factors identified in the needs assessment that are related to the performance on the indicator through essential actions and research-based strategies;

(3) Submit the completed corrective action plan to the department through the division superintendent for department approval;

(4) Amend the plan, if the department disapproves any portion thereof, as needed to secure the department's approval;

(5) Implement the approved corrective action plan with fidelity; and

(6) Meet regularly with department staff to monitor evidence of the school's progress in implementing the plan, to track improvement on the indicator, and to identify next steps.

2. Superintendent agreement. The level of direction and intervention from the department may include requiring the local school division superintendent and the Superintendent of Public Instruction to enter into an agreement that shall delineate the responsibilities for the school division staff, school staff, and department staff and shall also include required essential actions to improve

student achievement and to improve performance on school quality indicators.

3. Memorandum of understanding. School divisions that do not demonstrate evidence of progress in adopting or implementing corrective action plans for a school or schools with indicators at Level Three shall be required to enter into a memorandum of understanding between the local school board and the board. The memorandum of understanding shall delineate responsibilities for the local school board, the board, school division staff, school staff, and department staff and shall also include required essential actions to improve student achievement and to improve performance on school quality indicators.

Department staff shall meet regularly with school division staff to monitor the memorandum of understanding and corrective action plan, to track progress on the indicators, and to identify next steps.

School divisions that do not demonstrate evidence of progress under the memorandum of understanding and the associated corrective action plan shall be subject to additional actions, which may include more frequent meetings with department staff, required technical assistance, or appearance before the board.

4. Denial of accreditation. If a school is designated "Accredited with Conditions," and the school or school division fails to adopt and implement corrective action plans with fidelity as specified by this section, the Superintendent of Public Instruction shall review the school for potential designation by the board as "Accreditation Denied" and shall present the results of such review to the board with recommendations. If the board determines that any such school is at Level Three on any school quality indicator due to its failure to adopt and implement corrective action plans with fidelity as required by this section, the board shall designate such school as "Accreditation Denied." The local school board shall be given an opportunity to correct such failure, and if successful in a timely manner, the school's "Accreditation Denied" designation may be rescinded at the board's discretion.

5. At-risk add-on funds. As provided in the appropriation act, if the board has required a local school board to submit a corrective action plan pursuant to § 22.1-253.13:3 A of the Code of Virginia, either for the school division pursuant to a division level review or for any schools within its division that have been designated as not meeting the standards as approved by the board, the Superintendent of Public Instruction shall determine and report to the board whether each such local school board has met its obligation to develop and submit such corrective action plan and is making adequate and timely progress in implementing the plan. Additionally, if an academic review process undertaken pursuant to § 22.1-253.13:3 A of the Code of Virginia has identified actions

for a local school board to implement, the Superintendent of Public Instruction shall determine and report to the board whether the local school board has implemented required actions. If the Superintendent of Public Instruction certifies that a local school board has failed or refused to meet any of those obligations, the board shall withhold payment of some or all at-risk add-on funds otherwise allocated to the affected division pursuant to this allocation for the pending fiscal year. In determining the amount of at-risk add-on funds to be withheld, the board shall take into consideration the extent to which such funds have already been expended or contractually obligated. The local school board shall be given an opportunity to correct its failure and, if successful in a timely manner, may have some or all of its at-risk add-on funds restored at the board's discretion.

6. Additional remedies. The board may exercise its authority to seek school division compliance with school laws pursuant to the relevant provisions of the Code of Virginia when any school within a division receives an accreditation designation other than "Accredited."

In accordance with the Standards of Quality at § 22.1-253.13:3 A of the Code of Virginia, if the board determines that a school division has failed or refused, and continues to fail or refuse, to comply with any of the Standards of Quality, including the requirement for local school boards to maintain schools designated as "Accredited" as provided in § 22.1-253.13:3 A of the Code of Virginia, the board may petition the circuit court having jurisdiction in the school division to mandate or otherwise enforce compliance with such standard, including the development or implementation of any required corrective action plan that a local school board has failed or refused to develop or implement in a timely manner.

8VAC20-131-410. Recognitions and rewards for school and division accountability.

A. Schools and divisions may be recognized by the board in accordance with guidelines it shall establish for the Virginia Index of Performance (VIP) incentive program. In order to encourage school divisions to promote student achievement in science, technology, engineering, and mathematics (STEM), the board shall take into account in its guidelines a school division's increase in enrollment and elective course offerings in these STEM areas. Such recognition may include:

1. Public announcements recognizing individual schools and divisions;
2. Tangible rewards;
3. Waivers of certain board regulations;
4. Exemptions from certain reporting requirements; or
5. Other commendations deemed appropriate to recognize high achievement.

In addition to board recognition, local school boards shall adopt policies to recognize individual schools through public announcements, media releases, and participation in community activities when setting policy relating to schools and budget development, as well as other appropriate recognition.

B. Schools and divisions may be designated and recognized by the board for exemplar performance in accordance with criteria and guidelines it shall establish for top achievement in one or more school quality indicators, and the board may include recognition for high performing schools in specific peer categories, such as schools with high levels of poverty.

8VAC20-131-420. Waivers and alternative accreditation plans.

A. Except as specified in this section, the board may grant, for a period of up to five years, a waiver of requirements of this chapter that are not mandated by state or federal law or designed to promote health or safety. The board may grant all or a portion of the request for a waiver and designate conditions as appropriate. Waivers of requirements in 8VAC20-131-30, 8VAC20-131-50, 8VAC20-131-51, 8VAC20-131-70, and 8VAC20-131-370 through 8VAC20-131-430 shall not be granted, and no waiver may be approved for a program that violates the Standards of Quality.

B. Waivers of some of the requirements of this chapter may be granted by the board based on submission of a request from the division superintendent and chairman of the local school board. The request shall include documentation of the justification and need for the waiver. In no event shall waivers be granted to the requirements of Part III (8VAC20-131-30 et seq.) of this chapter except that the board may provide for the waiver of certain graduation requirements in 8VAC20-131-50 and 8VAC20-131-51 upon (i) the board's initiative or (ii) the request of a local school board on a case-by-case basis. The board shall develop guidelines for implementing this chapter.

Any student with a disability whose Individualized Education Program (IEP) or 504 Plan documents that the student cannot successfully complete training in emergency first aid, cardiopulmonary resuscitation, or the use of automated external defibrillators, including hands-on practice of the skills necessary to perform cardiopulmonary resuscitation, as required for graduation in 8VAC20-31-50 B 2 and C 2 and 8VAC20-131-51 B 2 and C 2 shall be granted a waiver from this graduation requirement.

C. Waivers for innovative or school experimental programs. With the approval of the local school board, schools seeking to implement experimental or innovative programs, or both, that are not consistent with this chapter shall submit a waiver request to the board for evaluation and approval prior to implementation. The request must include the following:

1. Purpose and objectives of the experimental or innovative programs;

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2. Description and duration of the programs;
3. Anticipated outcomes;
4. Number of students affected;
5. Evaluation procedures; and
6. Mechanisms for measuring goals, objectives, and student academic achievement.

D. Alternative accreditation plans. Subject to the provisions of subsection B of this section, the governing school board of special purpose schools such as those provided for in § 22.1-26 of the Code of Virginia, Governor's schools, special education schools, alternative schools, or career and technical schools that serve as the student's school of principal enrollment may seek approval of an alternative accreditation plan from the board. Schools offering alternative education programs, schools with a graduation cohort of 50 or fewer students as defined by the graduation rate formula adopted by the board may request that the board approve an alternative accreditation plan to meet the graduation and completion index benchmark. Special purpose schools with alternative accreditation plans shall be evaluated on standards appropriate to the programs offered in the school and approved by the board prior to August 1 of the school year for which approval is requested. Any student graduating from a special purpose school with a Standard Diploma or an Advanced Studies Diploma must meet the requirements prescribed in 8VAC20-131-50 or 8VAC20-131-51.

As set forth in the Standards of Quality and according to department procedures, any school board may request the board for release from state regulations or, on behalf of one or more of its schools, for approval of an Individual School Accreditation Plan for the evaluation of the performance of one or more of its schools as authorized for schools enumerated in this subsection, based on special circumstances.

8VAC20-131-430. Effective dates.

A. Graduation requirements.

1. The graduation requirements for students entering the ninth grade for the first time in the 2013-2014 school year and prior to the 2018-2019 school year shall be those provided in 8VAC20-131-50.
2. The graduation requirements for students entering the ninth grade for the first time in the 2018-2019 school year and beyond shall be those provided in 8VAC20-131-51.
3. The graduation requirements applicable to students transferring into a Virginia high school for the first time shall be as determined by 8VAC20-131-60 G.

B. Locally awarded verified credits.

1. Locally awarded verified credits conferred for history and social science for students entering the ninth grade for the first time prior to the 2018-2019 school year shall be as provided in 8VAC20-131-110 B 3 a.

2. Locally awarded verified credits conferred for English, mathematics, laboratory science, and history and social science for students entering the ninth grade for the first time in 2018-2019 or thereafter shall be as provided in 8VAC20-131-110 B 3 b.

C. Academic and career planning.

1. The requirements for academic and career planning prescribed in 8VAC20-131-140 B shall be effective beginning with the 2013-2014 academic year and through the 2017-2018 academic year.
2. The requirements for Academic and Career Plans prescribed in 8VAC20-131-140 C shall be effective beginning with the 2018-2019 academic year.

D. The application of the college, career, and civic readiness index as a school quality indicator used for accreditation shall be made no later than the 2021-2022 school year .

E. Unless otherwise specified, the remainder of this chapter shall become effective beginning with the 2018-2019 academic year.

VA.R. Doc. No. R13-3789; Filed July 18, 2017, 3:46 p.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-160).**

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-70, 12VAC30-60-130).

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

Effective Date: January 13, 2018.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219,

telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

Summary:

The amendments update references to federal regulation citation 42 CFR 484.36, related to conditions of participation for home health agencies, which was recodified as 42 CFR 484.80.

12VAC30-50-160. Home health services.

A. Service must be ordered or prescribed and directed or performed within the scope of a license of a practitioner of the healing arts. Home health services shall be provided in accordance with guidelines found in the Virginia Medicaid Home Health Manual.

B. Nursing services provided by a home health agency.

1. Intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area.

2. Patients may receive up to five visits by a licensed nurse annually. Limits are per recipient, regardless of the number of providers rendering services. "Annually" shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services. Payment shall not be made for additional service unless authorized by DMAS.

C. Home health aide services provided by a home health agency.

1. Home health aides must function under the supervision of a registered nurse.

2. Home health aides must meet the certification requirements specified in 42 CFR ~~484.36~~ 484.80.

3. For home health aide services, patients may receive up to 32 visits annually. Limits shall be per recipient, regardless of the number of providers rendering services. "Annually" shall be defined as July 1 through June 30 for each recipient.

D. Physical therapy, occupational therapy, or speech pathology services and audiology services provided by a home health agency or medical rehabilitation facility.

1. Service covered only as part of a physician's plan of care.

2. Patients may receive up to five visits for each rehabilitative therapy service ordered annually without authorization. Limits shall apply per recipient regardless of the number of providers rendering services. "Annually" shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services.

E. The following services are not covered under the home health services program:

1. Medical social services;

2. Services or items which would not be paid for if provided to an inpatient of a hospital, such as private-duty nursing services, or items of comfort which have no medical necessity, such as television;

3. Community food service delivery arrangements;

4. Domestic or housekeeping services which are unrelated to patient care and which materially increase the time spent on a visit;

5. Custodial care, which is patient care that primarily requires protective services rather than definitive medical and skilled nursing care; and

6. Services related to cosmetic surgery.

12VAC30-60-70. Utilization control: home health services.

A. Home health services that meet the standards prescribed for participation under Title XVIII, will be supplied.

B. Home health services shall be provided by a home health agency that is (i) licensed by the Virginia Department of Health (VDH), (ii) certified by the Virginia Department of Health under provisions of Title XVIII (Medicare) or Title XIX (Medicaid) of the Social Security Act, or (iii) accredited either by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or by the Community Health Accreditation Program (CHAP) established by the National League of Nursing. Services shall be provided on a part-time or intermittent basis to a recipient in any setting in which normal life activities take place. Home health services shall not be furnished to individuals residing in a hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities, or any setting in which payment is or could be made under Medicaid for inpatient services that include room and board. Home health services must be ordered or prescribed by a physician and be part of a written plan of care that the physician shall review at least every 60 days.

C. Covered services. Any one of the following services may be offered as the sole home health service and shall not be contingent upon the provision of another service.

1. Nursing services;

2. Home health aide services;

3. Physical therapy services;

4. Occupational therapy services; or

5. Speech-language pathology services.

D. General conditions. The following general conditions apply to skilled nursing, home health aide, physical therapy, occupational therapy, and speech-language pathology services provided by home health agencies.

1. The patient must be under the care of a physician who is legally authorized to practice and who is acting within the

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scope of his license. The physician may be the patient's private physician or a physician on the staff of the home health agency or a physician working under an arrangement with the institution which is the patient's residence or, if the agency is hospital-based, a physician on the hospital or agency staff.

2. No payment shall be made for home health services unless a face-to-face encounter has been performed by an approved practitioner, as outlined in this subsection, with the Medicaid individual within the 90 days before the start of the services or within the 30 days after the start of the services. The face-to-face encounter shall be related to the primary reason the Medicaid individual requires home health services.

a. The face-to-face encounter shall be conducted by one of the following approved practitioners:

- (1) A physician licensed to practice medicine;
- (2) A nurse practitioner or clinical nurse specialist within the scope of his practice under state law and working in collaboration with the physician who orders the Medicaid individual's services;
- (3) A certified nurse midwife within the scope of his practice under state law;
- (4) A physician assistant within the scope of his practice under state law and working under the supervision of the physician who orders the Medicaid individual's services; or
- (5) For Medicaid individuals admitted to home health immediately after an acute or post-acute stay, the attending acute or post-acute physician.

b. The practitioner performing the face-to-face encounter shall document the clinical findings of the encounter in the Medicaid individual's record and communicate the clinical findings of the encounter to the ordering physician.

c. Face-to-face encounters may occur through telehealth, which shall not include by phone or email.

3. When a patient is admitted to home health services a start-of-care comprehensive assessment must be completed no later than five calendar days after the start of care date.

4. Services shall be furnished under a written plan of care and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of care and must be related to the patient's condition. The initial plan of care (certification) must be reviewed by the attending physician, or physician designee. The physician must sign the initial certification before the home health agency may bill DMAS.

5. A physician shall review and recertify the plan of care every 60 days. A physician recertification shall be performed within the last five days of each current 60-day

certification period, (i.e., between and including days 56-60). The physician recertification statement must indicate the continuing need for services and should estimate how long home health services will be needed. The physician must sign the recertification before the home health agency may bill DMAS.

6. The physician-orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

7. A written physician's statement located in the medical record must certify that:

- a. The patient needs licensed nursing care, home health aide services, physical or occupational therapy, or speech-language pathology services;
- b. A plan for furnishing such services to the individual has been established and is periodically reviewed by a physician; and
- c. These services were furnished while the individual was under the care of a physician.

8. The plan of care shall contain at least the following information:

- a. Diagnosis and prognosis;
- b. Functional limitations;
- c. Orders for nursing or other therapeutic services;
- d. Orders for home health aide services, when applicable;
- e. Orders for medications and treatments, when applicable;
- f. Orders for special dietary or nutritional needs, when applicable; and
- g. Orders for medical tests, when applicable, including laboratory tests and x-rays.

E. Utilization review shall be performed by DMAS to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Such post payment review audits may be unannounced. Services not specifically documented in patients' medical records as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.

F. All services furnished by a home health agency, whether provided directly by the agency or under arrangements with others, must be performed by appropriately qualified personnel. The following criteria shall apply to the provision of home health services:

1. Nursing services. Nursing services must be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

2. Home health aide services. Home health aides must meet the qualifications specified for home health aides by 42 CFR ~~484.36~~ 484.80. Home health aide services may include assisting with personal hygiene, meal preparation and feeding, walking, and taking and recording blood pressure, pulse, and respiration. Home health aide services must be provided under the general supervision of a registered nurse. A recipient may not receive duplicative home health aide and personal care aide services.

3. Rehabilitation services. Services shall be specific and provide effective treatment for patients' conditions in accordance with accepted standards of medical practice. The amount, frequency, and duration of the services shall be reasonable. Rehabilitative services shall be provided with the expectation, based on the assessment made by physicians of patients' rehabilitation potential, that the condition of patients will improve significantly in a reasonable and generally predictable period of time; or shall be necessary to the establishment of a safe and effective maintenance program required in connection with the specific diagnosis.

a. Physical therapy services shall be directly and specifically related to an active written plan of care approved by a physician after any needed consultation with a physical therapist licensed by the Board of Physical Therapy. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Physical Therapy, or a physical therapy assistant who is licensed by the Board of Physical Therapy and is under the direct supervision of a physical therapist licensed by the Board of Physical Therapy. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This supervisory visit shall not be reimbursable.

b. Occupational therapy services shall be directly and specifically related to an active written plan of care approved by a physician after any needed consultation with an occupational therapist registered and licensed by the National Board for Certification in Occupational Therapy and licensed by the Virginia Board of Medicine. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and licensed by the National Board for Certification in Occupational Therapy and licensed by the Virginia Board of Medicine, or an occupational therapy assistant who is certified by the National Board for Certification in Occupational Therapy under the direct supervision of an occupational therapist as defined in this subdivision. When occupational therapy services are provided by a qualified occupational

therapy assistant, such services shall be provided under the supervision of a qualified occupational therapist, as defined in this subdivision, who makes an onsite supervisory visit at least once every 30 days. This supervisory visit shall not be reimbursable.

c. Speech-language pathology services shall be directly and specifically related to an active written plan of care approved by a physician after any needed consultation with a speech-language pathologist licensed by the Virginia Department of Health Professions, Virginia Board of Audiology and Speech-Language Pathology. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Virginia Board of Audiology and Speech-Language Pathology.

4. A visit shall be defined as the duration of time that a nurse, home health aide, or rehabilitation therapist is with a client to provide services prescribed by a physician and that are covered home health services. Visits shall not be defined in measurements or increments of time.

12VAC30-60-130. Hospice services.

A. Admission criteria.

1. Service election. To be eligible for hospice coverage under Medicare or Medicaid, the recipient shall be "terminally ill," defined as having a life expectancy of six months or less, and except for individuals under 21 years of age, elect to receive hospice services rather than active treatment for the illness. Both the attending physician (if the individual has an attending physician) and the hospice medical director, or the attending physician and the physician member of the interdisciplinary team, must initially certify the life expectancy. The election statement shall include (i) identification of the hospice that will provide care to the individual; (ii) the individual's or representative's ~~acknowledgement~~ acknowledgment that he has been given a full understanding of the palliative rather than curative nature of hospice care as it relates to the individual's terminal illness; (iii) with the exception of children, defined as persons younger than 21 years of age, ~~acknowledgement~~ acknowledgment that certain Medicaid services are waived by the election; (iv) the effective date of the election; and (v) the signature of the individual or representative.

2. Service revocation. The recipient shall have the right to revoke his election of hospice services at any time during the covered hospice periods. DMAS shall be contacted if the recipient revokes his ~~hospices~~ hospice services. If the recipient reelects the hospice services, the hospice periods will begin as an initial ~~time frame~~ timeframe. Therefore, the ~~above~~ certification and time requirements in this subsection will apply. The recipient cannot retroactively receive hospice benefits from previously unused hospice

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periods. The recipient's written revocation statement shall be maintained in the recipient's medical record.

B. General conditions. The general conditions provided in this subsection apply to nursing care, medical social services, physician services, counseling services, short-term inpatient care, durable medical equipment and supplies, drugs and biologicals, home health aide and homemaker services, and rehabilitation services.

The recipient shall be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license. The hospice medical director or the physician member of the interdisciplinary team shall be a licensed doctor of medicine or osteopathy. Hospice services may be provided in the recipient's home or in a freestanding hospice, hospital or nursing facility.

The hospice shall obtain the written certification that an individual is terminally ill in accordance with the following procedures:

1. For the initial 90-day benefit period of hospice coverage, a Medicaid written certification (DMAS 420) shall be signed and dated by the medical director of the hospice and the attending physician, or the physician member of the hospice interdisciplinary team and the attending physician, at the beginning of the certification period. This initial certification shall be submitted for preauthorization within 14 days from the physician's signature date. This certification shall be maintained in the recipient's medical record.

2. For the subsequent 90-day hospice period, a Medicaid written certification (DMAS 420) shall be signed and dated before or on the begin date of the 90-day hospice period by the medical director of the hospice or the physician member of the hospice's interdisciplinary team. The certification shall include the statement that the recipient's medical prognosis is that his life expectancy is six months or less. This certification of continued need for hospice services shall be maintained in the recipient's medical record.

3. After the second 90-day hospice period and until the recipient is no longer in the Medicaid hospice program, a Medicaid written certification shall be signed and dated every 60 days on or before the begin date of the 60-day period. This certification statement shall be signed and dated by the medical director of the hospice or the physician member of the hospice's interdisciplinary team. The certification shall include the statement that the recipient's medical prognosis is that his life expectancy is six months or less. This certification shall be maintained in the recipient's medical record.

C. Utilization review. Authorization for hospice services requires an initial preauthorization by DMAS and physician certification of life expectancy. Utilization review will be conducted to determine if services were provided by the appropriate provider and to ensure that the services provided

to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the recipients' medical records as having been rendered shall be deemed not to have been rendered and no coverage shall be provided. All hospice services shall be provided in accordance with guidelines established in the Virginia Medicaid Hospice Manual.

D. Hospice services are a medically directed, interdisciplinary program of palliative services for terminally ill people and their families, emphasizing pain and symptom control. The rules pertaining to them are:

1. Interdisciplinary team. An interdisciplinary team shall include at least the following individuals: a physician (either a hospice employee or a contract physician), a registered nurse, a social worker, and a pastoral or other counselor. Other professionals may also be members of the interdisciplinary team depending on the terminally ill recipient's medical needs.

2. Nursing care. Nursing care shall be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

3. Medical social services. Medical social services shall be provided by a social worker who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education, and who is working under the direction of a physician.

4. Physician services. Physician services shall be performed by a professional who is licensed to practice, who is acting within the scope of his license, and who is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. The hospice medical director or the physician member of the interdisciplinary team shall be a licensed doctor of medicine or osteopathy.

5. Counseling services. Counseling services shall be provided to the terminally ill individual and the family members or other persons caring for the individual at home. Counseling, including dietary counseling, may be provided both for the purpose of training the individual's family or other caregiver to provide care, and for the purpose of helping the individual and those caring for him to adjust to the individual's approaching death. Bereavement counseling consists of counseling services provided to the individual's family up to one year after the individual's death. Bereavement counseling is a required hospice service, but it is not reimbursable.

6. Short-term inpatient care. Short-term inpatient care may be provided in a participating hospice inpatient unit, or a participating hospital or nursing facility. General inpatient care may be required for procedures necessary for pain control or acute or chronic symptom management which

cannot be provided in other settings. Inpatient care may also be furnished to provide respite for the individual's family or other persons caring for the individual at home.

7. Durable medical equipment and supplies. Durable medical equipment as well as other self-help and personal comfort items related to the palliation or management of the patient's terminal illness is covered. Medical supplies include those that are part of the written plan of care.

8. Drugs and biologicals. Only drugs which are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered.

9. Home health aide and homemaker services. Home health aides providing services to hospice recipients shall meet the qualifications specified for home health aides by 42 CFR ~~484.36~~ 484.80. Home health aides may provide personal care services. Aides may also perform household services to maintain a safe and sanitary environment in areas of the home used by the patient, such as changing the bed or light cleaning and laundering essential to the comfort and cleanliness of the patient. Homemaker services may include assistance in personal care, maintenance of a safe and healthy environment, and services to enable the individual to carry out the plan of care. Home health aide and homemaker services shall be provided under the general supervision of a registered nurse.

10. Rehabilitation services. Rehabilitation services include physical and occupational therapies and speech-language pathology services that are used for purposes of symptom control or to enable the individual to maintain activities of daily living and basic functional skills.

a. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:

(1) The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board;

(2) The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board or an occupational therapy assistant certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist ~~as defined above~~; and

(3) The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice, including the requirement that the amount, frequency, and duration of the services shall be reasonable.

b. Physical therapy services shall be those furnished a patient which meet all of the following conditions:

(1) The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;

(2) The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and under the direct supervision of a physical therapist licensed by the Board of Medicine; and

(3) The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice, including the requirement that the amount, frequency, and duration of the services shall be reasonable.

c. Speech-language pathology services shall be those services furnished a patient which meet all of the following conditions:

(1) The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology;

(2) The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology; and

(3) The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice, including the requirement that the amount, frequency, and duration of the services shall be reasonable.

11. Documentation of hospice services shall be maintained in the recipient's medical record. Coordination of patient care between all health care professionals should be maintained in the recipient's medical record.

V.A.R. Doc. No. R17-5056; Filed July 10, 2017, 1:34 p.m.

Final Regulation

Title of Regulation: **12VAC30-120. Waivered Services (amending 12VAC30-120-1710 through 12VAC30-120-1740).**

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

Effective Date: September 6, 2017.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219,

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Summary:

The amendments update the technology assisted waiver provisions to accommodate changes in the home health care industry and provide additional flexibility to families and provider agencies when attempting to staff authorized skilled private duty nursing hours. Changes include (i) modifying the staff experience requirement to substitute a quality training program for nurses instead of the current six months of clinical experience, (ii) permitting families greater flexibility to use their authorized private duty nursing hours over the span of a week rather than limiting them to 16 hours of private duty nursing services in a 24-hour period, (iii) removing the current option of making up or rescheduling missed nursing hours, and (iv) clarifies the period of validity for preadmission screening (PAS) and requirements for revisions to the PAS following breaks in service. Changes since the proposed stage are technical.

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

12VAC30-120-1710. Individual eligibility requirements; preadmission screening.

A. Individual eligibility requirements.

1. The Commonwealth covers these optional categorically needy groups: ADC and AFDC-related individuals; SSI and SSA-related individuals; aged, blind, or disabled Medicaid-eligible individuals under 42 CFR 435.121; and the home and community-based waiver group at 42 CFR 435.217 that includes individuals who are eligible under the State Plan if they were institutionalized.

a. The income level used for the home and community-based waiver group at 42 CFR 435.217 shall be 300% of the current Supplemental Security Income payment standard for one person.

b. Medically needy Medicaid-eligible individuals shall be eligible if they meet the medically needy financial requirements for income and resources.

2. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act shall be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All individuals in the waiver must meet the financial and non-financial Medicaid eligibility criteria and meet the institutional LOC criteria. The deeming rules shall be applied to waiver eligible individuals as if they were residing in an institution or would require that level of care.

3. An applicant for technology assisted waiver shall meet specialized care nursing facility criteria, including both medical and functional needs, and also be dependent on waiver services to avoid or delay facility placement and meet all criteria for the age appropriate assessments in order to be eligible for the tech waiver. Applicants shall

not be enrolled in the tech waiver unless skilled ~~PDN~~ private duty nursing (PDN) hours are ordered by the physician. The number of skilled PDN hours shall be based on the total technology and nursing score on the Technology Assisted Waiver Pediatric Referral form, DMAS-109 (when individuals are younger than 21 years of age). The number of skilled PDN hours for adults shall be based on the Technology Assisted Waiver Adult Referral form (DMAS-108).

4. Applicants who are eligible for third-party payment for skilled private duty nursing services shall not be eligible for these waiver services. If an individual or an individual's legally responsible party voluntarily drops any insurance plan that would have provided coverage of skilled private duty nursing services in order to become eligible for these waiver services within one year prior to the date waiver services are requested, eligibility for the waiver shall be denied. From the date that such insurance plan is discontinued, such applicants shall be barred for one year from reapplying for waiver services. After the passage of the one-year time period, the applicant may reapply to DMAS for admission to the tech waiver.

5. In addition to the medical needs identified in this section, the Medicaid-eligible individual shall be determined to need substantial and ongoing skilled nursing care. The Medicaid-eligible individual shall be required to meet a minimum standard on the age appropriate referral forms to be eligible for enrollment in the tech waiver.

6. Medicaid-eligible individuals who entered the waiver prior to their 21st birthday shall, on the date of their 21st birthday, conform to the adult medical criteria and cost-effectiveness standards.

7. Every individual who applies for Medicaid-funded waiver services must have his Medicaid eligibility evaluated or re-evaluated, if already Medicaid eligible, by the local DSS in the city or county in which he resides. This determination shall be completed at the same time the ~~Pre-admission Screening~~ preadmission screening (PAS) team completes its evaluation (via the use of the Uniform Assessment Instrument (UAI)) of whether the applicant meets waiver criteria. DMAS payment of waiver services shall be contingent upon the DSS' determination that the individual is eligible for Medicaid services for the dates that waiver services are to be provided and that DMAS or the designated service authorization contractor has authorized waiver enrollment and has prior authorized the services that will be required by the individual.

8. In order for an enrolled waiver individual to retain his enrolled status, tech waiver services must be used by the individual at least once every 30 days. Individuals who do not utilize tech waiver services at least once every 30 days shall be terminated from the waiver.

9. The waiver individual shall have a trained primary caregiver, as defined in 12VAC30-120-1700, who accepts

responsibility for the individual's health, safety, and welfare. This primary caregiver shall be responsible for a ~~minimum of eight hours of the individual's care in a 24-hour period as well as~~ all hours not provided by ~~an~~ the provider agency's RN or an LPN. The name of the trained primary caregiver shall be documented in the provider agency records. This trained primary caregiver shall also have a back up system available in emergency situations.

B. Screening and community referral for authorization for tech waiver. Tech waiver services shall be considered only for individuals who are eligible for Medicaid and for admission to a specialized care nursing facility, ICF/ID, long-stay hospital, or acute care hospital when those individuals meet all the criteria for tech waiver admission. Such individuals, with the exception of those who are transferring into this tech waiver from a long-stay hospital, shall have been screened using the Uniform Assessment Instrument (UAI).

1. The screening team shall provide the individual and family or caregiver with the choice of tech waiver services or specialized care nursing facility or long-stay hospital placement, as appropriate, as well as the provider of those services from the time an individual seeks waiver information or application and referral. Such provision of choice includes the right to appeal pursuant to 12VAC30-110 when applicable.

2. The screening team shall explore alternative care settings and services to provide the care needed by the applicant being screened when Medicaid-funded home and community-based care services are determined to be the critical service necessary to delay or avoid facility placement.

3. Individuals must be screened to determine necessity for nursing facility placement if the individual is currently financially Medicaid eligible or anticipates that he will be financially eligible within 180 days of the receipt of nursing facility care or if the individual is at risk of nursing facility placement.

a. Such covered waiver services shall be critical, as certified by the participant's physician at the time of assessment, to enable the individual to remain at home and in the community rather than being placed in an institution. In order to meet criteria for tech waiver enrollment, the applicant requesting consideration for waiver enrollment must meet the level of care criteria.

b. Individuals who are younger than 21 years of age shall have the Technology Assisted Waiver Pediatric Referral ~~Form~~ form (DMAS-109) completed and must require substantial and ongoing nursing care as indicated by a minimum score of at least 50 points to qualify for waiver enrollment. This individual shall require a medical device and ongoing skilled PDN care by meeting the categories described in subdivision (1), (2), or (3) below:

(1) Applicants depending on mechanical ventilators;

(2) Applicants requiring prolonged intravenous administration of nutritional substances or drugs or requiring ongoing peritoneal dialysis; or

(3) Applicants having daily dependence on other device-based respiratory or nutritional support, including tracheostomy tube care, oxygen support, or tube feeding.

c. Individuals who are 21 years of age or older shall have the Technology Assisted Waiver Adult Referral ~~Form~~ form (DMAS-108) completed and must be determined to be dependent on a ventilator or must meet all eight specialized care criteria (12VAC30-60-320) for complex tracheostomy care in order to qualify for waiver enrollment.

4. When an applicant has been determined to meet the financial and waiver eligibility requirements and DMAS has verified the availability of the services for that individual and that the individual has no other payment sources for skilled PDN, tech waiver enrollment and entry into home and community-based care may occur.

~~5. Preadmission screenings are considered valid for the following time frames for all LTC services. The following time frames apply to individuals who have been screened but have not received either institutional or community-based services during the periods shown below:~~

~~a. Zero to six months: screenings are valid and do not require updates;~~

~~b. Six months to 12 months: screening updates are required; however, no additional reimbursement is made by DMAS; and~~

~~c. Over 12 months: a new screening is required. Additional reimbursement shall be made by DMAS for the repeated screening.~~

5. A PAS is considered valid for the following timeframes. The validity of a PAS applies to individuals who are screened, meet the criteria for long-term care services, but have not yet begun receiving services during the periods outlined in subdivisions 5 a through 5 f of this subsection.

a. Zero to 180 days. Screenings are valid and do not require revisions or a new screening.

b. [180 181] days to 12 months. Screening revisions are required; revisions may also be done if there is a significant change in an individual's medical or physical condition. Revisions should be entered into the ePAS system, per the Medicaid web portal instructions, resulting in a claim being generated for the screening revision. For the purposes of this subdivision, "Electronic preadmission screening" or "ePAS" means the automated system for use by all entities contracted by DMAS to perform preadmission screenings pursuant to § 32.1-330 of the Code of Virginia. DMAS will cover the cost of the PAS.

c. Over 12 months. A new screening is required and reimbursement is made by DMAS. New screenings must

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be entered into ePAS according to the Medicaid web portal instructions.

d. Break in services. When an individual starts and then stops services for a period of time exceeding 30 consecutive calendar days, the PAS team will need to complete a revised screening prior to service resumption if the individual has not received any Medicaid funded long-term care services during the break in service delivery. DMAS will cover the cost of the PAS.

e. In any other circumstances, including hospitalization, that cause services to cease or to be interrupted for more than 30 consecutive calendar days, the individuals shall be referred back to the local department of social services for redetermination of his Medicaid eligibility. The provider shall be responsible for notifying the local department of social services via the DMAS-225 form when there is an interruption of services for 30 consecutive calendar days or upon discharge from the provider's services.

f. If the individual has been receiving ongoing services either through a nursing facility or a home and community-based service program, the screening timeframes do not apply.

6. When an individual was not screened prior to admission to a specialized care nursing facility, or the individual resides in the community at the time of referral initiation to DMAS, the locality in which the individual resides at the time of discharge shall complete the preadmission screening prior to enrollment into the tech waiver.

7. DMAS shall be the final determining body for enrollment in the tech waiver and the determination of the number of approved skilled PDN hours for which DMAS will pay. DMAS has the ultimate responsibility for authorization of waiver enrollment and Medicaid skilled PDN reimbursement for tech waiver services.

C. Waiver individuals' rights and responsibilities. DMAS shall ensure that:

1. Each waiver individual shall receive, and the provider and provider staff shall provide, the necessary care and services, to the extent of provider availability, to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the individual's comprehensive assessment and POC.

2. Waiver individuals shall have the right to receive services from the provider with reasonable accommodation of the individuals' needs and preferences except when DMAS makes a determination that the health, safety, or welfare of the individuals or other waiver individuals would be endangered.

3. Waiver individuals formulate their own advance directives based on information that providers must give to adult waiver individuals at the time of their admissions to services.

4. All waiver individuals shall have the right to:

a. Voice grievances to the provider or provider staff without discrimination or reprisal. Such grievances include those with respect to treatment that has been furnished or has not been furnished;

b. Prompt efforts by the provider or staff, as appropriate, to resolve any grievances the waiver individual may have;

c. Be free from verbal, sexual, physical, and mental abuse, neglect, exploitation, and misappropriation of property;

d. Be free from any physical or chemical restraints of any form that may be used as a means of coercion, discipline, convenience, or retaliation and that are not required to treat the individual's medical symptoms; and

e. Their personal privacy and confidentiality of their personal and clinical records.

5. Waiver individuals shall be provided by their health care providers, at the time of their admission to this waiver, with written information regarding their rights to participate in medical care decisions, including the right to accept or refuse medical treatment and the right to formulate advance directives.

6. The legally competent waiver individual, the waiver individual's legal guardian, or the parent (natural, adoptive or foster) of the minor child shall have the right to:

a. Choose whether the individual wishes to receive home and community-based care waiver services instead of institutionalization in accordance with the assessed needs of the individual. The PAS team shall inform the individual of all available waiver service providers in the community in which the waiver individual resides. The tech waiver individual shall have the option of selecting the provider and services of his choice. This choice must be documented in the individual's medical record;

b. Choose his own primary care physician in the community in which he lives;

c. Be fully informed in advance about the waiver POC and treatment needs as well as any changes in that care or treatment that may affect the individual's well-being; and

d. Participate in the care planning process, choice, and scheduling of providers and services.

12VAC30-120-1720. Covered services; limits; changes to or termination of services.

A. Coverage statement.

1. These waiver services shall be medically necessary, cost-effective as compared to the costs of institutionalization, and necessary to maintain the individual safely in the community and prevent institutionalization.

2. Services shall be provided only to those individuals whose service needs are consistent with the service

description and for which providers are available who have adequate and appropriate staffing to meet the needs of the individuals to be served.

3. All services covered through this waiver shall be rendered according to the individuals' POCs that have been certified by physicians as medically necessary and also reviewed by DMAS to enable the waiver enrolled individuals to remain at home or in the community.

4. Providers shall be required to refund payments received to DMAS if they (i) are found during any review to have billed Medicaid contrary to policy, (ii) have failed to maintain records to support their claims for services, or (iii) have billed for medically unnecessary services.

5. DMAS shall perform service authorization for skilled PDN services, PC for adults, and transition services. DMAS or the service authorization contractor shall perform service authorization for skilled private duty respite services, AT services and EM services.

6. When a particular service requires service authorization, reimbursement shall not be made until the service authorization is secured from either DMAS or the DMAS-designated service authorization contractor.

B. Covered services. Covered services shall include: skilled PDN; skilled private duty respite care; personal care only for adults, assistive technology; environmental modifications; and transition services only for individuals needing to move from a designated institution into the community or for waiver individuals who have already moved from an institution within 30 days of their transition. Coverage shall not be provided for these services for individuals who reside in any facilities enumerated in 12VAC30-120-1705. Skilled PDN shall be a required service. If an individual has no medical necessity for skilled PDN, he shall not be admitted to this waiver. All other services provided in this waiver shall be provided in conjunction with the provision of skilled PDN.

1. Skilled PDN, for a single individual and congregate group settings, as defined in 12VAC30-120-1700, shall be provided for waiver enrolled individuals who have serious medical conditions or complex health care needs. To receive this service, the individuals must require specific skilled and continuous nursing care on a regularly scheduled or intermittent basis performed by an RN or an LPN. Upon completion of the required screening and required assessments and a determination that the individual requires substantial and ongoing skilled nursing care and waiver enrollment then the PDN hours shall be authorized by the DMAS staff.

a. PDN services shall be rendered according to a POC authorized by DMAS and shall have been certified by a physician as medically necessary to enable the individual to remain at home.

b. No reimbursement shall be provided by DMAS for either RN or LPN services without signed physician

orders that specifically identify skilled nursing tasks to be performed for the individual.

c. Limits placed on the amount of PDN that will be approved for reimbursement shall be consistent with the individual's ~~total points on the age-appropriate Tech Waiver Referral Form (DMAS-108)~~ technology assisted waiver referral form (DMAS-108 or DMAS-109) and medical necessity. ~~In~~ Except for a minor individual's care during his first 15 days following initial enrollment into this waiver, in no instances shall the individual's POC or ongoing multiple POCs result in coverage of more than ~~16 hours of PDN in a 24 hour period per household or congregate group setting except for minor individuals during the first 15 calendar days after initial waiver admission, and where 16 scheduled PDN hours are not completed within a 24 hour period, the hours may be rescheduled and worked within the following 72 hours to support the primary caregiver~~ 112 hours of skilled PDN per week (Sunday through Saturday). The maximum number of approved hours authorized per week for minor children shall be based on their total approved points documented on the Technology Assisted Waiver Pediatric Referral form (DMAS-109). The maximum skilled PDN hours authorized per week for adult individuals shall be based on their technology and medical necessity justification documented on the Technology Assisted Waiver Adult Referral form (DMAS-108).

(1) The number of skilled PDN hours for minor individuals shall be based on the total technology and nursing score on the [~~DMAS~~] ~~Tech Waiver Staff Assessment [DMAS 109 form~~ Technology Assisted Waiver Pediatric Referral form (DMAS-109)] and updated by the DMAS staff when changes occur and with annual waiver eligibility redetermination by DMAS.

(2) Once the minor individual's composite score (total score) is derived, a LOC is designated for the individual as a Level A, B, or C. This LOC designation determines the maximum number of hours per ~~day~~ week of skilled PDN that DMAS may allocate for a pediatric individual. Any hours beyond the approved maximum for such individual's LOC ~~must~~ shall be medically necessary and service authorized by DMAS. Any POC submitted without approval for hours beyond the approved maximum for any particular LOC will only be entered for the approved maximum for that LOC.

(3) The results of the scoring assessment determine the maximum amount of hours available and authorization shall occur as follows:

(a) 50 – 56 points = ~~40 hours per day~~ 70 hours per week.

(b) 57 – 79 points = ~~42 hours per day~~ 84 hours per week.

(c) 80 points or greater = ~~46 hours per day~~ 112 hours per week.

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~~(3)~~ (4) For minor individuals, whether living separately or in a congregate setting, during the first 15 calendar days after such individuals' initial admission to the waiver, skilled PDN may be covered for up to 24-hours per day, if required and appropriate to assist the family in adjustment to the care associated with technology assistance. After these first 15 calendar days, skilled PDN shall be reimbursed up to ~~a the maximum of 16 hours per 24-hour period per household~~ allowable hours per week based on the individual's total technology and nursing scores and provided that the aggregate cost-effectiveness standard is not exceeded for the individual's care.

~~(4)~~ (5) When reimbursement is to be made for skilled PDN services to be provided in schools, the nurse shall be in the same room as the waiver individual for the hours of skilled PDN care billed. When an individual receives skilled PDN while attending school, the total skilled PDN hours shall not exceed the authorized number of hours under his nursing score category on the Technology Assisted Waiver Pediatric Referral ~~Form~~ form (DMAS-109).

~~(5) The making up or trading of any missed authorized hours of care may be done within the same week (Sunday through Saturday) of the missed scheduled shift but the total hours made up, including for any day, shall not exceed 16 hours per day for any reason.~~

(6) For adult individuals, whether living separately or in a congregate ~~group~~ setting, skilled PDN shall be reimbursed up to a maximum of ~~16 hours within a 24-hour period per~~ 112 hours per week (Sunday through Saturday) per tech waiver individual living in the household based on the individual's total technology and nursing scores medical justification and provided that the aggregate cost-effectiveness standard is not exceeded for the individual's care.

(7) The adult individual shall be determined to need a medical device and ongoing skilled nursing care when such individual meets Category A or all eight criteria in Category B:

(a) Category A. Individuals who depend on mechanical ventilators; or

(b) Category B. Individuals who have a complex tracheostomy as defined by:

(i) Tracheostomy with the potential for weaning off of it, or documentation of attempts to wean, with subsequent inability to wean;

(ii) Nebulizer treatments ordered at least four times a day or nebulizer treatments followed by chest physiotherapy provided by a nurse or respiratory therapist at least four times a day;

(iii) Pulse oximetry monitoring at least every shift due to unstable oxygen saturation levels;

(iv) Respiratory assessment and documentation every shift by a licensed respiratory therapist or nurse;

(v) Have a physician's order for oxygen therapy with documented usage;

(vi) Receives tracheostomy care at least daily;

(vii) Has a physician's order for tracheostomy suctioning; and

(viii) Deemed at risk to require subsequent mechanical ventilation.

(8) Skilled PDN services shall be available to individuals in their primary residence with some community integration (e.g., medical appointments and school) permitted.

(9) Skilled PDN services may include consultation and training for the primary caregiver.

d. The provider shall be responsible for notifying DMAS should the primary residence of the individual be changed, should the individual be hospitalized, should the individual die, or should the individual be out of the Commonwealth for 48 hours or more.

e. Exclusions from DMAS' coverage of skilled PDN:

(1) This service shall not be authorized when intermittent skilled nursing visits could be satisfactorily utilized while protecting the health, safety, and welfare of the individual.

(2) Skilled PDN hours shall not be reimbursed while the individual is receiving emergency care or during emergency transport of the individual to such facilities. The RN or LPN shall not transport the waiver individual to such facilities.

(3) Skilled PDN services may be ordered but shall not be provided simultaneously with PDN respite care or personal care services as described in ~~12VAC30-120-1720~~ this section.

(4) Parents (natural, adoptive, legal guardians), spouses, siblings, grandparents, grandchildren, adult children, other legal guardians, or any person living under the same roof with the individual shall not provide skilled PDN services for the purpose of Medicaid reimbursement for the waiver individual.

(5) Providers shall not bill prior to receiving the physician's dated signature on the individual's POC for services provided and the DMAS staff's authorization/determination of skilled PDN hours.

(6) Time spent driving the waiver individual shall not be reimbursed by DMAS.

f. Congregate skilled PDN.

(1) If more than one waiver individual will reside in the home, the same waiver provider or providers shall be chosen to provide all skilled PDN services for all waiver individuals in the home.

(2) Only one nurse shall be authorized to care for no more than two waiver individuals in such arrangements. In instances when three waiver individuals share a home, nursing ratios shall be determined by DMAS or its designated agent based on the needs of all the individuals who are living together. These congregate skilled PDN hours shall be at the same scheduled shifts.

(3) The primary caregiver shall be shared and shall be responsible for providing ~~at least eight hours of skilled PDN care per 24 hours as well as all skilled PDN all care needs in the absence of the provider agency~~ when a private duty nurse is not available.

(4) DMAS shall not reimburse for skilled PDN services through the tech waiver and skilled PDN services through the EPSDT benefit for the same individual at the same time.

2. Skilled private duty respite care services. Skilled private duty respite care services may be covered for a maximum of 360 hours per calendar year ~~regardless of waiver~~ for individuals who are qualified for tech waiver services and regardless of whether the waiver individual changes waivers and ~~who have a~~ whose primary caregiver ~~who~~ requires temporary or intermittent relief from the burden of caregiving.

a. This service shall be provided by skilled nursing staff licensed to practice in the Commonwealth under the direct supervision of a licensed, certified, or accredited home health agency and with which DMAS has a provider agreement to provide skilled PDN.

b. Skilled private duty respite care services shall be comprised of both skilled and hands-on care of either a supportive or health-related nature and ~~may include, but shall not be limited to~~ includes (i) all skilled nursing care as ordered on the physician-certified POC, (ii) assistance with ~~ADLs/IADLs~~ ADLs and IADLs, (iii) administration of medications or other medical needs, and (iv) monitoring of the health status and physical condition of the individual or individuals.

c. When skilled private duty respite services are offered in conjunction with skilled PDN, the same individual record may be used with a separate section for skilled private duty respite services documentation.

d. Individuals who are living in congregate arrangements shall be permitted to share skilled private duty respite care service providers. The same limits on this service in the congregate setting (~~360~~ 360 hours per calendar year per household) shall apply ~~regardless of the waiver.~~

e. Skilled private duty respite care services shall be provided in the individual's primary residence as is designated upon admission to the waiver.

3. Assistive technology (AT) services. Assistive technology, as defined in 12VAC30-120-1700, devices shall be portable and shall be authorized per calendar year.

a. AT services shall be available for enrolled waiver individuals who are receiving skilled PDN. AT services are the specialized medical equipment and supplies, including those devices, controls, or appliances, specified in the individual's plan of care, but that are not available under the State Plan for Medical Assistance, that enable waiver individuals to increase their abilities to perform ADLs/IADLs, or to perceive, control, or communicate with the environment in which they live. This service includes ancillary supplies and equipment necessary to the proper functioning of such items.

b. An independent, professional consultation shall be obtained from qualified professionals who are knowledgeable of that item for each AT request prior to approval by DMAS or the designated service authorization contractor. Individual professional consultants include speech/language therapists, physical therapists, occupational therapists, physicians, certified rehabilitation engineers or rehabilitation specialists. A prescription shall not meet the standard of an assessment.

c. In order to qualify for these services, the individual must have a demonstrated need for equipment for remedial or direct medical benefit primarily in the individual's primary residence or primary vehicle to specifically serve to improve the individual's personal functioning.

d. AT shall be covered in the least expensive, most cost-effective manner. The cost of AT services shall be included in the total cost of waiver services.

e. Service units and service limitations. AT equipment and supplies shall not be rented but shall be purchased through a Medicaid-enrolled durable medical equipment provider.

(1) The service unit is always one, for the total cost of all AT being requested for a specific timeframe. The maximum Medicaid-funded expenditure per individual for all AT covered procedure codes combined shall be \$5,000 per individual per calendar year.

(2) The cost for AT shall not be carried over from one calendar year to the next. Each item must be service authorized by either DMAS or the DMAS designated contractor for each calendar year.

(3) Unexpended portions of the maximum amount shall not be accumulated across one or more calendar years to be expended in a later year.

(4) Shipping/freight/delivery charges are not billable to DMAS or the waiver individual, as such charges are considered noncovered items.

(5) All products must be delivered, demonstrated, installed and in working order prior to submitting any claim for them to Medicaid.

(6) The date of service on the claim shall be within the service authorization approval dates, which may be prior

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to the delivery date as long as the initiation of services commenced during the approved dates.

(7) The service authorization shall not be modified to accommodate delays in product deliveries. In such situations, new service authorizations must be sought by the provider.

(8) When two or more waiver individuals live in the same home or congregate living arrangement, the AT shall be shared to the extent practicable consistent with the type of AT.

f. AT exclusions.

(1) Medicaid shall not reimburse for any AT devices or services that may have been rendered prior to authorization from DMAS or the designated service authorization contractor.

(2) Providers of AT shall not be spouses, parents (natural, adoptive, or foster), or stepparents of the individual who is receiving waiver services. Providers that supply AT for the waiver individual may not perform assessments/consultation or write specifications for that individual. Any request for a change in cost (either an increase or a decrease) requires justification and supporting documentation of medical need and service authorization by DMAS or the designated service authorization contractor. The vendor shall receive a copy of the professional evaluation in order to purchase the items recommended by the professional. If a change is necessary then the vendor shall notify the assessor to ensure the changed items meet the individual's needs.

(3) All equipment or supplies already covered by a ~~service provided for in~~ the State Plan shall not be purchased under the waiver as AT. Such examples ~~are, but shall not necessarily be limited to~~ include:

(a) Specialized medical equipment, durable or nondurable medical equipment (DME), ancillary equipment, and supplies necessary for life support;

(b) Adaptive devices, appliances, and controls that enable an individual to be more independent in areas of personal care and ADLs/IADLs; and

(c) Equipment and devices that enable an individual to communicate more effectively.

(4) AT services shall not be approved for purposes of the convenience of the caregiver, restraint of the individual, recreation or leisure, educational purposes, or diversion activities. Examples of these types of items shall be listed in DMAS guidance documents.

4. Environmental modifications services shall be covered as defined in 12VAC30-120-1700. Medicaid reimbursement shall not occur before service authorization of EM services is completed by DMAS or the DMAS-designated service authorization contractor. EM services shall entail limited physical adaptations to preexisting structures and shall not include new additions to an

existing structure that simply increase the structure's square footage.

a. In order to qualify for EM services, the individual shall have a demonstrated need for modifications of a remedial nature or medical benefit to the primary residence to specifically improve the individual's personal functioning. Such modifications may include, but shall not necessarily be limited to, the installation of ramps and grab-bars, widening of doorways and other adaptations to accommodate wheelchairs, modification of bathroom facilities to accommodate wheelchairs (but not strictly for cosmetic purposes), or installation of specialized electrical and plumbing systems required to accommodate the medical equipment and supplies that are necessary for the individual's welfare. Modifications may include a generator for waiver individuals who are dependent on mechanical ventilation for 24 hours a day and when the generator is used to support the medical equipment and supplies necessary for the individual's welfare.

b. EM shall be available costing up to a maximum amount of \$5,000 per calendar year regardless of waiver for individuals who are receiving skilled PDN services.

c. Costs for EM shall not be carried over from one calendar year to the next year. Each item shall be service authorized by DMAS or the DMAS-designated agent for each calendar year. Unexpended portions of this maximum amount shall not be accumulated across one or more years to be expended in a later year.

d. When two or more waiver individuals live in the same home or congregate living arrangement, the EM shall be shared to the extent practicable consistent with the type of requested modification.

e. Only the actual cost of material and labor is reimbursed. There shall be no additional markup.

f. EM shall be carried out in the most cost-effective manner possible to achieve the goal required for the individual's health, safety, and welfare. The cost of EM waiver services shall be included in the individual's costs of all other waiver services, which shall not exceed the total annual cost for placement in an institution.

g. All services shall be provided in the individual's primary residence in accordance with applicable state or local building codes and appropriate permits or building inspections, which shall be provided to DMAS or the DMAS contractor.

h. Proposed modifications that are to be made to rental properties must have prior written approval of the property's owner. Modifications to rental properties shall only be valid if it is an independently operated rental facility with no direct or indirect ties to any other Medicaid service provider.

i. Modifications may be made to a vehicle if it is the primary vehicle used by the individual. This service shall not include the purchase of or the general repair of vehicles. Repairs of modifications that have been reimbursed by DMAS shall be covered.

j. The EM provider shall ensure that all work and products are delivered, installed, and in good working order prior to seeking reimbursement from DMAS. The date of service on this provider's claim shall be within the service authorization approval dates, which may be prior to the completion date as long as the work commenced during the approval dates. The service authorization shall not be modified to accommodate installation delays. All requests for cost changes (either increases or decreases) shall be submitted to DMAS or the DMAS-designated service authorization contractor for revision to the previously issued service authorization and shall include justification and supporting documentation of medical needs.

k. EM exclusions.

(1) There shall be no duplication of previous EM services within the same residence such as (i) multiple wheelchair ramps or (ii) previous modifications to the same room. There shall be no duplication of EM within the same plan year.

(2) Adaptations or improvements to the primary home that shall be excluded are of general utility and are not of direct medical or remedial benefit to the waiver individual, such as, but not necessarily limited to, carpeting, flooring, roof repairs, central air conditioning or heating, general maintenance and repairs to a home, additions or maintenance of decks, maintenance/replacement or addition of sidewalks, driveways, carports, or adaptations that only increase the total square footage of the home.

(3) EM shall not be covered by Medicaid for general leisure or diversion items or those items that are recreational in nature or those items that may be used as an outlet for adaptive/maladaptive behavioral issues. Such noncovered items may include, but shall not necessarily be limited to, swing sets, playhouses, climbing walls, trampolines, protective matting or ground cover, sporting equipment or exercise equipment, such as special bicycles or tricycles.

(4) EM shall not be approved for Medicaid coverage when the waiver individual resides in a residential provider's facility program, such as sponsored homes and congregate residential and supported living settings. EM shall not be covered by Medicaid if, for example, the Fair Housing Act (42 USC § 3601 et seq.), the Virginia Fair Housing Law (§ 36-96.1 et seq. of the Code of Virginia) or the Americans with Disabilities Act (42 USC § 12101 et seq.) requires the modification and the payment for such modifications are to be made by a third party.

(5) EM shall not include the costs of removal or disposal, or any other costs, of previously installed modifications, whether paid for by DMAS or any other source.

(6) Providers of EM shall not be the waiver individual's spouse, parent (natural, adoptive, legal guardians), other legal guardians, or conservator. Providers who supply EM to waiver individuals shall not perform assessments/consultations or write EM specifications for such individuals.

5. Personal care (PC) services as defined in 12VAC30-120-1700, shall be covered for individuals older than 21 years of age who have a demonstrated need for assistance with ADLs and IADLs and who have a trained primary caregiver for skilled PDN interventions during portions of their day. PC services shall be rendered by a provider who has a DMAS provider agreement to provide PC, home health care, or skilled PDN. Due to the complex medical needs of this waiver population and the need for 24-hour supervision, the trained primary caregiver shall be present in the home and rendering the required skilled services during the entire time that the PCA is providing nonskilled care.

a. PC services are either of a supportive or health-related nature and ~~may include, but are not limited to~~ include assistance with ADLs/IADLs, community access (such as, but not necessarily limited to, going to medical appointments), monitoring of self-administration of medication or other medical needs, and monitoring of health status and physical condition. In order to receive PC, the individual must require assistance with ADLs/IADLs. When specified in the POC, PC services may also include assistance with IADLs to include making or changing beds, and cleaning areas used by the individual. Assistance with IADLs must be essential to the health and welfare of the individual, rather than the individual's representative, as applicable.

(1) The unit of service for PC services shall be one hour. The hours that may be authorized by DMAS or the designated service authorization contractor shall be based on the individual's need as documented in the individual's POC and assessed on the Technology Assisted Waiver Adult Aide Plan of Care (DMAS-97 T).

(2) Supervision of the waiver individual shall not be covered as part of the tech waiver personal care service.

(3) Individuals may have skilled PDN, PC, and skilled private duty nursing respite care in their plans of care but shall not be authorized to receive these services simultaneously.

b. PC services shall not include either practical or professional nursing services or those practices regulated in Chapters 30 (§ 54.1-3000 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia, as appropriate, with the exception of skilled nursing tasks that may be delegated in accordance with Part VIII

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(18VAC90-20-420 et seq.). The PCA may perform ADL functions such as assistance to the primary caregiver but shall not perform any nursing duties or roles except as permitted by Part VIII (18VAC90-20-420 et seq.). At a minimum, the staff providing PC must have been certified through coursework as either PCAs or home health aides.

c. DMAS will pay for any PC services that the ~~PC aide~~ PCA gives to individuals to assist them in preparing for school or when they return home. DMAS shall not pay for the ~~PC aide~~ PCA to assist the individual with any functions related to the individual completing post-secondary school functions or for supervision time during school.

d. PC exclusions.

(1) Time spent driving the waiver individual shall not be reimbursed.

(2) Regardless of the combination of skilled PDN and PC hours, the total combined number of hours that shall be reimbursed by DMAS in a ~~24-hour period~~ week shall not exceed ~~46~~ 112 hours.

(3) The consumer-directed services model shall not be covered for any services provided in the tech waiver.

(4) Spouses, parents (natural, adoptive, legal guardians), siblings, grandparents, grandchildren, adult children, other legal guardians, or any person living under the same roof with the individual shall not provide PC services for the purpose of Medicaid reimbursement for the waiver individual.

6. Transition services shall be covered two ways: (i) as defined at 12VAC30-120-1700 to provide for applicants to move from institutional placements to community private homes and shall be service authorized by DMAS or the designated service authorization contractor in order for reimbursement to occur, and (ii) for applicants who have already moved from an institution to the community within 30 days of their transition. The applicant's transition from an institution to the community shall be coordinated by the facility's discharge planning team. The discharge planner shall coordinate with the DMAS staff to ensure that technology assisted waiver eligibility criteria shall be met.

a. Transition services shall be service authorized by DMAS or its designated service authorization contractor in order for reimbursement to occur. ~~These services shall include those set out in the MFP demonstration.~~

b. For the purposes of transition funding for the technology assisted waiver, an institution means an ICF/ID, a specialized care nursing facility or a long-stay hospital as defined at 42 CFR 435.1009. Transition funding shall not be available for individuals who have been admitted to an acute care hospital.

~~e. When the Money Follows the Person demonstration is terminated or expires by federal action, the portion of this~~

~~service covered through MFP shall also terminate. The remaining transition services shall continue until modified.~~

C. Changes to services or termination of services.

1. DMAS or its designated agent shall have the final authority to approve or deny a requested change to an individual's skilled PDN and PC hours. Any request for an increase to an individual's skilled PDN or PC hours that exceeds the number of hours allowed for that individual's LOC shall be service authorized by DMAS staff and accompanied by adequate documentation justifying the increase.

a. The provider may decrease the amount of authorized care if the revised skilled PDN hours are appropriate and based on the needs of the individual. The provider agency shall work with the DMAS staff for coordination and final approval of any decrease in service delivery. A revised tech waiver skilled PDN authorization shall be completed by DMAS for final authorization and forwarded to the provider agency.

b. The provider shall be responsible for documenting in writing the physician's verbal orders and for inclusion of the changes on the recertification POC in accordance with the DMAS skilled private duty nursing authorization. The provider agency's RN supervisor, who is responsible for supervising the individual's care, shall use a person-centered approach in discussing the change in care with the individual and the individual's representative to include documentation in the individual's record. The DMAS staff or the DMAS designated service authorization contractor shall notify in writing the individual or the individual's representative of the change.

c. The provider shall be responsible for submitting the DMAS-225 form to the local department of social services when the following situations occur: (i) when Medicaid eligibility status changes; (ii) when the individual's level of care changes; (iii) when the individual is admitted to or discharged from an institution, a home and community-based waiver, or a provider agency's care; (iv) the individual dies; or (v) any other information that causes a change in the individual's eligibility status or patient pay amounts.

2. At any time the individual no longer meets LOC criteria for the waiver, termination of waiver enrollment shall be initiated by DMAS staff who is assigned to the individual. In such instances, DMAS shall forward the DMAS-225 form to the local department of social services.

3. In an emergency situation when the health, safety, or welfare of the provider staff is endangered, the provider agency may immediately initiate discharge of the individual and contact the DMAS staff. The provider must issue written notification containing the reasons for and the effective date of the termination of services. The written

notification period in subdivision 4 of this subsection shall not be required. Other entities (e.g., licensing authorities, APS, CPS) shall also be notified as appropriate. A copy of this letter shall be forwarded to the DMAS staff within five business days of the letter's date.

4. In a nonemergency situation (i.e., when the health, safety, or welfare of the waiver individual or provider personnel is not endangered), the provider shall provide the individual and the individual's representative 14 calendar days' written notification (plus three days to allow for mail transmission) of the intent to discharge the individual from agency services. Written notification shall provide the reasons for and the effective date of the termination of services as well as the individual's appeal rights. A copy of the written notification shall also be forwarded to the DMAS staff within five business days of the date of the notification.

5. Individuals who no longer meet the tech waiver criteria as certified by the physician for either children or adults shall be terminated from the waiver. In such cases, a reduction in skilled PDN hours may occur that shall not exceed two weeks in duration as long as such skilled PDN was previously approved in the individual's POC. The agency provider of skilled PDN for such individuals shall document with DMAS the decrease in skilled PDN hours and prepare for cessation of skilled PDN hours and waiver services.

6. When a waiver individual, regardless of age, requires admission to a specialized care nursing facility or long-stay hospital, the individual shall be discharged from waiver services while he is in the specialized care nursing facility or long-stay hospital. Readmission to waiver services may resume once the individual has been discharged from the specialized care nursing facility or long-stay hospital as long as the waiver eligibility and medical necessity criteria continue to be met. For individuals 21 years of age and older, the individual shall follow the criteria for specialized care nursing facility admission. For individuals who are younger than 21 years of age, the individual shall follow the criteria for long-stay hospital admissions as well as the age appropriate criteria.

7. When a waiver individual, regardless of age, requires admission to ~~a an acute care hospital for 30 days or more~~, the individual shall be discharged from waiver services ~~while he is in the hospital~~. When such hospitalization exceeds 30 days ~~and upon hospital discharge~~, readmission to waiver services ~~requires a~~ is required. Such readmission requires reassessment by the PAS discharge team for and a determination that the individual currently meets continues to meet Medicaid eligibility, functional level of care criteria, and specialized nursing facility waiver criteria medical criteria on the DMAS-108 or DMAS-109 form, as appropriate. If these criteria are met, the individual shall be readmitted to waiver services. For adults, ages 21 years

and older, the individual shall meet the criteria for specialized care admissions. For children, younger than 21 years of age, the individual shall meet the criteria for long-stay hospital admissions and the age appropriate criteria.

8. Waiver individuals, regardless of age, who require admission to any type of acute care facility for less than 30 days shall, upon discharge from such acute care facility, be eligible for waiver services as long as all other requirements continue to be met.

12VAC30-120-1730. General requirements for participating providers.

A. All agency providers shall sign the appropriate technology assisted waiver provider agreement in order to bill and receive Medicaid payment for services rendered. Requests for provider enrollment shall be reviewed by DMAS to determine whether the provider applicant meets the requirements for Medicaid participation and demonstrates the abilities to perform, at a minimum, the following activities:

1. Be able to render the medically necessary services required by the waiver individuals. Accept referrals for services only when staff is available and qualified to initiate and perform the required services on an ongoing basis.

2. Assure the individual's freedom to reject medical care and treatment.

3. Assure freedom of choice to individuals in seeking medical care from any institution, pharmacy, or practitioner qualified to perform the service or services that may be required and participating in the Medicaid program at the time the service or services are performed.

4. Actively involve the individual and the authorized representative, as applicable, in the assessment of needs, strengths, goals, preferences, and abilities and incorporate this information into the person-centered planning process. A provider shall protect and promote the rights of each individual for whom he is providing services and shall provide for each of the following individual rights:

a. The individual's rights are exercised by the person appointed under state law to act on the individual's behalf in the case of an individual adjudged incompetent under the laws of the Commonwealth by a court of competent jurisdiction.

b. The individual, who has not been adjudged incompetent by the state court, may designate any legal-surrogate in accordance with state law to exercise the individual's rights to the extent provided by state law.

c. The individual shall have the right to receive services from the provider with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other waiver individuals would be endangered.

5. Perform a criminal background check on all employees, including the business owner, who may have any contact

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or provide services to the waiver individual. Such record checks shall be performed by the Virginia State Police for the Commonwealth. When the Medicaid individual is a minor child, searches shall also be made of the Virginia CPS Central Registry.

a. Provider documentation of the results of these searches must be made available upon request of DMAS or its authorized representatives. Persons convicted of having committed barrier crimes as defined in § 32.1-162.9:1 of the Code of Virginia shall not render services to waiver individuals for the purposes of seeking Medicaid reimbursement.

b. Persons having founded dispositions in the CPS Central Registry at DSS shall not be permitted to render services to children in this waiver and seek Medicaid reimbursement. Medicaid reimbursement shall not be made for providers' employees who have findings with the Virginia Board of Nursing of the Department of Health Professions concerning abuse, neglect, or mistreatment of individuals or misappropriation of their property.

6. Screen all new and existing employees and contractors to determine whether any of them have been excluded from participation in federal programs. Search the HHS-OIG List of Excluded Individuals and Entities (LEIE) website monthly by name for employees, contractors and entities to validate the eligibility of such persons and entities for federal programs.

a. Immediately report to DMAS any exclusion information identified.

b. Such information shall be sent in writing and shall include the individual or business name, provider identification number (if applicable), and what, if any, action has been taken to date.

c. Such information shall be sent to: DMAS, ATTN: Program Integrity/Exclusions, 600 E. Broad St., Suite 1300, Richmond, VA 23219 or emailed to providerexclusion@dmass.virginia.gov.

7. Provide services and supplies to individuals in full compliance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000 et seq.), which prohibits discrimination on the grounds of race, color, religion, or national origin; the Virginians with Disabilities Act (§ 51.5-1 et seq. of the Code of Virginia); § 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794), which prohibits discrimination on the basis of a disability; and the ADA of 1990, as amended (42 USC § 12101 et seq.), which provides comprehensive civil rights protections to individuals with disabilities.

8. Report all suspected violations, pursuant to § 63.2-100, §§ 63.2-1508 through 63.2-1513, and § 63.2-1606 et seq. of the Code of Virginia, involving mistreatment, neglect, or abuse, including injuries of an unknown source, and

misappropriation of individual property to either CPS, APS, or other officials in accordance with state law. Providers shall also train their staff in recognizing all types of such injuries and how to report them to the appropriate authorities. Providers shall ensure that all employees are aware of the requirements to immediately report such suspected abuse, neglect, or exploitation to APS, CPS or human rights, as appropriate.

9. Notify DMAS or its designated agent immediately, in writing, of any change in the information that the provider previously submitted to DMAS. When ownership of the provider changes, notify DMAS at least 15 calendar days before the date of such a change.

10. Provide services and supplies to individuals in full compliance of the same quality and in the same mode of delivery as are provided to the general public. Submit charges to DMAS for the provision of services and supplies to individuals in amounts not to exceed the provider's usual and customary charges to the general public.

11. Accept as payment in full the amount established and reimbursed by DMAS' payment methodology beginning with individuals' authorization dates for the waiver services. The provider shall not attempt to collect from the individual or the individual's responsible relative or relatives any amount the provider may consider a balance due amount or an uncovered amount. Providers shall not collect balance due amounts from individuals or individuals' responsible relatives even if such persons are willing to pay such amounts. Providers shall not bill DMAS, individuals or their responsible relatives for broken or missed appointments.

12. Collect all applicable patient pay amounts pursuant to 12VAC30-40-20, 12VAC30-40-30, 12VAC30-40-40, 12VAC30-40-50, and 12VAC30-40-60.

13. Use only DMAS-designated forms for service documentation. The provider shall not alter the required DMAS forms in any manner unless DMAS' approval is obtained prior to using the altered forms.

14. Not perform any type of direct-marketing activities to Medicaid individuals.

15. Furnish access to the records of individuals who are receiving Medicaid services and furnish information, on request and in the form requested, to DMAS or its designated agent or agents, the Attorney General of Virginia or his authorized representatives, the state Medicaid Fraud Control Unit, the State Long-Term Care Ombudsman and any other authorized state and federal personnel. The Commonwealth's right of access to individuals receiving services and to provider agencies and records shall survive any termination of the provider agreement.

16. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, and business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of services to participants of Medicaid.

17. Pursuant to 42 CFR 431.300 et seq. and § 32.1-325.3 of the Code of Virginia, all information associated with a waiver applicant or individual that could disclose the individual's identity is confidential and shall be safeguarded. Access to information concerning waiver applicants or individuals shall be restricted to persons or agency representatives who are subject to the standards of confidentiality that are consistent with that of the agency, and any such access must be in accordance with the provisions found in 12VAC30-20-90.

18. Meet staffing, financial solvency, disclosure of ownership, assurance of comparability of services requirements, and other requirements as specified in the provider's written program participation agreement with DMAS.

19. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided fully and accurately with documentation necessary to support services billed. Failure to meet this requirement may result in DMAS' recovery of expenditures resulting from claims payment.

20. Maintain a medical record for each individual who is receiving waiver services. Failure to meet this requirement may result in DMAS recovering expenditures made for claims paid that are not adequately supported by the provider's documentation.

21. Retain business and professional records at least six years from the last date of service or as provided by applicable federal and state laws, whichever period is longer. However, if an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of the storage location and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth.

22. Retain records of minors for at least six years after such minors have reached 21 years of age.

23. Ensure that all documentation in the individual's record is completed, signed, and dated with the name or names of the person or persons providing the service and the appropriate title, dated with month, day, and year, and in accordance with accepted professional practice. This documentation shall include the nurses' or PCAs', as appropriate, arrival and departure times for each shift that is worked.

24. Begin PDN services for which it expects reimbursement only when the admission packet is received and DMAS' authorization for skilled PDN services has been given. This authorization shall include the enrollment date that shall be issued by DMAS staff. It shall be the provider agency's responsibility to review and ensure the receipt of a complete and accurate screening packet.

25. Ensure that there is a backup caregiver who accepts responsibility for the oversight and care of the individual in order to ensure the health, safety, and welfare of the individual when the primary caregiver is ill, incapacitated, or using PDN respite. Documentation in the medical record shall include this backup caregiver's name and phone number.

26. Notify the DMAS staff every time the waiver individual's primary residence changes.

27. Ensure that minimum qualifications of provider staff are met as follows:

a. All RN and LPN employees shall have a satisfactory work record, as evidenced by at least two references from prior job experiences. In lieu of this requirement for personal care aides only, employees who have worked for only one employer shall be permitted to provide two personal references. Providers who are not able to obtain previous job references about personal care aides shall retain written documentation showing their good faith efforts to obtain such references in the new employee's work record.

b. Staff and agencies shall meet any certifications, licensure, or registration, as applicable and as required by applicable state law. Staff qualifications shall be documented and maintained for review by DMAS or its designated agent. All additional provider requirements as may be required under a specific waiver service in this part shall also be met.

c. ~~In addition, the RN as well as all nurses~~ All RNs and LPNs providing the skilled PDN service services shall be currently and validly licensed to practice nursing in the Commonwealth and have at least six months of related clinical experience, which may include work in acute care hospitals, long stay hospitals, rehabilitative hospitals or specialized care nursing facilities. The LPN shall be under the direct supervision of an RN.

d. ~~The RN supervisor shall be currently licensed to practice nursing in the Commonwealth and have at least one year of related clinical nursing experience, which may include work in an acute care hospital, long stay hospital, rehabilitation hospital, or specialized care nursing facility.~~ All RNs and LPNs who provide skilled PDN services shall have either (i) at least six months of related clinical experience as documented in their history, which may include work in acute care hospitals, long-stay hospitals, rehabilitation hospitals, or specialized care nursing facilities, or (ii) completed a provider training

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program related to the care and technology needs of the assigned tech waiver individual.

e. Training programs established by providers shall include, at a minimum, the following:

(1) Trainers (either RNs or respiratory therapists) shall have at least six months hands-on [successful] experience in the areas in which they provide training, such as ventilators, tracheostomies, peg tubes, and nasogastric tubes.

(2) Training shall include classroom time as well as direct hands-on demonstration of mastery of the specialized skills required to work with individuals in the technology assisted waiver by the trainee.

(3) The training program shall include the following subject areas as they relate to the care to be provided by the tech waiver nurse: (i) human anatomy and physiology, (ii) medications frequently used by technology dependent individuals, (iii) emergency management, and (iv) the operation of the relevant equipment.

(4) Providers shall assure the competency and mastery of the skills necessary to [successfully] care for tech waiver individuals by the nurses prior to assigning them to a tech waiver individual. Documentation of successful completion of such training course and mastery of the specialized skills required to work with individuals in the technology assisted waiver shall be maintained in the provider's personnel records. This documentation shall be provided to DMAS upon request.

f. The RN supervisor shall be currently licensed to practice nursing in the Commonwealth and have at least one year of related clinical nursing experience, which may include work in an acute care hospital, long-stay hospital, rehabilitation hospital, or specialized care nursing facility.

B. DMAS shall have the authority to require the submission of any other medical documentation or information as may be required to complete a decision for a waiver individual's eligibility, waiver enrollment, or coverage for services.

1. Review of individual-specific documentation shall be conducted by DMAS or its designated agent. This documentation shall contain, up to and including the last date of service, all of the following, as may be appropriate for the service rendered:

a. All supporting documentation, including physicians' orders, from any provider rendering waiver services for the individual;

b. All assessments, reassessments, and evaluations (including the complete UAI screening packet or risk evaluations) made during the provision of services, including any required initial assessments by the RN supervisor completed prior to or on the date services are

initiated and changes to the supporting documentation by the RN supervisor;

c. Progress notes reflecting individual's status and, as appropriate, progress toward the identified goals on the POC;

d. All related communication with the individual and the family/caregiver, the designated agent for service authorization, consultants, DMAS, DSS, formal and informal service providers, referral to APS or CPS and all other professionals concerning the individual, as appropriate;

e. Service authorization decisions performed by the DMAS staff or the DMAS-designated service authorization contractor;

f. All POCs completed for the individual and specific to the service being provided and all supporting documentation related to any changes in the POCs; and

g. Attendance logs documenting the date and times services were rendered, the amount and type of services rendered and the dated professional signature with title.

2. Review of provider participation standards and renewal of provider agreements. DMAS shall be responsible for ensuring continued adherence to provider participation standards by conducting ongoing monitoring of compliance.

a. DMAS shall recertify each provider for agreement renewal, contingent upon the provider's timely license renewal, to provide home and community-based waiver services.

b. A provider's noncompliance with DMAS policies and procedures, as required in the provider agreement, may result in a written request from DMAS for a corrective action plan that details the steps the provider shall take and the length of time required to achieve full compliance with the corrective action plan that shall correct the cited deficiencies.

c. A provider that has been convicted of a felony, or who has otherwise pled guilty to a felony, in Virginia or in any other of the 50 states, the District of Columbia, or the U.S. territories must, within 30 days of such conviction, notify DMAS of this conviction and relinquish its provider agreement. Upon such notice, DMAS shall immediately terminate the provider's Medicaid provider agreement pursuant to § 32.1-325 D of the Code of Virginia and as may be required for federal financial participation. Such provider agreement terminations shall be immediate and conform to § 32.1-325 E of the Code of Virginia.

d. Providers shall not be reimbursed for services that may be rendered between the conviction of a felony and the provider's notification to DMAS of the conviction.

e. Except as otherwise provided by applicable state or federal law, the Medicaid provider agreement may be

terminated at will on 30 days' written notice. The agreement may be terminated if DMAS determines that the provider poses a threat to the health, safety, or welfare of any individual enrolled in a DMAS administered program.

12VAC30-120-1740. Participation standards for provision of services.

A. Skilled PDN, skilled PDN respite, and PC services. DMAS or its designated agent shall periodically review and audit providers' records for these services for conformance to regulations and policies, and concurrence with claims that have been submitted for payment. When an individual is receiving multiple services, the records for all services shall be separated from those of non-home and community-based care services, such as companion or home health services. The following documentation shall be maintained for every individual for whom DMAS-enrolled providers render these services:

1. Physicians' orders for these services shall be maintained in the individual's record as well as at the individual's primary residence. All recertifications of the POC shall be performed within the last five business days of each current 60-day period. The physician shall sign the recertification before Medicaid reimbursement shall occur;
2. All assessments, reassessments, and evaluations (including the complete UAI screening packet or risk evaluations) made during the provision of services, including any required initial assessments by the RN supervisor completed prior to or on the date services are initiated and changes to the supporting documentation by the RN supervisor;
3. Progress notes reflecting the individual's status and, as appropriate, progress toward the identified goals on the POC;
4. All related communication with the individual and the individual's representative, the DMAS designated agent for service authorization, consultants, DMAS, DSS, formal and informal service providers, all required referrals, as appropriate, to APS or CPS and all other professionals concerning the individual;
5. All service authorization decisions rendered by the DMAS staff or the DMAS-designated service authorization contractor;
6. All POCs completed with the individual, or family/caregiver, as appropriate, and specific to the service being provided and all supporting documentation related to any changes in the POC;
7. Attendance logs documenting the date and times services were rendered, the amount and type of services rendered and the dated signatures of the professionals who rendered the specified care, with the professionals' titles. Copies of all nurses' records shall be subject to review by either state or federal Medicaid representatives or both.

Any required nurses' visit notes, PCA notes, and all dated contacts with service providers and during supervisory visits to the individual's home and shall include:

- a. The private duty nurse's or PCA's daily visit note with arrival and departure times;
 - b. The RN, LPN, or PCA daily observations, care, and services that have been rendered, observations concerning the individual's physical and emotional condition, daily activities and the individual's response to service delivery; and
 - c. Observations about any other services, such as and not limited to meals-on-wheels, companion services, and home health services, that the participant may be receiving shall be recorded in these notes;
8. Provider's HIPAA release of information form;
 9. All Long Term Care Communication forms (DMAS-225);
 10. Documentation of rejection or refusal of services and potential outcomes resulting from the refusal of services communicated to the individual or the individual's representative;
 11. Documentation of all inpatient hospital or specialized care nursing facility admissions to include service interruption dates, the reason for the hospital or specialized care nursing facility admission, the name of the facility or facilities and primary caregiver notification when applicable including all communication to DMAS;
 12. The RN, LPN, or PCA's and individual's, or individual's representative's weekly or daily, as appropriate, signatures, including the date, to verify that services have been rendered during that week as documented in the record. For records requiring weekly signatures, such signatures, times, and dates shall be placed on these records no earlier than the last day of the week in which services were provided and no later than seven calendar days from the date of the last service. An employee providing services to the tech waiver individual cannot sign for the individual. If the individual is unable to sign the nurses' records, it shall be documented in the record how the nurses' records will be signed or who will sign in the individual's place. An employee of the provider shall not sign for the individual unless he is a family member of the individual or legal guardian of the individual;
 13. Contact notes or progress notes reflecting the individual's status; and
 14. Any other documentation to support that services provided are appropriate and necessary to maintain the individual in the home and in the community.

B. In addition to meeting the general conditions and requirements for home and community-based services participating providers and skilled PDN, private duty respite,

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and PC services, providers shall also meet the following requirements:

1. This service shall be provided through either a home health agency licensed or certified by the VDH for Medicaid participation and with which DMAS has a contract for either skilled PDN or congregate PDN or both;
2. Demonstrate a prior successful health care delivery;
3. Operate from a business office; and
4. Employ (or subcontract with) and directly supervise an RN or an LPN. The LPN and RN shall be currently licensed to practice in the Commonwealth ~~and, Prior to assignment to a tech waiver individual, the RN or LPN shall have either (i) at least six months of related clinical nursing experience, which may include work in an acute care hospital, long stay hospital, rehabilitation hospital, or specialized care nursing facility or (ii) completed a provider training program related to the care and technology needs of the tech waiver individual as described in 12VAC30-120-1730 A 27 e. Regardless of whether a nurse has six months of experience or completes a provider training course, the provider agency shall be responsible for assuring all nurses who are assigned to an individual are competent in the care needs of that individual.~~
5. As part of direct supervision, the RN supervisor shall make, at a minimum, a visit every 30 days to ensure both quality and appropriateness of PDN, PDN respite services, and personal care services to assess the individual's and the individual's representative's satisfaction with the services being provided, to review the medication and treatments and to update and verify the most current physician signed orders are in the home.
 - a. The waiver individual shall be present when the supervisory visits are made;
 - b. At least every other visit shall be in the individual's primary residence;
 - c. When a delay occurs in the RN supervisor's visits because the individual is unavailable, the reason for the delay shall be documented in the individual's record, and the visit shall occur as soon as the individual is available. Failure to meet this standard may result in DMAS' recovery of payments made.
 - d. The RN supervisor may delegate personal care aide supervisory visits to an LPN. The provider's [RN or LPN] supervisor shall make supervisory visits at least every 90 days. During visits to the waiver individual's home, the ~~RN/LPN~~ RN or LPN supervisor shall observe, evaluate, and document the adequacy and appropriateness of personal care services with regard to the individual's current functioning status and medical and social needs. The personal care aide's record shall be reviewed and the waiver individual's or

family/caregiver's, or both, satisfaction with the type and amount of services discussed.

- e. Additional supervisory visits may be required under the following circumstances: (i) at the provider's discretion; (ii) at the request of the individual when a change in the individual's condition has occurred; (iii) any time the health, safety, or welfare of the individual could be at risk; and (iv) at the request of the DMAS staff.

6. When private duty respite services are routine in nature and offered in conjunction with PC services for adults, the RN supervisory visit conducted for PC may serve as the supervisory visit for respite services. However, the supervisor shall document supervision of private duty respite services separately. For this purpose, the same individual record can be used with a separate section for private duty respite services documentation.

7. For this waiver, personal care services shall only be agency directed and provided by a DMAS-enrolled PC provider to adult waiver individuals.

- a. For DMAS-enrolled skilled PDN providers that also provide PC services, the provider shall employ or subcontract with and directly supervise an RN who will provide ongoing supervision of all PCAs. The supervising RN shall be currently licensed to practice nursing in the Commonwealth and have at least one year of related clinical nursing experience, which may include work in an acute care hospital, long-stay hospital, rehabilitation hospital, or specialized care nursing facility.

- b. In addition to meeting the general conditions and requirements for home and community-based services participating providers as specified elsewhere in this part, the provision of PC services shall also comply with the requirements of 12VAC30-120-930.

8. Skilled monthly supervisory reassessments shall be performed in accordance with regulations by the PDN agency provider. The agency RN supervisor shall complete the monthly assessment visit and submit the "Technology Assisted Waiver Supervisory Monthly Summary" form (DMAS-103) to DMAS for review by the sixth day of the month following the month when the visit occurred.

9. Failure of the provider to ensure timely submission of the required assessments may result in retraction of all skilled PDN payments for the period of time of the delinquency.

C. Assistive technology and environmental modification.

1. All AT and EM services shall be provided by DMAS-enrolled DME providers that have a DMAS provider agreement to provide AT or EM or both.

2. AT and EM shall be covered in the least expensive, most cost-effective manner. The provider shall document and justify why more cost-effective solutions cannot be used.

DMAS and the DMAS-designated service authorization contractor may request further documentation on the alternative cost-effective solutions as necessary.

3. The provider documentation requirements for AT and EM shall be as follows:

- a. Written documentation setting out the medical necessity for these services regarding the need for service, the process and results of ensuring that the item is not covered by the State Plan as DME and supplies and that it is not available from a DME provider when purchased elsewhere and contacts with vendors or contractors of service and cost;
- b. Documentation of any or all of the evaluation, design, labor costs or supplies by a qualified professional;
- c. Documentation of the date services are rendered and the amount of service needed;
- d. Any other relevant information regarding the device or modification;
- e. Documentation in the medical record of notification by the designated individual or the individual's representative of satisfactory completion or receipt of the service or item;
- f. Instructions regarding any warranty, repairs, complaints, or servicing that may be needed; and
- g. Any additional cost estimates requested by DMAS.

7. The ~~EM/AT~~ EM or AT provider shall maintain a copy of all building permits and all building inspections for modifications, as required by code. All instructions regarding any warranty, repairs, complaints, and servicing that may be needed and the receipt for any purchased goods or services. More than one cost estimate may be required.

8. Individuals who reside in rental property shall obtain written permission from the property's owner before any EM shall be authorized by DMAS. This letter shall be maintained in the provider's record.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (12VAC30-120)

- Virginia Uniform Assessment Instrument (UAI) (1994)
- Consent to Exchange Information, DMAS-20 (rev. 4/03)
- [Provider Aide Record \(Personal/Respite Care\), DMAS-90 \(rev. 6/12\)](#)
- LPN Skilled Respite Record, DMAS-90A (eff. 7/05)

Personal Assistant/Companion Timesheet, DMAS-91 (rev. 8/03)

[Questionnaire to Assess an Applicant's Ability to Independently Manage Consumer-Directed Services, DMAS-95 Addendum \(rev. 8/05\)](#)

[Medicaid Funded Long-Term Care Service Authorization Form, DMAS-96 \(rev. 8/12\)](#)

[Individual Choice - Institutional Care or Waiver Services Form, DMAS-97 \(rev. 8/12\)](#)

[Agency or Consumer Direction Provider Plan of Care, DMAS-97A/B \(rev. 3/10\)](#)

[Community-Based Care Recipient Assessment Report, DMAS-99 \(rev. 9/09\)](#)

[Community-Based Care Level of Care Review Instrument, DMAS-99LOC \(undated\)](#)

[Medicaid LTC Communication Form, DMAS-225 \(rev.10/11\)](#)

[Technology Assisted Waiver Provider RN Initial Home Assessment, DMAS-116 \(11/10\)](#)

[Technology Assisted Waiver/EPSTD Nursing Services Provider Skills Checklist for Individuals Caring for Tracheostomized and/or Ventilator Assisted Children and Adults, DMAS-259](#)

[Home Health Certification and Plan of Care, CMS-485 \(rev. 2/94\)](#)

[IFDDS Waiver Level of Care Eligibility Form \(eff. 5/07\)](#)

[Request for Screening for Individual and Family Developmental Disabilities Support Waiver \(DD Waiver\), DMAS 305 \(rev. 3/09\)](#)

[DD Medicaid Waiver - Level of Functioning Survey Summary Sheet, DMAS-458 \(undated\)](#)

[Technology Assisted Waiver Adult Aide Plan of Care, DMAS 97 T \(rev. 6/08\)](#)

[Technology Assisted Waiver Supervisory Monthly Summary, DMAS 103 \(rev. 4/08\)](#)

~~[Technology Assisted Waiver Adult Referral, DMAS-108 \(rev. 3/10\)](#)~~

~~[Technology Assisted Waiver Pediatric Referral, DMAS-109 \(rev. 3/10\)](#)~~

[Technology Assisted Waiver Adult Referral, DMAS-108 \(rev. 1/2017\)](#)

[Technology Assisted Waiver Pediatric Referral, DMAS-109 \(rev. 1/2017\)](#)]

V.A.R. Doc. No. R16-4359; Filed July 12, 2017, 7:31 a.m.



TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

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

Title of Regulation: 14VAC5-265. Rules Governing Corporate Governance Annual Disclosures (adding 14VAC5-265-10 through 14VAC5-265-50).

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

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

Public Comment Deadline: September 21, 2017.

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

Summary:

The proposed amendments implement the provisions of Article 5.2 (§§ 38.2-1334.11 through 38.2-1334.17) of Chapter 13 of Title 38.2 of the Code of Virginia, which was enacted by Chapter 643 of the 2017 Acts of Assembly and becomes effective on January 1, 2018. Article 5.2 requires each insurer domiciled in the Commonwealth of Virginia, or the insurance group of which the insurer is a member, to submit to the State Corporation Commission a Corporate Governance Annual Disclosure (CGAD). The CGAD is a confidential report on an insurer or insurance group's corporate governance structure, policies, and practices, which allows the commission to gain and maintain an understanding of the insurer's corporate governance framework. The new regulation sets forth the requirements for what is to be included in the CGAD, which is due June 1, 2018, and annually thereafter. All insurers domiciled in Virginia are required to submit a CGAD pursuant to § 38.2-1334.12 of the Code of Virginia.

AT RICHMOND, JULY 14, 2017

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2017-00161

Ex Parte: In the matter of Adopting
New Rules Governing Corporate
Governance Annual Disclosures

ORDER TO TAKE NOTICE

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

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

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to promulgate new rules at Chapter 265 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Corporate Governance Annual Disclosures," which are recommended to be set out at 14 VAC 5-265-10 through 14 VAC 5-265-50.

The proposed new rules are necessary to implement the provisions of §§ 38.2-1334.11 through 38.2-1334.17 of the Code, which were enacted in Chapter 643 of the 2017 Acts of Assembly (HB 2102) and require each insurer domiciled in the Commonwealth of Virginia, or the insurance group of which the insurer is a member, to submit to the Commission a Corporate Governance Annual Disclosure. These new rules establish procedures for filing, and the required contents of, the Corporate Governance Annual Disclosure. The amendments to the Code are effective on January 1, 2018.

NOW THE COMMISSION is of the opinion that the proposal to adopt new rules recommended to be set out at Chapter 265 in the Virginia Administrative Code as submitted by the Bureau should be considered for adoption with a proposed effective date of January 1, 2018.

Accordingly, IT IS ORDERED THAT:

(1) The proposed new rules entitled "Rules Governing Corporate Governance Annual Disclosures," recommended to be set out at 14 VAC 5-265-10 through 14 VAC 5-265-50 are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to consider the adoption of proposed Chapter 265, shall file such comments or hearing request on or before September 21, 2017, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. INS-2017-00161.

(3) If no written request for a hearing on the adoption of the proposed new rules as outlined in this Order is received on or

before September 21, 2017, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt the rules as submitted by the Bureau.

(4) The Bureau forthwith shall give notice of the proposal by mailing a copy of this Order, together with the proposal, to all insurers domiciled in Virginia and to all interested persons.

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

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

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

(8) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Kiva B. Pierce, Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Donald C. Beatty.

CHAPTER 265

**RULES GOVERNING CORPORATE GOVERNANCE
ANNUAL DISCLOSURES**

14VAC5-265-10. Purpose and scope.

The purpose of this chapter is to set forth rules and procedures for filing and for the required contents of the Corporate Governance Annual Disclosure that the commission deems necessary to carry out the provisions of Article 5.2 (§ 38.2-1334.11 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia.

14VAC5-265-20. Definitions.

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

"Corporate Governance Annual Disclosure" or "CGAD" means a confidential report filed by the insurer or insurance group made in accordance with the requirements of this chapter.

"Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in § 38.2-1322 of the Code of Virginia.

"Insurer" means an insurance company as defined in § 38.2-100 of the Code of Virginia. "Insurer" shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto

Rico, the District of Columbia, or a state or political subdivision of a state.

"Senior management" means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and shall include, for example and without limitation, the chief executive officer (CEO), chief financial officer, chief operations officer, chief procurement officer, chief legal officer, chief information officer, chief technology officer, chief revenue officer, chief visionary officer, or any other "C" level executive.

"The Act" means Article 5.2 (§ 38.2-1334.11 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia.

14VAC5-265-30. Filing procedures.

A. An insurer, or the insurance group of which the insurer is a member, required to file a CGAD by the Act shall, no later than June 1 of each calendar year, submit to the commission a CGAD that contains the information described in 14VAC5-265-40.

B. The CGAD must include a signature of the insurer's or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer or insurance group has implemented the corporate governance practices and that a copy of the CGAD has been provided to the insurer's or insurance group's board of directors or the appropriate committee thereof.

C. The insurer or insurance group shall have discretion regarding the appropriate format for providing the information required by this chapter and is permitted to customize the CGAD to provide the most relevant information, appropriate to the nature, scale, and complexity of the operations of the insurer or insurance group that is necessary to permit the commission to gain an understanding of the corporate governance structure, policies, and practices utilized by the insurer or insurance group.

D. For purposes of completing the CGAD, the insurer or insurance group may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which (i) the insurer's or insurance group's risk appetite is determined; (ii) the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised; or (iii) the legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

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E. Notwithstanding subsection A of this section, and as outlined in § 38.2-1334.12 of the Act, if the CGAD is completed at the insurance group level, then it must be filed with the lead state of the group as determined by the procedures outlined in the 2016 Annual/2017 Quarterly Financial Analysis Handbook adopted by the National Association of Insurance Commissioners. In these instances, a copy of the CGAD must also be provided to the chief insurance regulatory official of any state in which the insurance group has a domestic insurer, upon request.

F. An insurer or insurance group may comply with this section by referencing other existing documents (e.g., Own Risk and Solvency Assessment Summary Report, Holding Company Form B or F Filings, Securities and Exchange Commission Proxy Statements, foreign regulatory reporting requirements, etc.) if the documents provide information that is comparable to the information described in 14VAC5-265-40. The insurer or insurance group shall clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed or available to the commission.

G. Each year following the initial filing of the CGAD, the insurer or insurance group shall file an amended version of the previously filed CGAD, indicating where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group, the filing should so state.

14VAC5-265-40. Contents of Corporate Governance Annual Disclosure.

A. The insurer or insurance group shall be as descriptive as possible in completing the CGAD and include attachments or example documents that are used in the governance process since these may provide a means to demonstrate the strengths of the governance framework and practices.

B. The CGAD shall describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following:

1. The board of directors (board) and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level at which that oversight occurs (e.g., ultimate control level, intermediate holding company, legal entity, etc.). The insurer or insurance group shall describe and discuss the rationale for the current board size and structure; and

2. The duties of the board and each of its significant committees and how they are governed (e.g., bylaws, charters, informal mandates, etc.), as well as how the board's leadership is structured, including a discussion of the roles of the chief executive officer (CEO) and chairman of the board within the organization.

C. The insurer or insurance group shall describe the policies and practices of the most senior governing entity and

significant committees thereof, including a discussion of the following factors:

1. How the qualifications, expertise, and experience of each board member meet the needs of the insurer or insurance group;

2. How an appropriate amount of independence is maintained on the board and its significant committees;

3. The number of meetings held by the board and its significant committees over the past year as well as information on director attendance;

4. How the insurer or insurance group identifies, nominates, and elects members to the board and its committees. The discussion should include, for example:

a. Whether a nomination committee is in place to identify and select individuals for consideration;

b. Whether term limits are placed on directors;

c. How the election and reelection processes function; and

d. Whether a board diversity policy is in place and if so, how it function;

5. The processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance (including any board or committee training programs that have been put in place).

D. The insurer or insurance group shall describe the policies and practices for directing senior management, including a description of the following factors:

1. Any processes or practices (i.e., suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience, and integrity to fulfill their prospective roles, including:

a. Identification of the specific positions for which suitability standards have been developed and a description of the standards employed; and

b. Any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.

2. The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:

a. Compliance with laws, rules, and regulations; and

b. Proactive reporting of any illegal or unethical behavior.

3. The insurer's or insurance group's processes for performance evaluation, compensation, and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the commission to

understand how the organization ensures that compensation programs do not encourage or reward excessive risk taking. Elements to be discussed may include, for example:

- a. The board's role in overseeing management compensation programs and practices;
- b. The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;
- c. How compensation programs are related to both company and individual performance over time;
- d. Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;
- e. Any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted; or
- f. Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.

4. The insurer's or insurance group's plans for CEO and senior management succession.

E. The insurer or insurance group shall describe the processes by which the board, its committees, and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of:

- 1. How oversight and management responsibilities are delegated between the board, its committees, and senior management;
- 2. How the board is kept informed of the insurer's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks;
- 3. How reporting responsibilities are organized for each critical risk area. The description should allow the commission to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. This description may include, for example, the following critical risk areas of the insurer:
 - a. Risk management processes (a Own Risk and Solvency Assessment (ORSA) Summary Report filer may refer to its ORSA Summary Report filed pursuant to Article 5.1 (§ 38.2-1334.3 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia);
 - b. Actuarial function;
 - c. Investment decision-making processes;
 - d. Reinsurance decision-making processes;

e. Business strategy and finance decision-making processes;

f. Compliance function;

g. Financial reporting and internal auditing; and

h. Market conduct decision-making processes.

14VAC5-265-50. Severability clause.

If any provision in this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of the provision to other persons or circumstances shall not be affected thereby.

DOCUMENTS INCORPORATED BY REFERENCE (14VAC5-265)

Financial Analysis Handbook, Volume 1, 2016 Annual/2017 Quarterly, National Association of Insurance Commissioners, 444 North Capitol Street, NW, Suite 700, Washington, DC 20001, <http://www.naic.org/>

VA.R. Doc. No. R17-5187; Filed July 17, 2017, 4:07 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Emergency Regulation

Title of Regulation: 18VAC60-21. Regulations Governing the Practice of Dentistry (amending 18VAC60-21-106).

Statutory Authority: §§ 54.1-2400 and 54.1-2708 of the Code of Virginia.

Effective Dates: July 21, 2017, through October 23, 2018.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4437, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

Preamble:

Section 2.2-4011 of the Code of Virginia authorizes an agency to adopt emergency regulations necessitated by an emergency situation upon consultation with the Attorney General, and the necessity for the action is at the sole discretion of the Governor. Emergency regulations for dentists prescribing medications containing opioids were published in 33:19 VA.R. 2112-2113 May 15, 2017 and became effective on April 24, 2017.

The Board of Dentistry has adopted an amendment to the emergency regulations that became effective on April 24, 2017, for prescribing of opioids. The requirement in 18VAC60-21-106 is amended to allow dentists to begin immediately fulfilling the continuing education requirement of two hours on pain management, rather than

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waiting until the next renewal cycle beginning March 31, 2018.

The purpose of the regulatory action is to encourage dentists to seek continuing education in prescribing opioids as soon as possible so that they understand the crisis in the Commonwealth, their role in addressing the issue, and the requirements of the emergency regulations on prescribing. As rewritten, the emergency regulation will allow dentists almost two years to obtain two hours of continuing education, beginning with the effective date of the emergency regulation on April 24, 2017.

18VAC60-21-106. Continuing education required for prescribers.

~~[A dentist who prescribes Schedules II through IV controlled substances during one license renewal cycle shall obtain two hours of continuing education on pain management during the next renewal cycle following April 24, 2017. Continuing education hours required for prescribing of controlled substances may be included in the 15 hours required for renewal of licensure. Any dentist who prescribes Schedules II through IV controlled substances after April 24, 2017, shall obtain two hours of continuing education on pain management, which must be taken by March 31, 2019. Thereafter, any dentist who prescribes Schedules II through IV controlled substances shall obtain two hours of continuing education on pain management every two years. Continuing education hours required for prescribing of controlled substances may be included in the 15 hours required for renewal of licensure.]~~

VA.R. Doc. No. R17-5064; Filed July 21, 2017, 8:44 a.m.

BOARD OF PHARMACY

Emergency Regulation

Title of Regulation: **18VAC110-60. Regulations Governing Pharmaceutical Processors (adding 18VAC110-60-10 through 18VAC110-60-330).**

Statutory Authority: §§ 54.1-2400 and 54.1-3442.6 of the Code of Virginia.

Effective Dates: August 7, 2017, through February 6, 2019.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4578, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Preamble:

Pursuant to Chapter 577 of the 2016 Acts of Assembly and Chapter 613 of the 2017 Acts of Assembly, the Board of Pharmacy is promulgating emergency regulations governing (i) the registration process for a patient who has been issued a written certification for the use of cannabidiol oil or THC-A oil and (ii) the issuance of a permit for a pharmaceutical processor to manufacture and provide cannabidiol oil and THC-A oil to be used for the treatment of intractable epilepsy. The regulation includes

(i) the fees for application, registration, and permitting; (ii) requirements for issuance or denial of registration for certifying physicians, patients, parents, or legal guardians; (iii) the application and approval process for issuing a permit to a pharmaceutical processor, including the information that must be submitted, the requirements for issuing conditional and then final approval, the rules for notification to the board of any changes or of closure of the processor, and the causes for action against a processor; (iv) the provisions for personnel at the pharmaceutical processor, including a requirement that a pharmacist with a current, unrestricted Virginia license provide personal supervision on the premises at all times during hours of operation or whenever the processor is accessed, employee training, supervision of pharmacy technicians, and the responsibilities of the pharmacist-in-charge; and (v) provisions for the operation of a pharmaceutical processor, including requirements for inventory, security, storage and handling, recordkeeping, and reportable events; (vi) requirements for the cultivation, production, and dispensing of cannabidiol oil, including labeling, laboratory and testing standards, dispensing errors and quality assurance, and proper disposal.

The goals of the new regulation are accessibility of cannabidiol oil or THC-A oil for patients with intractable epilepsy in compliance with the conditions and restraints imposed by the statute and in consideration of the need for security of the facility and its contents and the integrity of the dispensed product. The statute sets limits on the number of permits that the board may issue and requires that the board adopt regulations establishing health, safety, and security requirements for pharmaceutical processors. It also provides that only a licensed practitioner of medicine or osteopathy who is a neurologist or who specializes in the treatment of epilepsy may issue a written certification to a patient for the use of cannabidiol oil or THC-A oil. It requires that a practitioner who issues a written certification for cannabidiol oil or THC-A oil, the patient issued such certification, and, if the patient is a minor or incapacitated, the patient's parent or legal guardian register with the board. The statute further provides that a pharmaceutical processor shall not provide cannabidiol oil or THC-A oil to a patient or a patient's parent or legal guardian without first verifying that the patient, the patient's parent or legal guardian if the patient is a minor or incapacitated, and the practitioner who issued the written certification have registered with the board. The safeguards put in place in statute and regulations are essential to protect the health and safety of the general public and, in particular, the health of the patients to whom cannabidiol oil or THC-A oil is dispensed.

CHAPTER 60
REGULATIONS GOVERNING PHARMACEUTICAL
PROCESSORS

Part I
General Provisions

18VAC110-60-10. Definitions.

In addition to words and terms defined in §§ 54.1-3408.3 and 54.1-3442.5 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Board" means the Board of Pharmacy.

"Certification" means a written statement, consistent with requirements of § 54.1-3408.3 of the Code of Virginia, issued by a practitioner for the use of cannabidiol oil or THC-A oil for treatment or to alleviate the symptoms of a patient's intractable epilepsy.

"Code" means the Code of Virginia.

"Dispensing error" means an act or omission relating to the dispensing of cannabidiol oil or THC-A oil that results in, or may reasonably be expected to result in, injury to or death of a registered patient or results in any detrimental change to the medical treatment for the patient.

"Electronic tracking system" means an electronic radio-frequency identification (RFID) seed-to-sale tracking system that tracks the Cannabis from either the seed or immature plant stage until the cannabidiol oil and THC-A oil are sold to a registered patient, parent, or legal guardian or until the Cannabis, including the seeds, parts of plants, and extracts, are destroyed. The electronic tracking system shall include, at a minimum, a central inventory management system and standard and ad hoc reporting functions as required by the board and shall be capable of otherwise satisfying required recordkeeping.

"Intractable epilepsy" means drug-resistant epilepsy (DRE), which is defined as failure of adequate trials of two tolerated, appropriately chosen and used antiepileptic drug schedules (whether as monotherapies or in combination) to achieve sustained seizure freedom.

"On duty" means that a pharmacist is on the premises at the address of the permitted pharmaceutical processor and is available as needed.

"One-month supply" means the amount of cannabidiol oil or THC-A oil reasonably necessary to ensure an uninterrupted availability of supply for a 30-day period for registered patients, which cannot exceed 20 fluid ounces.

"PIC" means the pharmacist-in-charge.

"Production" or "produce" means the manufacture, planting, preparation, cultivation, growing, harvesting, propagation, conversion, or processing of marijuana, either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and

includes any packaging or repackaging of the substance or labeling or relabeling of its container.

"Resident" means a person whose principal place of residence is within the Commonwealth as evidenced by a federal or state income tax return or a current Virginia driver's license. If a person is a minor, residency may be established by evidence of Virginia residency by a parent or legal guardian.

"Qualifying patient" means a Virginia resident who has received a written certification for the use of cannabidiol oil or THC-A oil for treatment of intractable epilepsy from a practitioner, as defined in § 54.1-3408.3 of the Code.

"Registered patient" means a qualifying patient who has been issued a registration by the board for the dispensing of cannabidiol oil or THC-A oil.

"Registration" means an identification card or other document issued by the board that identifies a person as a practitioner or a qualifying patient, parent, or legal guardian.

"Temperature and humidity" means temperature and humidity maintained in the following ranges:

<u>Room or Phase</u>	<u>Temperature</u>	<u>Humidity</u>
<u>Mother room</u>	<u>65 - 75°</u>	<u>50% - 60%</u>
<u>Nursery phase</u>	<u>77 - 85° F</u>	<u>65% - 75%</u>
<u>Vegetation phase</u>	<u>77 - 85° F</u>	<u>55% - 65%</u>
<u>Flower/harvest phase</u>	<u>77 - 85° F</u>	<u>55% - 60%</u>
<u>Drying/extraction rooms</u>	<u>< 75° F</u>	<u>55% - 60%</u>

18VAC110-60-20. Fees.

A. Fees are required by the board as specified in this section. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Registration of practitioner.

- 1. Initial registration \$50
- 2. Annual renewal of registration \$50
- 3. Replacement of registration for a qualifying practitioner whose information has changed or whose original registration certificate has been lost, stolen, or destroyed \$50

C. Registration by a qualifying patient or by a parent or legal guardian.

- 1. Initial registration \$50
- 2. Annual renewal of registration \$50
- 3. Replacement of registration for a qualifying patient or parent or legal guardian whose information has changed or whose original registration certificate has been lost, stolen, or destroyed \$50

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D. Pharmaceutical processor permit.

<u>1. Application</u>	<u>\$10,000</u>
<u>2. Initial permit</u>	<u>\$60,000</u>
<u>3. Annual renewal of permit</u>	<u>\$10,000</u>
<u>4. Change of name of processor</u>	<u>\$100</u>
<u>5. Change of PIC or any other information provided on the permit application</u>	<u>\$100</u>
<u>6. Any acquisition, expansion, remodel, or change of location requiring an inspection</u>	<u>\$1,000</u>
<u>7. Reinspection fee</u>	<u>\$1,000</u>

Part II

Requirements for Practitioners and Patients

18VAC110-60-30. Requirements for practitioner issuing a certification.

A. Prior to issuing a certification for cannabidiol oil or THC-A oil for the treatment or to alleviate symptoms of intractable epilepsy, the practitioner shall meet the requirements of § 54.1-3408.3 of the Code, shall submit an application and fee as prescribed in 18VAC110-60-20, and shall be registered with the board.

B. A practitioner issuing a certification shall:

1. Conduct an assessment and evaluation of the patient in order to develop a treatment plan for the patient, which shall include an examination of the patient and the patient's medical history, prescription history, and current medical condition, including an in-person physical examination;
2. Diagnose the patient as having intractable epilepsy;
3. Be of the opinion that the potential benefits of cannabidiol oil or THC-A oil would likely outweigh the health risks of such use to the qualifying patient;
4. Explain proper administration and the potential risks and benefits of the cannabidiol oil or THC-A oil to the qualifying patient and, if the qualifying patient lacks legal capacity, to a parent or legal guardian prior to issuing the written certification;
5. Be available or ensure that another practitioner, as defined in § 54.1-3408.3 of the Code, is available to provide follow-up care and treatment to the qualifying patient, including physical examinations, to determine the efficacy of cannabidiol oil or THC-A oil for treating the intractable epilepsy;
7. Comply with generally accepted standards of medical practice, except to the extent such standards would counsel against certifying a qualifying patient for cannabidiol oil or THC-A oil;
8. Maintain medical records for all patients for whom the practitioner has issued a certification in accordance with 18VAC85-20-26; and

9. Be registered with and able to access the Virginia Prescription Monitoring Program.

C. Patient care and evaluation shall not occur by telemedicine for at least the first year of certification. Thereafter, the practitioner shall use his professional judgment to determine the manner and frequency of patient care and evaluation.

D. A practitioner shall not delegate the responsibility of diagnosing a patient or determining whether a patient should be issued a certification. Employees under the direct supervision of the practitioner may assist with preparing a certification, so long as the final certification is approved and signed by the practitioner before it is issued to the patient.

E. The practitioner shall provide instructions for the use of cannabidiol oil or THC-A oil to the patient, or parent or guardian, as applicable, and shall also securely transmit such instructions to the permitted pharmaceutical processor.

F. A practitioner shall not issue certifications for cannabidiol oil or THC-A oil to more than 600 patients at any given time. However, the practitioner may petition the Board of Pharmacy and Board of Medicine for an increased number of patients for whom certifications may be issued, upon submission of evidence that the limitation represents potential patient harm.

G. Upon request, a practitioner shall make a copy of medical records available to an agent of the Board of Medicine or Board of Pharmacy for the purpose of enabling the board to ensure compliance with the law and regulations or to investigate a possible violation.

18VAC110-60-40. Prohibited practices for practitioners.

A. A practitioner who issues certifications shall not:

1. Directly or indirectly accept, solicit, or receive anything of value from any person associated with a pharmaceutical processor or provider of paraphernalia;
2. Offer a discount or any other thing of value to a qualifying patient, parent, or guardian based on the patient's agreement or decision to use a particular pharmaceutical processor or cannabidiol oil or THC-A oil product;
3. Examine a qualifying patient for purposes of diagnosing intractable epilepsy at a location where cannabidiol oil or THC-A oil is dispensed or produced; or
4. Directly or indirectly benefit from a patient obtaining a certification. Such prohibition shall not prohibit a practitioner from charging an appropriate fee for the patient visit.

B. A practitioner who issues certifications, and such practitioner's coworker, employee, spouse, parent, or child, shall not have a direct or indirect financial interest in a pharmaceutical processor or any other entity that may benefit from a qualifying patient's acquisition, purchase, or use of cannabidiol oil or THC-A oil, including any formal or

informal agreement whereby a pharmaceutical processor or other person provides compensation if the practitioner issues a certification for a qualifying patient or steers a qualifying patient to a specific pharmaceutical processor or cannabidiol oil or THC-A oil product.

C. A practitioner shall not issue a certification for himself or for family members, employees, or coworkers.

D. A practitioner shall not provide product samples containing cannabidiol oil or THC-A oil other than those approved by the U.S. Food and Drug Administration.

18VAC110-60-50. Registration of a patient, parent, or legal guardian.

A. A qualifying patient for whom a practitioner has issued a certification, and, if such patient is a minor or an incapacitated adult, the qualifying patient's parent or legal guardian shall register with the board in accordance with this section. For a registration application to be considered complete, the following items shall be submitted:

1. A copy of the certification issued by a registered practitioner;
2. Proof of residency of the qualifying patient and proof of residency of a parent or legal guardian, if applicable, such as a government-issued identification card or tax receipt;
3. Proof of identity of the qualifying patient and, if the patient is a minor, proof of identity of the parent or legal guardian in the form of a government-issued identification card;
4. Proof of the qualifying patient's age in the form of a birth certificate or other government-issued identification;
5. Payment of the appropriate fees; and
6. Such other information as the board may require to determine the applicant's suitability for registration or to protect public health and safety.

B. A qualifying patient shall not be issued a written certification by more than one practitioner during a given time period.

C. Patients, parents, and legal guardians issued a registration shall carry their registration with them whenever they are in possession of cannabidiol oil or THC-A oil.

18VAC110-60-60. Denial of a qualifying patient, parent, or legal guardian registration application.

A. The board may deny an application or renewal of the registration of a qualifying patient, parent, or legal guardian if the applicant:

1. Does not meet the requirements set forth in law or regulation or fails to provide complete information on the application form;
2. Does not provide acceptable proof of identity, residency, or age of the patient to the board;
3. Provides false, misleading, or incorrect information to the board;

4. Has had a qualifying registration of a qualifying patient, parent, or legal guardian denied, suspended, or revoked by the board in the previous six months;

5. Has a certification issued by a practitioner who is not authorized to certify patients for cannabidiol oil or THC-A oil; or

6. Has a prior conviction of a violation of any law pertaining to controlled substances.

B. If the board denies an application or renewal of a qualifying patient applicant or parent or legal guardian applicant, the board shall provide the applicant with notice of the grounds for the denial and shall inform the applicant of the right to request a hearing pursuant to § 2.2-4019 of the Code.

18VAC110-60-70. Reporting requirements for practitioners, patients, parents, or legal guardians.

A. A practitioner shall report to the board, on a form prescribed by the board, the death of a registered patient or a change in status involving a registered patient for whom the practitioner has issued a certification if such change affects the patient's continued eligibility to use cannabidiol oil or THC-A oil, or the practitioner's inability to continue treating the patient. A practitioner shall report such death, change of status, or inability to continue treatment not more than 15 days after the practitioner becomes aware of such fact.

B. A patient, parent, or legal guardian who has been issued a registration shall notify the board of any change in the information provided to the board not later than 15 days after such change. The patient, parent, or legal guardian shall report changes that include a change in name, address, contact information, medical status of the patient, or change of the certifying practitioner. The patient, parent, or legal guardian shall report such changes on a form prescribed by the board.

C. If a patient, parent, or legal guardian notifies the board of any change that results in information on the patient, parent, or legal guardian's registration being inaccurate, the patient, parent, or legal guardian shall submit the fee for a replacement registration. Upon receipt of a new registration, the qualifying patient, parent, or legal guardian shall destroy in a nonrecoverable manner the registration that was replaced.

D. If a patient, parent, or legal guardian becomes aware of the loss, theft, or destruction of the registration of such patient, parent, or legal guardian, the patient, parent, or legal guardian shall notify the board not later than five business days after becoming aware of the loss, theft, or destruction, and submit the fee for a replacement registration. The board shall inactivate the initial registration upon receiving such notice and issue a replacement registration upon receiving the applicable fee, provided the applicant continues to satisfy the requirements of law and regulation.

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18VAC110-60-80. Proper storage and disposal of cannabidiol oil or THC-A oil by patients, parents, or legal guardians.

A. A registered patient, parent, or legal guardian shall exercise reasonable caution to store cannabidiol oil or THC-A oil in a manner to prevent theft, loss, or access by unauthorized persons.

B. A registered patient, parent, or legal guardian shall dispose of all usable cannabidiol oil or THC-A oil in the registered patient, parent, or legal guardian's possession no later than 10 calendar days after the expiration of the patient's registration if such registration is not renewed, or sooner should the patient no longer wish to possess cannabidiol oil or THC-A oil. A registered patient, parent, or legal guardian shall complete such disposal by one of the following methods:

1. By removing the oil from the original container and mixing it with an undesirable substance such as used coffee grounds, dirt, or kitty litter. The mixture shall be placed in a sealable bag, empty can, or other container to prevent the drug from leaking or breaking out of a garbage bag.

2. By transferring it to law enforcement via a medication drop-box or drug take-back event, if permissible under state and federal law.

18VAC110-60-90. Revocation or suspension of a qualifying patient, parent, or legal guardian registration.

The board may revoke or suspend the registration of a patient, a parent, or a legal guardian under the following circumstances:

1. The patient's practitioner notifies the board that the practitioner is withdrawing the written certification submitted on behalf of the patient, and 30 days after the practitioner's withdrawal of the written certification, the patient has not obtained a valid written certification from a different practitioner;

2. The patient, parent, or legal guardian provided false, misleading, or incorrect information to the board;

3. The patient, parent, or legal guardian is no longer a resident of Virginia;

4. The patient, parent, or legal guardian obtained more than a one-month supply of cannabidiol oil or THC-A oil in a one-month period;

5. The patient, parent, or legal guardian provided or sold cannabidiol oil or THC-A oil to any person, including another registered patient, parent, or legal guardian;

6. The patient, parent, or legal guardian permitted another person to use the patient, parent, or legal guardian's registration;

7. The patient, parent, or legal guardian tampered, falsified, altered, modified, or allowed another person to tamper,

falsify, alter, or modify the patient, parent, or legal guardian's registration;

8. The patient, parent, or legal guardian's registration was lost, stolen, or destroyed, and the patient, parent, or legal guardian failed to notify the board or notified the board of such incident more than five business days after becoming aware that the registration was lost, stolen, or destroyed;

9. The patient, parent, or legal guardian failed to notify the board of a change in registration information or notified the board of such change more than 14 days after the change; or

10. The patient, parent, or legal guardian violated any federal or state law or regulation.

Part III

Application and Approval Process for Pharmaceutical Processors

18VAC110-60-100. Publication of notice for submission of applications.

A. The board shall publish a notice of open applications for pharmaceutical processor permits. Such notice shall include information on how to obtain and complete an application, the required fees, the criteria for issuance of a permit, and the deadline for receipt of applications.

B. The board shall have the right to amend the notice of open applications prior to the deadline for submitting an application. Such amended notice shall be published in the same manner as the original notice of open applications.

C. The board shall have the right to cancel a notice of open applications prior to the award of a pharmaceutical processor permit.

18VAC110-60-110. Application process for pharmaceutical processor permits.

A. The application process for permits shall occur in three stages: submission of initial application, awarding of conditional approval, and granting of a pharmaceutical processor permit.

B. Submission of initial application.

1. A pharmaceutical processor permit applicant shall submit the required application fee and form with the following information and documentation:

a. The name and address of the applicant and the applicant's owners;

b. The location within the health service area established by the State Board of Health for the pharmaceutical processor that is to be operated under such permit;

c. Detailed information regarding the applicant's financial position, indicating all assets, liabilities, income, and net worth, to demonstrate the financial capacity of the applicant to build and operate a facility to cultivate Cannabis plants intended only for the production and dispensing of cannabidiol oil and THC-A oil pursuant to §§ 54.1-3442.6 and 54.1-3442.7 of the Code of Virginia,

which may include evidence of an escrow account, letter of credit, or performance surety bond;

d. Details regarding the applicant's plans for security to maintain adequate control against the diversion, theft, or loss of the Cannabis plants and the cannabidiol oil or THC-A oil;

e. Documents sufficient to establish that the applicant is authorized to conduct business in Virginia and that all applicable state and local building, fire, and zoning requirements and local ordinances are met or will be met prior to issuance of a permit;

f. Information necessary for the board to conduct a criminal background check on owners and any other person who is employed by or acts as an agent of the proposed pharmaceutical processor;

g. Information about any previous or current involvement in the medical cannabidiol oil or THC-A oil industry;

h. Whether the person has ever applied for a permit or registration related to medical cannabidiol oil or THC-A oil in any state and, if so, the status of that application, permit, or registration, to include any disciplinary action taken by any state on the permit, the registration, or an associated license;

i. Any business and marketing plans related to the operation of the pharmaceutical processor or the sale of cannabidiol oil or THC-A oil;

j. Text and graphic materials showing the exterior appearance of the proposed pharmaceutical processor;

k. A blueprint of the proposed pharmaceutical processor, which shall show and identify the square footage of each area of the facility, to include the location of all safes or vaults used to store the Cannabis plants and oils and the location of all areas that may contain Cannabis plants, cannabidiol oil, or THC-A oil, showing the placement of walls, partitions, counters, and all areas of ingress and egress;

l. Documents related to any compassionate need program the pharmaceutical processor intends to offer;

m. Information about the applicant's expertise in agriculture and other production techniques required to produce cannabidiol oil or THC-A oil and to safely dispense such products; and

n. Such other documents and information required by the board to determine the applicant's suitability for permitting or to protect public health and safety.

2. In the event any information contained in the application or accompanying documents changes after being submitted to the board, the applicant shall immediately notify the board in writing and provide corrected information in a timely manner so as not to disrupt the permit selection process.

3. The board shall conduct criminal background checks on the owner or owners and may verify information contained in each application and accompanying documentation in order to assess the applicant's ability to operate a pharmaceutical processor.

C. In the event the board determines that there are no qualified applicants to award conditional approval for a pharmaceutical processor permit in a health service area, the board may republish, in accordance with 18VAC110-60-100, a notice of open applications for pharmaceutical processor permits.

D. No person who has been convicted of a felony or of any offense in violation of Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia shall have any form of ownership, be employed by, or act as an agent of a pharmaceutical processor.

18VAC110-60-120. Conditional approval.

A. Following the deadline for receipt of applications, the board shall evaluate each complete and timely submitted application and may grant conditional approval on a competitive basis based on compliance with requirements set forth in 18VAC110-60-110.

B. The board shall consider, but is not limited to, the following criteria in evaluating pharmaceutical processor permit applications:

1. The results of the criminal background checks required in 18VAC110-60-110 B 3 or any history of disciplinary action imposed by a state or federal regulatory agency;

2. The location for the proposed pharmaceutical processor, which shall not be within 1,000 feet of a school or daycare;

3. The applicant's ability to maintain adequate control against the diversion, theft, and loss of the Cannabis, to include the seeds, any parts or extracts of the Cannabis plants, the cannabidiol oil, or THC-A oil;

4. The applicant's ability to maintain the knowledge, understanding, judgment, procedures, security controls, and ethics to ensure optimal safety and accuracy in the dispensing and sale of cannabidiol oil or THC-A oil;

5. The extent to which the applicant or any of the applicant's pharmaceutical processor owners have a financial interest in another license, permit, registrant, or applicant; and

6. Any other reason provided by state or federal statute or state or federal regulation that is not inconsistent with the law and regulations regarding pharmaceutical processors.

B. The board may disqualify any applicant who:

1. Submits an incomplete, false, inaccurate, or misleading application;

2. Fails to submit an application by the published deadline;

3. Fails to pay all applicable fees; or

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4. Fails to comply with all requirements for a pharmaceutical processor.

C. Following review, the board shall notify applicants of denial or conditional approval. The decision of the board not to grant conditional approval to an applicant shall be final.

D. If granted conditional approval, an applicant shall have one year from date of notification to complete all requirements for issuance of a permit to include employment of a PIC and other personnel necessary for operation of a pharmaceutical processor, the construction or remodeling of a facility, installation of equipment, and securing local zoning approval.

18VAC110-60-130. Granting of a pharmaceutical processor permit.

A. The board may issue a pharmaceutical processor permit when all requirements of the board have been met to include:

1. Designation of a PIC;

2. Evidence of criminal background checks for all employees and agents of the processor to ensure compliance with § 54.1-3442.6 of the Code;

3. Evidence of utilization of an electronic tracking system; and

4. A satisfactory inspection of the facility conducted by the board or its agents.

B. The permit shall not be awarded until any deficiencies identified by inspectors have been corrected and the facility has been satisfactorily reinspected, if warranted.

C. Before any permit is issued, the applicant shall attest to compliance with all state and local laws and ordinances. A pharmaceutical processor permit shall not be issued to any person to operate from a private dwelling or residence.

D. If an applicant has been awarded a pharmaceutical processor permit and has not commenced operation of such facility within 180 days of being notified of the issuance of a pharmaceutical processor permit, the board may rescind such permit, unless such delay was caused by circumstances beyond the control of the permit holder.

E. A pharmaceutical processor shall be deemed to have commenced operation if Cannabis plants are under cultivation by the processor in accordance with the approved application.

F. In the event a permit is rescinded pursuant to this subsection, the board may award a pharmaceutical processor permit by selecting among the qualified applicants who applied for the pharmaceutical processor permit subject to rescission. If no other qualified applicant applied for such pharmaceutical processor permit satisfied the criteria for awarding a permit, the board shall publish, in accordance with this section, a notice of open applications for a pharmaceutical processor permit.

G. Once the permit is issued, Cannabis may not be grown or held in the pharmaceutical processor earlier than two weeks prior to the opening date designated on the application. Once

Cannabis has been placed in the pharmaceutical processor, a pharmacist shall be present during hours of operation to ensure the safety, security, and integrity of the Cannabis. If there is a change in the designated opening date, the pharmaceutical processor shall notify the board office, and a pharmacist shall continue to be on site on a daily basis.

18VAC110-60-140. Notification of changes by pharmaceutical processor.

A. Unless otherwise provided in law or regulation, the PIC designated on the application to be in full and actual charge of the pharmaceutical processor shall provide any notification or information that is required from a pharmaceutical processor.

B. Prior to making any change to the pharmaceutical processor name, the pharmaceutical processor shall submit an application for such change to the board and pay the fee.

C. Any person wishing to engage in the acquisition of an existing pharmaceutical processor, change the location of an existing pharmaceutical processor, make structural changes to an existing pharmaceutical processor, or make changes to a previously approved security system shall submit an application to the board and pay the required fee.

1. The proposed location or structural changes shall be inspected by an authorized agent of the board prior to issuance of a permit.

2. Cannabis shall not be moved to a new location until approval is granted by the inspector or board staff.

18VAC110-60-150. Pharmaceutical processor closings; going out of business; change of ownership.

A. At least 30 days prior to the date a pharmaceutical processor closes, either temporarily or permanently, the owner shall:

1. Notify the board;

2. Send written notification to patients with current certification; and

3. Post a notice on the window or door of the pharmaceutical processor.

B. The proposed disposition of all Cannabis, dispensing records, patient information records, and other required records shall be reported to the board. If the Cannabis and records are to be transferred to another processor located in Virginia, the owner shall inform the board and the patients and include on the public notice the name and address of the processor to whom the Cannabis and records are being transferred and the date of transfer.

C. Exceptions to the public notice shall be approved by the board and may include sudden closing due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy, or other emergency circumstances. If the pharmaceutical processor is not able to meet the notification requirements, the owner shall ensure that the board and public are properly notified as soon as he knows of the closure and

shall disclose the emergency circumstances preventing the notification within the required deadlines.

D. In the event of an exception to the notice, the PIC or owner shall provide notice as far in advance of closing as allowed by the circumstances.

E. At least 14 days prior to any change in ownership of an existing pharmaceutical processor, the owner shall notify the board of the pending change.

1. Upon any change in ownership of an existing pharmaceutical processor, the dispensing records for the two years immediately preceding the date of change of ownership and other required patient information shall be provided to the new owners on the date of change of ownership in substantially the same format as previously used immediately prior to the transfer to provide continuity of services.

2. The previous owner shall be held responsible for assuring the proper and lawful transfer of records on the date of the transfer.

18VAC110-60-160. Grounds for action against a pharmaceutical processor permit.

In addition to the bases enumerated in § 54.1-3316 of the Code of Virginia, the board may suspend, revoke, or refuse to grant or renew a permit issued, or place such permit on probation, place conditions on such permit, or take other actions permitted by statute or regulation on the following grounds:

1. Any criminal conviction under federal or state statutes or regulations or local ordinances, unless the conviction was based on a federal statute or regulation related to the possession, purchase, or sale of cannabidiol oil or THC-A oil that is authorized under state law and regulations;

2. Any civil action under any federal or state statute or regulation or local ordinance (i) relating to the applicant's, licensee's, permit holder's, or registrant's profession or (ii) involving drugs, medical devices, or fraudulent practices, including fraudulent billing practices;

3. Failure to maintain effective controls against diversion, theft, or loss of Cannabis, cannabidiol oil or THC-A oil, or other controlled substances;

4. Intentionally, or through negligence, obscuring, damaging, or defacing a permit or registration card;

5. Permitting another person to use the permit of a permit holder or registration of a qualifying patient, parent, or legal guardian;

6. Failure to cooperate or give information to the board on any matter arising out of conduct at a pharmaceutical processor; or

7. Discontinuance of business for more than 60 days, unless the board approves an extension of such period for good cause shown, upon a written request from a pharmaceutical processor. Good cause includes exigent

circumstances that necessitate the closing of the facility. Good cause shall not include a voluntary closing of the pharmaceutical processor or production facility.

Part IV

Requirements for Pharmaceutical Processor Personnel

18VAC110-60-170. Pharmaceutical processor employee licenses and registrations.

A. A pharmacist with a current, unrestricted license issued by the board, practicing at the location of the address on the pharmaceutical processor application shall be in full and actual charge of a pharmaceutical processor and serve as the pharmacist-in-charge.

B. A pharmacist with a current, unrestricted license issued by the board shall provide personal supervision on the premises of the pharmaceutical processor at all times during hours of operation or whenever the processor is being accessed.

C. No person shall perform the following duties under pharmacist supervision without maintaining a current, unrestricted registration as a pharmacy technician pursuant to § 54.1-3321 of the Code of Virginia and having been registered with the board or registered or certified by the board of another United States jurisdiction as a pharmacy technician for the previous two years:

1. The entry of drug dispensing information and drug history into a data system or other recordkeeping system;

2. The preparation of labels for dispensing the oils or patient information;

3. The removal of the oil to be dispensed from inventory;

4. The measuring of the oil to be dispensed;

5. The packaging and labeling of the oil to be dispensed and the repackaging thereof;

6. The stocking or loading of devices used in the dispensing process;

7. The selling of the oil to the registered patient, parent, or legal guardian;

8. The performance of any other task restricted to pharmacy technicians by the board's regulations.

D. A pharmacist with a current, unrestricted license or a pharmacy technician with a current, unrestricted registration issued by the board may perform duties associated with the cultivation, extraction, and dispensing of the oils, as authorized by the PIC or as otherwise authorized in law.

E. Persons who do not maintain licensure as a pharmacist or registration as a pharmacy technician but have received a degree in horticulture or have at least two years of experience cultivating plants may perform duties associated with the cultivation of Cannabis, as authorized by the PIC.

F. Persons who do not maintain licensure as a pharmacist or registration as a pharmacy technician, but have received a degree in chemistry or pharmacology or have at least two

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years of experience extracting chemicals from plants may perform duties associated with the extraction of cannabidiol oil and THC-A oil, as authorized by the PIC.

G. A pharmacist on duty shall directly supervise the activities in all areas designated for cultivation, extraction, and dispensing or have a process in place, approved by the board, that provides adequate supervision to protect the security of the Cannabis, seeds, extracts, cannabidiol oil, and THC-A oil and ensure quality of the dispensed oils.

H. At no time shall a pharmaceutical processor operate or be accessed without a pharmacist on duty.

I. No person shall be employed by or serve as an agent of a pharmaceutical processor without being at least 18 years of age.

J. No person who has had a license or registration suspended or revoked or been denied issuance of such license or registration shall serve as an employee or agent of the pharmaceutical processor.

18VAC110-60-180. Employee training.

A. All employees of a pharmaceutical processor shall complete training, prior to the employee commencing work at the pharmaceutical processor, at a minimum, in the following:

1. The proper use of security measures and controls that have been adopted for the prevention of diversion, theft, or loss of Cannabis, to include the seeds, any parts or extracts of the Cannabis plants, cannabidiol oil, and THC-A oil;
2. Procedures and instructions for responding to an emergency;
3. Professional conduct, ethics, and state and federal statutes and regulations regarding patient confidentiality; and
4. Developments in the field of the medical use of cannabidiol oil or THC-A oil.

B. Prior to regular performance of assigned tasks, the employee shall also receive on-the-job training and other related education, which shall be commensurate with the tasks assigned to the employee.

C. The PIC shall assure the continued competency of all employees through continuing in-service training designed to supplement initial training, which shall include any guidance specified by the board.

D. The PIC shall be responsible for maintaining a written record documenting the initial and continuing training of all employees, which shall contain:

1. The name of the person receiving the training;
2. The dates of the training;
3. A general description of the topics covered;
4. The name of the person supervising the training; and
5. The signatures of the person receiving the training and the PIC.

E. When a change of pharmaceutical processor PIC occurs, the new PIC shall review the training record and sign it, indicating that the new PIC understands its contents.

F. A pharmaceutical processor shall maintain the record documenting the employee training and make it available in accordance with regulations.

18VAC110-60-190. Pharmacy technicians; ratio; supervision and responsibility.

A. The ratio of pharmacy technicians to pharmacists on-duty in the areas of a pharmaceutical processor designated for production or dispensing shall not exceed four pharmacy technicians to one pharmacist.

B. The pharmacist providing direct supervision of pharmacy technicians may be held responsible for the pharmacy technicians' actions. Any violations relating to the dispensing of cannabidiol oil or THC-A oil resulting from the actions of a pharmacy technician shall constitute grounds for action against the license of the pharmacist and the registration of the pharmacy technician. As used in this subsection, "direct supervision" means a supervising pharmacist who:

1. Is on duty where the pharmacy technician is performing routine cannabidiol oil or THC-A oil production or dispensing functions; and
2. Conducts in-process and final checks on the pharmacy technician's performance.

C. Pharmacy technicians shall not:

1. Counsel a registered patient or the patient's parent or legal guardian regarding cannabidiol oil, THC-A oil, or other drugs, either before or after cannabidiol oil or THC-A oil has been dispensed, or regarding any medical information contained in a patient medication record;
2. Consult with the practitioner who certified the qualifying patient, or the practitioner's agent, regarding a patient or any medical information pertaining to the patient's cannabidiol oil or THC-A oil or any other drug the patient may be taking;
3. Interpret the patient's clinical data or provide medical advice;
4. Determine whether a different formulation of cannabidiol oil or THC-A oil should be substituted for the cannabidiol oil or THC-A oil product or formulation recommended by the practitioner or requested by the registered patient or parent or legal guardian; or
5. Communicate with a practitioner who certified a registered patient, or the practitioner's agent, to obtain a clarification on a qualifying patient's written certification or instructions.

18VAC110-60-200. Responsibilities of the PIC.

A. No person shall be PIC for more than one pharmaceutical processor at any time. A processor shall employ the PIC at the pharmaceutical processor for at least 35 hours per week, except as otherwise authorized by the board.

B. The PIC or the pharmacist on duty shall control all aspects of the practice of the pharmaceutical processor. Any decision overriding such control of the PIC or other pharmacist on duty may be grounds for disciplinary action against the pharmaceutical processor permit.

C. The pharmaceutical processor PIC shall be responsible for ensuring that:

1. Pharmacy technicians are registered and all employees are properly trained;
2. All record retention requirements are met;
3. All requirements for the physical security of the Cannabis, to include the seeds, any parts or extracts of the Cannabis plants, the cannabidiol oil, and THC-A oil are met;
4. The pharmaceutical processor has appropriate pharmaceutical reference materials to ensure that cannabidiol oil or THC-A oil can be properly dispensed;
5. The following items are conspicuously posted in the pharmaceutical processor in a location and in a manner so as to be clearly and readily identifiable to registered patients, parents, or legal guardians:
 - a. Pharmaceutical processor permit;
 - b. Licenses for all pharmacists practicing at the pharmaceutical processor; and
 - c. The price of all cannabidiol oil or THC-A oil products offered by the pharmaceutical processor; and
6. Any other required filings or notifications are made on behalf of the processor as set forth in regulation.

D. When the PIC ceases practice at a pharmaceutical processor or no longer wishes to be designated as PIC, he shall immediately return the pharmaceutical processor permit to the board indicating the effective date on which he ceased to be the PIC.

E. An outgoing PIC shall have the opportunity to take a complete and accurate inventory of all Cannabis, to include plants, extracts, cannabidiol oil, or THC-A oil on hand on the date he ceases to be the PIC, unless the owner submits written notice to the board showing good cause as to why this opportunity should not be allowed.

F. A PIC who is absent from practice for more than 30 consecutive days shall be deemed to no longer be the PIC. If the PIC knows of an upcoming absence of longer than 30 days, he shall be responsible for notifying the board and returning the permit. For unanticipated absences by the PIC, which exceed 15 days with no known return date within the next 15 days, the permit holder shall immediately notify the board and shall obtain a new PIC.

G. An application for a permit designating the new PIC shall be filed with the required fee within 15 days of the original date of resignation or termination of the PIC on a form provided by the board. It shall be unlawful for a pharmaceutical processor to operate without a new permit

past the 15-day deadline unless the board receives a request for an extension prior to the deadline. The executive director for the board may grant an extension for up to an additional 14 days for good cause shown.

Part V

Operation of a Pharmaceutical Processor

18VAC110-60-210. General provisions.

A. A pharmaceutical processor shall sell cannabidiol oil or THC-A oil only in a child-resistant, secure, and light-resistant container. Upon a written request from the registered patient, parent, or legal guardian, the oil may be dispensed in a non-child-resistant container so long as all labeling is maintained with the product.

B. Only a pharmacist may dispense cannabidiol oil or THC-A oil to registered patients or parents or legal guardians of patients who are minors or incapacitated adults and who are registered with the board. A pharmacy technician who meets the requirements of 18VAC110-60-170 C may assist, under the direct supervision of a pharmacist, in the dispensing and selling of cannabidiol oil or THC-A oil.

C. The PIC or pharmacist on duty shall restrict access to the pharmaceutical processor to:

1. Such persons whose responsibilities necessitate access to the pharmaceutical processor and then for only as long as necessary to perform the person's job duties; or
2. Such person who is a registered patient, parent, or legal guardian, in which case such person shall not be permitted behind the service counter or in other areas where Cannabis plants, extracts, cannabidiol oil, or THC-A oil is stored.

D. All pharmacists and pharmacy technicians shall, at all times while at the pharmaceutical processor, have their current license or registration available for inspection by the board or the board's agent.

E. While inside the pharmaceutical processor, all pharmaceutical processor employees shall wear name tags or similar forms of identification that clearly identify them, including their position at the pharmaceutical processor.

F. A pharmaceutical processor shall be open for registered patients, parents, or legal guardians to purchase cannabidiol oil or THC-A oil products for a minimum of 35 hours a week, except as otherwise authorized by the board.

G. A pharmaceutical processor that closes during its normal hours of operation shall implement procedures to notify registered patients, parents, and legal guardians of when the pharmaceutical processor will resume normal hours of operation. Such procedures may include telephone system messages and conspicuously posted signs. If the pharmaceutical processor is, or will be, closed during its normal hours of operation for longer than two business days, the pharmaceutical processor shall immediately notify the board.

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H. A pharmacist shall counsel registered patients, parents, and legal guardians regarding the use of cannabidiol oil or THC-A oil. Such counseling shall include information related to safe techniques for proper use and storage of cannabidiol oil or THC-A oil;

I. The pharmaceutical processor shall establish, implement, and adhere to a written alcohol-free, drug-free, and smoke-free work place policy, which shall be available to the board or the board's agent upon request.

18VAC110-60-220. Pharmaceutical processor prohibitions.

A. No pharmaceutical processor shall:

1. Cultivate Cannabis plants, produce, or dispense cannabidiol oil or THC-A oil in any place except the approved facility at the address of record on the application for the pharmaceutical processor permit;
2. Sell, deliver, transport, or distribute Cannabis, including cannabidiol oil or THC-A oil, to any other facility;
3. Produce or manufacture cannabidiol oil or THC-A oil for use outside of Virginia; or
4. Provide cannabidiol oil or THC-A oil samples.

B. No pharmaceutical processor shall be open or in operation, and no person shall be in the pharmaceutical processor, unless a pharmacist is on the premises and directly supervising the activity within the pharmaceutical processor. At all other times, the pharmaceutical processor shall be closed and properly secured.

C. No pharmaceutical processor shall sell anything other than cannabidiol oil or THC-A oil products from the pharmaceutical processor.

D. A pharmaceutical processor shall not market or advertise cannabidiol oil or THC-A oil products, except it may post the following information on websites:

1. Name and location of the processor;
2. Contact information for the processor;
3. Hours and days the pharmaceutical processor is open for dispensing cannabidiol oil or THC-A oil products;
4. Laboratory results; and
5. Directions to the processor facility.

E. No cannabidiol oil or THC-A oil shall be consumed on the premises of a pharmaceutical processor, except for emergency administration to a registered patient.

F. No person except a pharmaceutical processor employee or a registered patient, parent, or legal guardian shall be allowed on the premises of a processor with the following exceptions: laboratory staff may enter a processor for the sole purpose of identifying and collecting Cannabis, cannabidiol oil, or THC-A oil samples for purposes of conducting laboratory tests; the board or the board's authorized representative may waive the prohibition upon prior written request.

G. All persons who have been authorized, in writing, to enter the facility by the board or the board's authorized representative shall obtain a visitor identification badge from a pharmaceutical processor employee, prior to entering the pharmaceutical processor.

1. An employee shall escort and monitor such a visitor at all times the visitor is in the pharmaceutical processor.

2. A visitor shall visibly display the visitor identification badge at all times the visitor is in the pharmaceutical processor and shall return the visitor identification badge to a pharmaceutical processor employee upon exiting the pharmaceutical processor.

3. All visitors shall log in and out. The pharmaceutical processor shall maintain the visitor log, which shall include the date, time, and purpose of the visit, and that shall be available to the board.

4. If an emergency requires the presence of a visitor and makes it impractical for the pharmaceutical processor to obtain a waiver from the board, the processor shall provide written notice to the board as soon as practicable after the onset of the emergency. Such notice shall include the name and company affiliation of the visitor, the purpose of the visit, and the date and time of the visit. A pharmaceutical processor shall monitor the visitor and maintain a log of such visit as required by this subsection.

H. No cannabidiol oil or THC-A oil shall be sold, dispensed, or distributed via a delivery service or any other manner outside of a pharmaceutical processor, except that a registered parent or legal guardian may deliver cannabidiol oil or THC-A oil to the registered patient.

I. Notwithstanding the requirements of subsection E of this section, an agent of the board, local law enforcement or other federal, state, or local government officials may enter any area of a pharmaceutical processor if necessary to perform their governmental duties.

18VAC110-60-230. Inventory requirements.

A. Each pharmaceutical processor, prior to commencing business, shall:

1. Conduct an initial comprehensive inventory of all Cannabis plants, including the seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil at the facility. The inventory shall include, at a minimum, the date of the inventory, a summary of the inventory findings, and the name, signature, and title of the pharmacist or pharmacy technician who conducted the inventory. If a facility commences business with no Cannabis on hand, the pharmacist shall record this fact as the initial inventory; and

2. Establish ongoing inventory controls and procedures for the conduct of inventory reviews and comprehensive inventories of all Cannabis plants, including the seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil,

which shall enable the facility to detect any diversion, theft, or loss in a timely manner.

B. Upon commencing business, each pharmaceutical processor and production facility shall conduct a weekly inventory of all Cannabis plants, including the seeds, parts of plants, cannabidiol oil, and THC-A oil in stock, which shall include, at a minimum, the date of the inventory, a summary of the inventory findings, and the name, signature, and title of the pharmacist or pharmacy technician who conducted the inventory. The record of all cannabidiol oil and THC-A oil sold, dispensed, or otherwise disposed of shall show the date of sale, the name of the pharmaceutical processor, registered patient, parent, or legal guardian to whom the cannabidiol oil or THC-A oil was sold, the address of such person, and the kind and quantity of cannabidiol oil or THC-A oil sold.

C. A complete and accurate record of all Cannabis plants, including the seeds, parts of plants, cannabidiol oil, and THC-A oil on hand shall be prepared annually on the anniversary of the initial inventory or such other date that the PIC may choose, so long as it is not more than one year following the prior year's inventory.

D. All inventories, procedures, and other documents required by this section shall be maintained on the premises and made available to the board or its agent.

E. Inventory records shall be maintained for three years from the date the inventory was taken.

F. Whenever any sample or record is removed by a person authorized to enforce state or federal law for the purpose of investigation or as evidence, such person shall tender a receipt in lieu thereof and the receipt shall be kept for a period of at least three years.

18VAC110-60-240. Security requirements.

A. A pharmaceutical processor shall initially cultivate only the number of Cannabis plants necessary to produce cannabidiol oil or THC-A oil for the number of patients anticipated within the first three months of operation. Thereafter, the processor shall:

1. Not maintain more than four Cannabis plants per patient at any given time based on dispensing data from the previous 30 days;
2. Not maintain cannabidiol oil or THC-A oil in excess of the quantity required for normal, efficient operation;
3. Maintain all Cannabis plants, seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil in a secure area or location accessible only by the minimum number of authorized employees essential for efficient operation;
4. Store all cut parts of Cannabis plants, extracts, cannabidiol oil, or THC-A oil in an approved safe or approved vault within the pharmaceutical processor and shall not sell cannabidiol oil or THC-A oil products when the pharmaceutical processor is closed;

5. Keep all approved safes, approved vaults, or any other approved equipment or areas used for the production, cultivation, harvesting, processing, manufacturing, or storage of cannabidiol oil or THC-A oil securely locked or protected from entry, except for the actual time required to remove or replace the Cannabis, seeds, parts of plants, extracts, cannabidiol oil, or THC-A oil;

6. Keep all locks and security equipment in good working order;

7. Restrict access to keys or codes to all safes, approved vaults, or other approved equipment or areas to pharmacists practicing at the pharmaceutical processor; and

8. Not allow keys to be left in the locks or accessible to nonpharmacists.

B. The pharmaceutical processor shall have an adequate security system to prevent and detect diversion, theft, or loss of Cannabis seeds, plants, extracts, cannabidiol oil, or THC-A oil. A device for the detection of breaking and a back-up alarm system with an ability to remain operational during a power outage shall be installed in each pharmaceutical processor. The installation and the device shall be based on accepted alarm industry standards and shall be subject to the following conditions:

1. The device shall be a sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device;

2. The device shall be monitored in accordance with accepted industry standards, maintained in operating order, have an auxiliary source of power, and be capable of sending an alarm signal to the monitoring entity when breached if the communication line is not operational;

3. The device shall fully protect the entire processor facility and shall be capable of detecting breaking by any means when activated;

4. The device shall include a duress alarm, a panic alarm, and automatic voice dialer; and

5. Access to the alarm system for the pharmaceutical processor shall be restricted to the pharmacists working at the pharmaceutical processor and the system shall be activated whenever the pharmaceutical processor is closed for business.

C. A pharmaceutical processor shall keep the outside perimeter of the premises well-lit. A processor shall have video cameras in all areas that may contain Cannabis plants, seeds, parts of plants, extracts, cannabidiol oil, or THC-A oil and at all points of entry and exit, which shall be appropriate for the normal lighting conditions of the area under surveillance.

1. The processor shall direct cameras at all approved safes, approved vaults, dispensing areas, cannabidiol oil, or THC-A oil sales areas and any other area where Cannabis plants, seeds, extracts, cannabidiol oil, or THC-A oil are being

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produced, harvested, manufactured, stored, or handled. At entry and exit points, the processor shall angle cameras so as to allow for the capture of clear and certain identification of any person entering or exiting the facility;

2. The video system shall have:

a. A failure notification system that provides an audible, text, or visual notification of any failure in the surveillance system. The failure notification system shall provide an alert to the processor within five minutes of the failure, either by telephone, email, or text message;

b. The ability to immediately produce a clear color still photo that is a minimum of 9600 dpi from any camera image (live or recorded);

c. A date and time stamp embedded on all recordings. The date and time shall be synchronized and set correctly and shall not significantly obscure the picture; and

d. The ability to remain operational during a power outage;

3. All video recording shall allow for the exporting of still images in an industry standard image format. Exported video shall have the ability to be archived in a proprietary format that ensures authentication of the video and guarantees that no alteration of the recorded image has taken place. Exported video shall also have the ability to be saved in an industry standard file format that can be played on a standard computer operating system. A pharmaceutical processor shall erase all recordings prior to disposal or sale of the facility; and

4. The processor shall make 24-hour recordings from all video cameras available for immediate viewing by the board or the board's agent upon request and shall retain the recordings for at least 30 days. If a processor is aware of a pending criminal, civil, or administrative investigation or legal proceeding for which a recording may contain relevant information, it shall retain an unaltered copy of the recording until the investigation or proceeding is closed or the entity conducting the investigation or proceeding notifies the pharmaceutical processor PIC that it is not necessary to retain the recording.

D. The processor shall maintain all security system equipment and recordings in a secure location so as to prevent theft, loss, destruction, or alterations. All security equipment shall be maintained in good working order and shall be tested no less than two times per year.

E. A pharmaceutical processor shall limit access to surveillance areas to persons who are essential to surveillance operations, law-enforcement agencies, security system service employees, the board or the board's agent, and others when approved by the board. A processor shall make available a current list of authorized employees and security system service employees who have access to the surveillance room to the processor. The pharmaceutical processor shall

keep all onsite surveillance rooms locked and shall not use such rooms for any other function.

F. If diversion, theft, or loss of Cannabis plants, seeds, parts of plants, extracts, cannabidiol oil, or THC-A oil has occurred from a pharmaceutical processor, the board may require additional safeguards to ensure the security of the products.

18VAC110-60-250. Requirements for the storage and handling of Cannabis, cannabidiol oil, or THC-A oil.

A. A pharmaceutical processor shall:

1. Have storage areas that provide adequate lighting, ventilation, sanitation, temperature, and humidity as defined in 18VAC110-60-10 and space, equipment, and security conditions for the cultivation of Cannabis, and the production and dispensing of cannabidiol oil or THC-A oil;

2. Separate for storage in a quarantined area Cannabis plants, seeds, parts of plants, extracts, including cannabidiol oil or THC-A oil, that is outdated, damaged, deteriorated, misbranded, or adulterated, or whose containers or packaging have been opened or breached, until such Cannabis plants, seeds, parts of plants, extracts, cannabidiol oil, or THC-A oil is destroyed;

3. Be maintained in a clean, sanitary, and orderly condition; and

4. Be free from infestation by insects, rodents, birds, or vermin of any kind.

B. A processor shall compartmentalize all areas in the facility based on function and shall restrict access between compartments. The processor shall establish, maintain, and comply with written policies and procedures regarding best practices for the secure and proper cultivation of Cannabis and production of cannabidiol oil or THC-A oil. These shall include policies and procedures that:

1. Restrict movement between compartments;

2. Provide for different colored identification cards for facility employees based on the compartment to which they are assigned at a given time so as to ensure that only employees necessary for a particular function have access to that compartment of the facility;

3. Require pocketless clothing for all production facility employees working in an area containing Cannabis plants, seeds, and extracts, including cannabidiol oil or THC-A oil; and

4. Document the chain of custody of all Cannabis plants, parts of plants, seeds, extracts, cannabidiol oil, and THC-A oil products.

C. The PIC shall establish, maintain, and comply with written policies and procedures for the cultivation, production, security, storage, and inventory of Cannabis, including seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil. Such policies and procedures shall include methods for identifying, recording, and reporting diversion, theft, or loss, and for correcting all errors and inaccuracies in

inventories. Pharmaceutical processors shall include in their written policies and procedures, a process for the following:

1. Handling mandatory and voluntary recalls of cannabidiol oil or THC-A oil. Such process shall be adequate to deal with recalls due to any action initiated at the request of the board and any voluntary action by the pharmaceutical processor to remove defective or potentially defective cannabidiol oil or THC-A oil from the market or any action undertaken to promote public health and safety by replacing existing cannabidiol oil or THC-A oil with improved products or packaging;

2. Preparing for, protecting against, and handling any crises that affect the security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency;

3. Ensuring that any outdated, damaged, deteriorated, misbranded, or adulterated Cannabis, including seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil, is segregated from all other Cannabis, seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil and destroyed. This procedure shall provide for written documentation of the Cannabis, including seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil disposition; and

4. Ensuring the oldest stock of Cannabis, including seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil product is used first. The procedure may permit deviation from this requirement, if such deviation is temporary and appropriate.

D. The processor shall store all Cannabis, including seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil, in the process of production, transfer, or analysis in such a manner as to prevent diversion, theft, or loss; shall make Cannabis, including the seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil accessible only to the minimum number of specifically authorized employees essential for efficient operation; and shall return the aforementioned items to their secure location immediately after completion of the production, transfer, or analysis process or at the end of the scheduled business day. If a production process cannot be completed at the end of a working day, the pharmacist shall securely lock the processing area or tanks, vessels, bins, or bulk containers containing Cannabis, including the seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil, inside an area or building that affords adequate security.

18VAC110-60-260. Recordkeeping requirements.

A. If a pharmaceutical processor uses an electronic system for the storage and retrieval of patient information or other records related to cultivating, producing, and dispensing cannabidiol oil or THC-A oil, the pharmaceutical processor shall use a system that:

1. Guarantees the confidentiality of the information contained therein;

2. Is capable of providing safeguards against erasures and unauthorized changes in data after the information has been entered and verified by the pharmacist; and

3. Is capable of being reconstructed in the event of a computer malfunction or accident resulting in the destruction of the data bank.

B. All records relating to the inventory, laboratory results, and dispensing shall be maintained for a period of three years and shall be made available to the board upon request.

18VAC110-60-270. Reportable events; security.

A. Upon becoming aware of diversion, theft, loss, discrepancies identified during inventory, or unauthorized destruction of any cannabidiol oil or THC-A oil or of any loss or unauthorized alteration of records related to cannabidiol oil or THC-A oil or qualifying patients, a pharmacist or pharmaceutical processor shall immediately notify appropriate law-enforcement authorities and the board.

B. A pharmacist or processor shall provide the notice required by subsection A of this section to the board by way of a signed statement that details the circumstances of the event, including an accurate inventory of the quantity and brand names of cannabidiol oil or THC-A oil diverted, stolen, lost, destroyed, or damaged and confirmation that the local law-enforcement authorities were notified. A pharmacist or processor shall make such notice no later than 24 hours after discovery of the event.

C. A pharmacist or pharmaceutical processor shall notify the board no later than the next business day, followed by written notification no later than 10 business days, of any of the following:

1. An alarm activation or other event that requires a response by public safety personnel;

2. A breach of security;

3. The failure of the security alarm system due to a loss of electrical support or mechanical malfunction that is expected to last longer than eight hours; and

4. Corrective measures taken, if any.

Part VI

Cultivation, Production, and Dispensing of Cannabidiol Oil or THC-A Oil

18VAC110-60-280. Cultivation and production of cannabidiol oil or THC-A oil.

A. No cannabidiol oil or THC-A oil shall have had pesticide chemicals or petroleum-based solvents used during the cultivation, extraction, production, or manufacturing process, except that the board may authorize the use of pesticide chemicals for purposes of addressing an infestation that could result in a catastrophic loss of Cannabis crops.

B. Cultivation methods for Cannabis plants and extraction methods used to produce the cannabidiol oil and THC-A shall be performed in a manner deemed safe and effective based on current standards or scientific literature.

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C. Any Cannabis plant, seed, parts of plant, extract, cannabidiol oil, or THC-A oil not in compliance with this section shall be deemed adulterated.

18VAC110-60-290. Labeling of batch of cannabidiol oil or THC-A oil products.

A. Cannabidiol oil or THC-A oil produced for dispensing shall not be adulterated and shall be:

1. Processed, packaged, and labeled according to the Food and Drug Administration's Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements," 21 CFR Part 111; and

2. Labeled with the results of an active ingredient analysis, a microbiological contaminants analysis, a mycotoxin analysis, a heavy metal analysis, and a pesticide chemical residue analysis that have been completed on a batch basis by a laboratory.

B. The pharmaceutical processor shall assign a name to each cannabidiol oil or THC-A oil product and associate each name with a specific laboratory test that includes a terpenes profile and a list of all active ingredients, including:

1. Tetrahydrocannabinol (THC);
2. Tetrahydrocannabinol acid (THC-A); and
3. Cannabidiol (CBD).

C. The pharmaceutical processor shall not label two cannabidiol oil or THC-A oil products with the same name unless the laboratory test results for each product indicate that they contain the same level of each active ingredient listed in subsection A of this section within a range of 97% to 103%.

D. The pharmaceutical processor shall not name a batched product that:

1. Is identical to, or confusingly similar to, the name of an existing noncannabidiol oil or THC-A oil product;
2. Is identical to, or confusingly similar to, the name of an unlawful product or substance;
3. Is confusingly similar to the name of another cannabidiol oil or THC-A oil product name;
4. Is obscene or indecent;
5. May encourage the use of cannabidiol oil or THC-A oil for recreational purposes;
6. May encourage the use of cannabidiol oil or THC-A oil for a condition other than intractable epilepsy;
7. Is customarily associated with persons younger than the age of 18 years; or
8. Is related to the benefits, safety, or efficacy of the cannabidiol oil or THC-A oil product unless supported by substantial evidence or substantial clinical data.

E. A pharmaceutical processor shall label each cannabidiol oil or THC-A oil product prior to dispensing by a pharmacist and shall securely affix to the package a label that states in legible English:

1. The name of the cannabidiol oil or THC-A oil;

2. A unique serial number that will match the product with a pharmaceutical processor batch and lot number so as to facilitate any warnings or recalls the board or pharmaceutical processor deem appropriate;

3. The date of final testing and packaging;

4. An appropriate expiration date, not to exceed six months;

5. The quantity of cannabidiol oil or THC-A oil contained therein;

6. A terpenes profile and a list of all active ingredients, including:

- a. Tetrahydrocannabinol (THC);
- b. Tetrahydrocannabinol acid (THC-A); and
- c. Cannabidiol (CBD); and

7. A pass or fail rating based on the laboratory's microbiological, mycotoxins, heavy metals, and chemical residue analysis.

F. A pharmaceutical processor shall not label cannabidiol oil or THC-A oil products as "organic" unless the Cannabis plants have been organically grown and the cannabidiol oil or THC-A oil products have been produced, processed, manufactured, and certified to be consistent with organic standards in compliance with 7 CFR Part 205.

18VAC110-60-300. Laboratory requirements; testing.

A. No pharmaceutical processor shall utilize a laboratory to handle, test, or analyze cannabidiol oil or THC-A oil unless such laboratory:

1. Is independent from all other persons involved in the cannabidiol oil or THC-A oil industry in Virginia, which shall mean that no person with a direct or indirect interest in the laboratory shall have a direct or indirect financial interest in a pharmacist, pharmaceutical processor, certifying practitioner, or any other entity that may benefit from the production, manufacture, dispensing, sale, purchase, or use of cannabidiol oil or THC-A oil; and

2. Has employed at least one person to oversee and be responsible for the laboratory testing who has earned, from a college or university accredited by a national or regional certifying authority, at least a master's level degree in chemical or biological sciences and a minimum of two years of post-degree laboratory experience or a bachelor's degree in biological sciences and a minimum of four years of post-degree laboratory experience.

B. Immediately prior to producing any cannabidiol oil or THC-A oil product, a pharmaceutical processor shall segregate all harvested Cannabis into homogenized batches. A pharmaceutical processor shall make a sample available from each batch for a laboratory to test for microbiological contaminants, mycotoxins, heavy metals, and pesticide chemical residue, and for purposes of conducting an active ingredient analysis.

C. From the time that a batch of Cannabis has been homogenized for sample testing and eventual packaging, until the laboratory provides the results from its tests and analysis, the pharmaceutical processor shall segregate and withhold from use the entire batch of Cannabis, except the samples that have been removed by the laboratory for testing. During this period of segregation, the pharmaceutical processor shall maintain the Cannabis in a secure, cool, and dry location so as to prevent the Cannabis from becoming contaminated or losing its efficacy.

D. Under no circumstances shall a pharmaceutical processor include Cannabis in a cannabidiol oil or THC-A oil product or sell it prior to the time that the laboratory has completed its testing and analysis and provided those results, in writing, to the pharmaceutical processor or other designated facility employee.

E. The processor shall require the laboratory to immediately return or properly dispose of any Cannabis upon the completion of any testing, use, or research.

F. If a sample of Cannabis does not pass the microbiological, mycotoxin, heavy metal, or pesticide chemical residue test based on the standards set forth in this subsection, the pharmaceutical processor shall dispose of the entire batch from which the sample was taken.

1. For purposes of the microbiological test, a cannabidiol oil or THC-A oil sample shall be deemed to have passed if it satisfies the standards set forth in Section 1111 of the United States Pharmacopeia.
2. For purposes of the mycotoxin test, a Cannabis sample shall be deemed to have passed if it meets the following standards:

Test Specification	
<u>Aflatoxin B1</u>	<u><20 uG/KG of Substance</u>
<u>Aflatoxin B2</u>	<u><20 uG/KG of Substance</u>
<u>Aflatoxin O1</u>	<u><20 uG/KG of Substance</u>
<u>Aflatoxin O2</u>	<u><20 uG/KG of Substance</u>
<u>Ochratoxin A</u>	<u><20 uG/KG of Substance</u>

3. For purposes of the heavy metal test, a Cannabis sample shall be deemed to have passed if it meets the following standards:

<u>Metal</u>	<u>Natural Health Products Acceptable Limits uG/KG BW/Day</u>
<u>Arsenic</u>	<u><0.14</u>
<u>Cadmium</u>	<u><0.09</u>
<u>Lead</u>	<u><0.29</u>
<u>Mercury</u>	<u><0.29</u>

4. For purposes of the pesticide chemical residue test, a Cannabis sample shall be deemed to have passed if it satisfies the most stringent acceptable standard for a pesticide chemical residue in any food item as set forth in Subpart C of the federal Environmental Protection Agency's regulations for Tolerances and Exemptions for Pesticide Chemical Residues in Food, 40 CFR Part 180.

G. If a sample of Cannabis passes the microbiological, mycotoxin, heavy metal, and pesticide chemical residue test, the entire batch may be utilized by the processor for immediate manufacturing, packaging and labeling for sale.

H. The processor shall require the laboratory to file with the board an electronic copy of each laboratory test result for any batch that does not pass the microbiological, mycotoxin, heavy metal, or pesticide chemical residue test at the same time that it transmits those results to the pharmaceutical processor. In addition, the laboratory shall maintain the laboratory test results and make them available to the board or an agent of the board.

I. Each pharmaceutical processor shall have such laboratory results available upon request to registered patients, parents, or legal guardians and registered practitioners who have certified qualifying patients.

18VAC110-60-310. Dispensing of cannabidiol oil or THC-A oil.

A. A pharmacist, in good faith, may dispense cannabidiol oil or THC-A oil to any registered patient, parent, or legal guardian as indicated on the written certification. A pharmacist or pharmacy technician shall require the presentation of a current registration for the patient and parent or legal guardian, if applicable, current written certification and current valid photographic identification issued to a registered patient, parent, or legal guardian, prior to selling oil to such registered patient, parent, or legal guardian. The pharmacist or pharmacy technician shall verify in the prescription monitoring program or other program recognized by the board that the registrations are current, the written certification has not expired, and the date and quantity of the last dispensing of cannabidiol oil or THC-A oil to the registered patient.

B. A pharmacist may dispense a portion of a registered patient's one-month supply of cannabidiol oil or THC-A oil. The pharmacist may dispense the remaining portion of the one-month supply of cannabidiol oil or THC-A oil at any time except that no registered patient, parent, or legal guardian shall receive more than a one-month supply of cannabidiol oil or THC-A oil in a one-month period from any pharmaceutical processor.

C. A dispensing record shall be maintained for three years from the date of dispensing, and the pharmacist or pharmacy technician under the direct supervision of the pharmacist shall affix a label to the container of oil which contains:

1. A serial number assigned to the dispensing of the oil;

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2. The name or kind of cannabidiol oil or THC-A oil and its strength;

3. The serial number assigned to the oil during production;

4. The date of dispensing the cannabidiol oil or THC-A oil;

5. The quantity of cannabidiol oil or THC-A oil dispensed, which cannot exceed 20 fluid ounces;

6. The name and registration number of the registered patient;

7. The name and registration number of the certifying practitioner;

8. Such directions for use as may be included in the practitioner's written certification or otherwise provided by the practitioner;

9. The name or initials of the dispensing pharmacist;

10. Name, address, and telephone number of the pharmaceutical processor;

11. Any cautionary statement as may be necessary; and

12. A prominently printed expiration date based on the pharmaceutical processor's recommended conditions of use and storage that can be read and understood by the ordinary individual.

D. The dispensed cannabidiol oil or THC-A oil shall be dispensed in child-resistant packaging, except as provided in 18VAC110-60-210 A. A package shall be deemed child-resistant if it satisfies the standard for "special packaging" as set forth in the Poison Prevention Packaging Act of 1970 Regulations, 16 CFR 1700.1(b)(4).

E. No person except a pharmacist, or a pharmacy technician operating under the direct supervision of a pharmacist, shall alter, deface, or remove any label so affixed.

F. A pharmacist shall be responsible for verifying the accuracy of the dispensed oil in all respects prior to dispensing and shall document that each verification has been performed.

G. A pharmacist shall document a registered patient's self-assessment of the effects of cannabidiol oil or THC-A oil in treating the registered patient's intractable epilepsy or the symptoms thereof. A pharmaceutical processor shall maintain such documentation in writing or electronically for two years from the date of dispensing and such documentation shall be made available in accordance with regulation.

H. A pharmacist shall exercise professional judgment to determine whether to dispense cannabidiol oil or THC-A oil to a registered patient, parent, or legal guardian if the pharmacist suspects that dispensing cannabidiol oil or THC-A oil to the registered patient, parent, or legal guardian may have negative health or safety consequences for the registered patient or the public.

18VAC110-60-320. Dispensing error review and reporting; quality assurance program.

A. A pharmaceutical processor shall implement and comply with a quality assurance program that describes, in writing, policies and procedures to detect, identify, and prevent dispensing errors. A pharmaceutical processor shall distribute it to all pharmaceutical processor employees and shall make it readily available on the premises of the pharmaceutical processor. Such policies and procedures shall include:

1. Directions for communicating the details of a dispensing error to the practitioner who certified a qualifying patient and to the qualifying patient, the patient's parent or legal guardian or appropriate family member if the patient is deceased or is unable to fully comprehend the communication. Such communication shall describe methods of correcting the dispensing error or reducing the negative impact of the error on the qualifying patient; and

2. A process to document and assess dispensing errors to determine the cause of the error and an appropriate response.

B. A pharmaceutical processor shall use the findings of its quality assurance program to develop systems and workflow processes designed to prevent dispensing errors. A pharmaceutical processor PIC shall:

1. Inform pharmaceutical processor employees of changes to policy, procedure, systems, or processes made as a result of recommendations generated by the quality assurance program;

2. Notify all processor employees that the discovery or reporting of a dispensing error shall be relayed immediately to a pharmacist on duty;

3. Ensure that a pharmacist performs a quality assurance review for each dispensing error. A pharmacist shall commence such review as soon as is reasonably possible, but no later than two business days from the date the dispensing error is discovered; and

4. Create a record of every quality assurance review. This record shall contain at least the following:

a. The date or dates of the quality assurance review and the names and titles of the persons performing the review;

b. The pertinent data and other information relating to the dispensing error reviewed;

c. Documentation of contact with the registered patient, parent, or legal guardian where applicable, and the practitioner who certified the patient;

d. The findings and determinations generated by the quality assurance review; and

e. Recommended changes to pharmaceutical processor policy, procedure, systems, or processes, if any.

C. A pharmaceutical processor shall maintain for three years a copy of the pharmaceutical processor's quality assurance program and records of all reported dispensing errors and quality assurance reviews in an orderly manner and filed by date.

18VAC110-60-330. Disposal of cannabidiol oil or THC-A oil.

A. To mitigate the risk of diversion, a pharmaceutical processor, an agent of the board, or the board's agent shall routinely and promptly dispose of undesired, excess, unauthorized, obsolete, adulterated, misbranded, or deteriorated Cannabis plants, including seeds, parts of plants, extracts, cannabidiol oil, or THC-A oil by disposal in the presence of an agent of the board in such a manner as to render the cannabidiol oil or THC-A oil nonrecoverable.

B. The person disposing of the cannabidiol oil or THC-A oil shall maintain and make available a separate record of each such disposal indicating:

1. The date and time of disposal;
2. The manner of disposal;
3. The name and quantity of cannabidiol oil or THC-A oil disposed of; and
4. The signatures of the persons disposing of the cannabidiol oil or THC-A oil, the agent of the board, and any other persons present during the disposal.

C. The record of disposal shall be maintained at the pharmaceutical processor for three years from the date of disposal.

VA.R. Doc. No. R17-4878; Filed July 7, 2017, 7:32 a.m.



TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Final Regulation

REGISTRAR'S NOTICE: The Department of State Police is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 6 of the Code of Virginia, which exempts agency action relating to customary military, naval, or police functions.

Title of Regulation: 19VAC30-70. Motor Vehicle Safety Inspection Regulations (amending 19VAC30-70-1, 19VAC30-70-6, 19VAC30-70-9.1, 19VAC30-70-10, 19VAC30-70-20, 19VAC30-70-30, 19VAC30-70-50, 19VAC30-70-160).

Statutory Authority: § 46.2-1165 of the Code of Virginia.

Effective Date: September 8, 2017.

Agency Contact: Kirk Marlowe, Regulatory Coordinator, Department of State Police, 7700 Midlothian Turnpike,

Chesterfield, VA 23235, telephone (804) 674-2000, FAX (804) 674-8531, or email kirk.marlowe@vsp.virginia.gov.

Summary:

The amendments update the Motor Vehicle Safety Inspection Rules and Regulations by making technical corrections and other revisions to comply with changes in Virginia law.

Part I

Administration of Virginia's Official Motor Vehicle Inspection Program

19VAC30-70-1. Purpose and authority.

The Virginia Virginia's Official Motor Vehicle Inspection Program was developed and adopted to promote highway safety. The program model is based on the National Highway Traffic Safety Administration Federal Motor Vehicle Safety Standards. Vehicles submitted for inspection must be compliant with Federal Motor Vehicle Safety Standards applicable on the date of manufacture. ~~Its aim~~ The goal of the Official Motor Vehicle Inspection Program is to assure that all Virginia registered vehicles are mechanically safe to operate over the highways of the Commonwealth.

The rules and regulations governing the Official Motor Vehicle Inspection Program are contained in the Official Motor Vehicle Safety Inspection Manual. These rules and regulations are promulgated under the authority of Chapter 10 (§ 46.2-1000 et seq.) of Title 46.2 of the Code of Virginia. All official inspection stations shall comply with these rules and regulations, issuing approval certificates only to those vehicles which the inspections shall determine to be in compliance with those rules and regulations.

These rules and regulations are intended to ensure a uniform system of corrective action for those who violate the rules and regulations of the Official Motor Vehicle Inspection Program.

The Official Motor Vehicle Safety Inspection Manual covers administrative procedure as well as numerous vehicular safety items of varying importance. It is, therefore, necessary that the various sections of the manual be divided into categories of seriousness. This will provide a uniform system of corrective action for the certified inspector mechanics and the inspection stations.

19VAC30-70-6. Class IV offenses.

Class IV offenses are those violations considered so critically important to the integrity and credibility of the Official Annual Motor Vehicle Inspection Program as to require immediate and severe disciplinary action. The following violations and actions shall be considered a Class IV offense:

1. Loss of driver's license, with the exception of an administrative court-ordered suspension that does not exceed seven days.

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2. Obvious usage of either alcohol ~~and/or~~ or drugs by an employee associated with the Annual Motor Vehicle Inspection Program.
3. Loss of inspection stickers through neglect or subsequent violations of subsection K of 19VAC30-70-10.
4. Improper use of inspection supplies such as placement on a vehicle that has not been inspected or failure to affix the inspection sticker to the vehicle in its proper location, after inspection.
5. Falsifying inspection receipts or inspection records.
6. Giving false information during an inspection complaint investigation.
7. Performing either an inspection or inspections at a station without authority from the safety officer.
8. The arrest of any person associated with the inspection program for a criminal offense or the institution of civil action of a nature that would tend to immediately reflect upon the integrity and reputation of the Department of State Police may be grounds for an immediate suspension until final court disposition. The conviction ~~for such a of~~ any criminal offense or a civil judgment or bankruptcy may result in a suspension or revocation of the inspector or station appointment, or both.
9. The use of profanity or verbal abuse directed at customers presenting their vehicles for inspection by inspectors, managers or business owners.
10. Illegal use of inspection supplies such as stealing, selling, mailing or giving away, shall be grounds for revocation.
11. Nonpayment of inspection fees.
12. Conduct displayed by station owners ~~and/or~~ managers, or safety inspectors that may be rude or discourteous, or the use of profanity ~~and/or~~ or verbal abuse directed at or towards Safety Division Personnel, may be grounds for revocation.
13. Failure of any person connected with the inspection program to ~~immediately~~ notify their supervising trooper or Safety Division Area Office within 72 hours of an arrest for a criminal offense or the institution of civil action.
14. Any misuse or falsification of the automated Motor Vehicle Inspection Program (MVIP) system through neglect or intentionally allowing an assigned password or personal identification number (PIN) to be used by other persons.
15. Willfully obtaining computer services without proper authority from the safety officer.
16. Failure to adequately explain and differentiate, both orally and in writing, to customers what repairs are necessary to pass the safety inspection and those repairs that are only recommended. Each station shall explicitly (not fine print) convey to each customer when his vehicle will be examined beyond the parameters of the state

inspection and empower the customer with the ability to decline this service.

Disciplinary action for a Class IV offense shall be immediate suspension or revocation. A suspension shall not be less than 90 days or more than six months. A revocation shall not be less than one year or more than three years. Offenses are cumulative in nature and will remain active for a period of 24 months from the date of the offense. For a subsequent violation within 24 months, the suspension shall not be less than six months or more than one year.

In the case of the loss of the driver's license, the suspension shall remain in effect until the driver's license is reinstated and consideration for reinstatement of inspection privileges will be made at that time.

In cases concerning nonpayment of fees when the inspection station has been given 15 days to reply to ~~their~~ a final notice, the suspension of the affected inspection station shall remain in effect until all inspection fees are paid. Consideration for reinstatement of inspection privileges will be made when all fees are paid. Furthermore, stations that have not paid their processing fee after the 15-day period will not be issued any additional inspection supplies. Supply orders may resume when the inspection fee is paid and the station has been reinstated to an active status.

A Class IV offense in combination with three Class I offenses, two Class II offenses, or one Class III offense shall be grounds for no less than a 90-day or more than a six-month suspension.

19VAC30-70-9.1. Official inspection station appointment.

A. These procedures are applicable to the application process for initial appointment, reclassification of appointment, change in ownership, change in name, and reinstatement of the appointment for an official inspection station following a period of suspension or revocation.

For investigations involving changes to the original report, only those areas of inquiry which have changed need to be reported.

For changes in station name, location, and classification only, a narrative report is not required. These requests may be reported on the Form SP-164. This report should include information pertinent to the change. A statement should be included to report verification of information contained in the station's new application for appointment.

1. Any garage or other facility that routinely performs motor vehicle, motorcycle, or trailer repairs may apply to the Department of State Police in writing for appointment as an Official Safety Inspection Station.

a. The Department of State Police will forward an application package to the applicant.

b. The application form or forms are to be completed and returned to the ~~Department of State Police~~ for supervising trooper processing the application within 45 days.

- c. The application shall include the names, addresses, email addresses, telephone numbers, dates of birth, and social security numbers for the applicant and each person who will supervise or otherwise participate in the program. Each person will also be required to execute an Authorization for Release of Information Form and a Criminal History Record Request (Form SP-167). When a corporation with other established inspection stations is applying for an additional location, it shall not be necessary for the corporate officers to complete the Form SP-167 or undergo the usual background investigation. In these situations, the Department of State Police is only concerned with the personnel who will be responsible for handling and securing the safety inspection supplies.
2. Each inspection station application will be reviewed and the applicant must meet the following criteria:
- a. The facility must have been in business at its present location for a minimum of six months.
 - (1) This requirement will not apply to a change in location for a previously appointed station or a change in ownership which does not affect the station's ability to perform safety inspections.
 - (2) This requirement will not apply to a repair garage that is an established business and is expanding its mechanical convenience to the general public by the addition of other repair locations.
 - (3) This requirement will not apply to a business license as a franchised dealer of new vehicles.
 - b. The facility must perform motor vehicle, motorcycle, or trailer repairs routinely.
 - c. The station must have on hand or be willing to purchase the necessary equipment as identified by the Department of State Police for performing safety inspections.
 - d. The station must employ or be willing to employ at least one full time safety inspector with the appropriate license for the desired station's classification.
 - e. The facility's physical plant must meet the specific standards for the station classification for which the appointment is required.
3. Each applicant station must undergo a background investigation to determine if the business and associated personnel meet the following minimum criteria:
- a. A review of the history of management and all persons employed who will participate in the inspection program must reflect general compliance with all federal, state, and local laws.
 - b. The character, attitude, knowledge of safety inspection requirements, mechanical ability, and experience of each individual who will perform or supervise safety inspections must be satisfactory.
- c. The applicant and all participants must be familiar with and agree to comply with the Official Motor Vehicle Inspection Manual. Each vehicle presented for safety inspection must be inspected in strict compliance with the Code of Virginia and the Official Motor Vehicle Inspection Manual.
- d. The business establishment must be financially stable. Its future existence should not be dependent upon appointment as an inspection station. The applicant and all persons to be associated with the inspection program must be in compliance with any judgment order or meeting all financial obligations, or both. The applicant and all persons to be associated with the inspection program must be in good financial standing for a period of at least one year.
4. Each business must agree to provide the necessary space, equipment, and personnel to conduct inspections as required by the Department of State Police. Facilities and equipment will be maintained in a manner satisfactory to the superintendent. All safety inspectors will read and be thoroughly familiar with the instructions furnished for Official Inspection Stations and agree to abide by these instructions and to carefully inspect every motor vehicle, trailer, and semi-trailer presented for inspection as required by the Official Motor Vehicle Safety Inspection Manual. Businesses must operate inspection stations in strict accordance with the Code of Virginia and the Official Motor Vehicle Inspection Manual. The appointment of an inspection station may be canceled at any time by the superintendent and will be automatically canceled if any change in address, name, or ownership is made without proper notification.
5. Any applicant whose application is rejected or withdrawn may not reapply sooner than six months from the date he is notified of the rejection of ~~their~~ his application or from the date the application is withdrawn.
6. Each business to be appointed will be assigned one of 11 classifications based upon the physical plant specifications or other criteria as follows:
- a. Unlimited: The inspection lane shall be level or on the same plane and in good condition for 60 feet. The front portion of the lane shall be level or on the same plane for a minimum of 40 feet. The entrance shall be at least 13-1/2 feet in height and no less than nine feet in width. (Space should be adequate to allow a tractor truck towing a 53-foot trailer access to the inspection lane.)
 - b. Small exemption: The inspection lane shall be level or on the same plane for 40 feet. The entrance opening shall be at least 10 feet in height, eight feet in width, and adequate to accommodate vehicles 40 feet in length. Any vehicle exceeding 10 feet in height may be inspected if the building entrance will allow such vehicle to completely enter the designated inspection lane.

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c. Large exemption: The inspection lane shall be level or on the same plane and in good condition for 60 feet. The front portion of the lane shall be level or on the same plane for a minimum of 40 feet. The entrance shall be at least 13-1/2 feet in height and no less than nine feet in width. (Space should be adequate to allow a tractor truck towing a 53-foot trailer access to the inspection lane.) This classification is required to inspect only vehicles with a GVWR exceeding 10,000 pounds.

d. Motorcycle: The inspection lane shall be level or on the same plane. The entrance shall be adequate to accommodate the motorcycle and the operator.

e. Unlimited trailer: The inspection lane shall be reasonably level and in good condition for 60 feet. The entrance shall be at least 13-1/2 feet in height and no less than nine feet in width. This classification is required to inspect all trailers.

f. Small trailer exemption: The inspection lane shall be reasonably level and in good condition for 40 feet. The entrance shall be at least 10 feet in height and adequate to accommodate trailers 40 feet in length. This classification is required to inspect only those trailers not exceeding 40 feet in length or 10 feet in height measured to the highest part of the trailer but not including racks, air conditioners, antennas, etc.

g. Large trailer exemption: The inspection lane shall be reasonably level and in good condition for 60 feet. The entrance shall be at least 13-1/2 feet in height and adequate to accommodate all legal size trailers. This classification is required to inspect only property-carrying trailers exceeding 10 feet in height or 40 feet in length.

h. Safety and emissions: The inspection lane shall be level or on the same plane. The lane must accommodate most passenger cars and light trucks. The emissions equipment must be placed in the lane at a location to allow the inspected vehicle to be positioned with all four wheels on the floor or on an above-ground ramp on a plane to the floor to accommodate headlight aiming and other required inspection procedures. Any above-ground structure must be constructed so as to permit proper steering, suspension, brake, and undercarriage inspection as outlined in the Official Motor Vehicle Safety Inspection Manual. A list of local inspection stations that can accommodate vehicles that cannot be safety inspected due to the pretenses of emissions equipment must be maintained and available for customers. A "bottle" jack or other appropriate lifting equipment may be used for safety inspection on above-ground structures.

i. Private station: The inspection lane shall be level or on the same plane. The entrance and size must be adequate to accommodate any vehicle in the fleet. An applicant who owns and operates less than 20 vehicles will not be considered.

j. Private station (fleet service contractor): The inspection lane shall be level or on the same plane. The entrance and size must be adequate to accommodate any vehicle in the fleet to be inspected. This classification will permit the inspection of all vehicles that the applicant has a written agreement to service and repair. An applicant who does not have at least six written agreements to service private fleets with at least five vehicles in each fleet or at least one written agreement to service a private fleet with at least 30 vehicles in the fleet will not be considered for this type of appointment. Vehicles not covered by a written agreement for service, and repair other than the vehicles owned by the applicant's company or corporation, shall not be inspected by a garage having this type of classification.

k. Private station (government): The inspection lane shall be level or on the same plane. The entrance and size must be adequate to accommodate any vehicle in the fleet to be inspected. This classification will permit the inspection of all vehicles in the government entity's fleet, the fleet of any volunteer or paid fire department, or any other unit or agency of the government structure having a written agreement with such governmental entity for repair ~~and/or~~ inspection service, or both. An applicant for this classification must own or have a written agreement to inspect 30 or more vehicles. Vehicles not owned by or covered by a written agreement shall not be inspected by a garage having this type of classification.

7. Classifications listed in subdivisions g a through g h of this subsection must be open to the public and have at least one safety inspector available to perform inspections during normal business hours as set forth in 19VAC30-70-10.

8. Private inspection station classifications may be assigned to businesses or governmental entities with fixed garage or repair facilities operating or contracting with vehicle fleets.

B. A representative of any official inspection station may apply to the Department of State Police in writing to request a change of the station's status.

1. An application form or forms will be forwarded to the applicant.

2. The applicant will complete the application form or forms and contact the Department of State Police in keeping with the application instructions. Applications will include all data as set forth in this section.

3. A Safety Division trooper will be assigned to complete the appropriate investigation to affect the change. A change in status investigation will include:

(1) A review of the existing station file.

(2) An update of the file to include personnel, facility, or other significant changes. Criteria for appointment and

background investigation procedures for a change in status will be in keeping with this section.

(3) Official inspection stations will be permitted to continue to perform safety inspections during a change of ownership investigation provided at least one safety inspector is retained from the prior owner.

(4) If disqualifying criteria is revealed, the station's appointment shall be canceled until final disposition of the application is made or until issues of disqualifying criteria are resolved.

C. Once an official inspection station has been suspended, regardless of the cause for the suspension, management may request reinstatement up to 60 days prior to the expiration of the suspension period. Stations whose appointments are revoked may complete the application process as set forth for original appointments after the expiration of the period of revocation.

1. The applicant station must submit a letter to Safety Division Headquarters (Attention: Station Files) requesting reinstatement.

2. An application package will be forwarded to the applicant.

3. The completed application forms are to be returned to Safety Division Headquarters (Attention: Station Files).

4. After review, the application package is forwarded to the appropriate Safety Division Area Office for investigation.

a. The trooper assigned to the investigation will compare the information in the new application package to the information in the existing files.

b. The investigation will focus on any changes or inconsistencies.

c. The applicant station must meet all criteria for appointment as set forth in this section.

d. Any applicant whose application for reinstatement is rejected or withdrawn may not reapply sooner than six months from the date he is notified of the rejection or withdrawal of the application.

D. Failure to comply with the provisions of this section shall be grounds for termination of the application process or cancellation of the official inspection station's appointment. An applicant having an application terminated or an official inspection station having an appointment canceled for noncompliance may not reapply for a period of one year.

Part II

Inspection Requirements

19VAC30-70-10. Official inspection station requirements.

A. Official inspection stations, except private appointments, shall be open at least eight hours of each normal business day and shall be able to perform inspections 12 months throughout the year, except during illness of limited duration or normal vacation.

1. Normal business hours, Monday through Friday, are defined as an eight-hour period of time between 8 a.m. and 6 p.m.

2. Stations are not prohibited from performing inspections at times other than during normal business hours.

3. A station that advertises inspections beyond normal business hours shall be able to perform such inspections.

4. If a station desires to maintain business hours that are different from those defined in this section, written permission must be obtained from the safety officer and a sign setting forth the inspection hours must be posted conspicuously at the station where it can be observed by a person desiring to have a vehicle inspected.

B. At least one full-time safety inspector to perform inspections and one inspection lane meeting the minimum requirements shall be available for inspection at all times during the normal business day. All inspections must be made only at the locations and in the inspection lane approved by the Department of State Police. All stations shall have other lanes, bays, or areas in which repairs can be made so the inspection lane can remain available.

The designated inspection areas, including any location where customers are permitted to enter when submitting vehicles for inspection, must be kept clean and free from excessive dirt, grease, and loose materials. If requested, customers presenting vehicles for inspection shall be allowed to observe the inspection process from a safe location designated by the station.

C. Inspection station facilities must be properly maintained and must present a businesslike appearance to the general public. Property adjacent to the inspection station that is owned or controlled by the station must be free of debris, litter, used parts and junk vehicles. Vehicles properly contained within fenced storage areas shall be deemed to comply with this requirement.

D. Inspections shall be performed on a first-come, first-served basis. "First-come, first-served" means a procedure whereby customers seeking an inspection shall be attended to in the order that they arrive to the station. Motorists shall not be required to make an appointment to obtain an inspection, except those appointments required by subdivision A 12 of § 46.2-1158.01 of the Code of Virginia. Stations that take in vehicles for inspection at the beginning of the work day shall not be required to stop inspecting those vehicles to provide an inspection for a drive-in request, provided inspections are currently being performed at the time and will continue throughout the day. Stations must maintain a procedure to validate when vehicles were brought to the station for inspection. Inspections shall begin concurrently with repair lanes during the station's normal business hours, without delay. Stations may suggest to motorists a timeframe of no greater than three hours during which it may be anticipated that an inspection may be provided. Stations shall cooperate

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fully with Department of State Police personnel regarding any issues detailed in this section, as with all other investigations.

In addition to accepting vehicles on a first-come, first-served basis, any official inspection station consisting of two or more inspection lanes may accept prescheduled appointments for the safety inspection of a motor vehicle pursuant to § 46.2-1157 of the Code of Virginia, so long as at least one lane is reserved for the sole purpose of first-come, first-served safety inspections. An additional certified safety inspector shall be available to perform those inspections that are made by an appointment.

Stations shall make every effort to keep the designated inspection lanes available. Stations with more than one repair bay shall not perform work in the designated inspection lanes when customers are waiting for an inspection. This will not apply to minor adjustments that require minimal time to perform. Stations shall not let vehicles occupy the designated inspection lanes while awaiting parts or customer authorization to complete the inspection pursuant to 19VAC30-70-60.

~~A station may inquire about accepting safety inspections by appointment. If the requirements are met, then the official inspection station may, in addition to having one lane for the first come, first served customers, also have a second inspection lane designated for customers who have made appointments for a designated time slot. An additional certified safety inspector shall be available to perform those inspections that are made by an appointment. If interested, stations should first contact their supervising trooper for specific requirements and guidelines.~~

E. Safety inspectors, managers who supervise inspection activities, and business owners, through participation in the Official Motor Vehicle Inspection Program, are representatives of the Department of State Police and should conduct themselves in a manner to avoid controversy in dealing with customers presenting vehicles for inspection. The use of profanity or verbal abuse directed at customers presenting their vehicles for inspection will be grounds for suspension from participation in the inspection program and will be considered a Class IV offense as set forth in 19VAC30-70-6.

Controversy that cannot be calmly resolved by the safety inspector, managers, and owners should be referred to the supervising trooper for handling.

F. The "Certificate of Appointment" must be framed under glass or clear plastic and posted in the customer waiting area where it can be observed and read by a person submitting a vehicle for inspection.

Inspection stations must have garage liability insurance in the amount of at least \$500,000 with an approved surplus lines carrier or insurance company licensed to write such insurance in this Commonwealth. This requirement shall not apply to inspection stations that only inspect their company-owned, government-owned, or leased vehicles.

G. The required "Official Inspection Procedure" sheet and the "Direct Inquiries" sheet furnished to each station must both be framed under glass or clear plastic and posted conspicuously in the customer waiting area where they can be observed and read by a person submitting a vehicle for inspection.

H. The poster designating the station as an official inspection station shall be posted in a prominent location, outside or visible outside the station, to alert passersby that inspection services are available. Private inspection stations shall not display an outside poster.

I. Each official inspection station shall display a list with the names and license expiration dates of all employees licensed to inspect at that station, adjacent to the certificate of appointment. The Official Motor Vehicle Safety Inspection Manual will be kept at or near the point of inspection for ready reference. The manual may be kept in written or electronic form.

J. Important -- Any change in name, ownership or location of any official inspection station cancels the appointment of that station, and the Department of State Police must be notified immediately. The department shall be notified when an official inspection station discontinues operation.

K. All inspection supplies, inspection binders and manual, unused stickers, duplicates of certificates issued, bulletins and other forms are the property of the Department of State Police and must be safeguarded against loss.

L. Inspection supplies issued to an inspection station can be used only by that station and are not to be loaned or reissued to any other station ~~with the exception of inserts.~~

1. Stations must maintain a sufficient supply of approval stickers, trailer and motorcycle approval stickers, rejection stickers and inserts. When reordering supplies, station owners or managers shall request sufficient supplies to sustain their business for at least six months. However, it is realized that a few stations will not be able to comply with the six-month requirement since there is a maximum of 100 books per order limit. Also, when ordering supplies, the following information should be considered so that the station does not order an excessive amount of supplies: each book of approval stickers contains 25 stickers, the rejection book contains 50 stickers, the month inserts are packaged in strips of 50 each, and trailer and motorcycle decals are five per strip. In December of each year, a supply of year inserts will be shipped to each station based on the station's previous year's usage. In November, each station shall check its stock of month inserts and order what is needed for the months of January through June. In May, the same should be done for the months of July through December.

2. Inspection stations that exhaust their supply of approval stickers, trailer and motorcycle approval stickers, rejection stickers, and inserts shall immediately stop performing new

inspections and contact their supervising trooper or the nearest Safety Division Area Office.

M. All losses of stickers must be reported immediately to the supervising inspection trooper or the nearest Safety Division Area Office.

N. Every precaution against the loss of stickers must be taken. If the loss occurs through carelessness or neglect, a suspension of the station may result.

O. Manuals, bulletins, other regulations and lists of approved equipment must be available at all times for reference and may be kept in written or electronic form. Revisions to the Motor Vehicle Safety Inspection Manual will be sent to each station electronically through the MVIP system. Station management shall be responsible to see that each safety inspector is familiar with all bulletins and manual revisions and shall be required to furnish evidence to the department that all bulletins and manual revisions have been reviewed by each licensed inspector.

A copy of the diagram drawn by the investigating trooper, showing the approved inspection lane or lanes, will be maintained for review and kept available with the station's inspection supplies.

P. Private appointment may be made of company stations or government stations that own and operate a minimum of 20 vehicles and they may inspect only company-owned or government-owned vehicles respectively. When authorized by the department, they may inspect vehicles of a wholly-owned subsidiary or leased vehicles.

1. A private station may perform inspections during each month of the year or may elect to inspect only during certain designated months.

2. A private station not electing to inspect vehicles every month of the year that finds it necessary to inspect a vehicle during a month other than those selected for inspection may issue a sticker to the vehicle from the nearest past inspection month.

Q. All official inspection station owners, managers, and certified safety inspectors shall comply with the Virginia inspection laws and the inspection rules and regulations and will adhere to all instructions given by the supervising trooper or the Safety Division. Reports of violations will be investigated and, if found to be valid, may result in the suspension of the station, suspension of the inspector, possible court action, or other appropriate action, or any combination of these actions. Repeated violations or serious violations may result in a revocation of the station appointment by the superintendent.

R. The arrest of any person associated with the inspection program for a criminal offense of a nature that would tend to immediately reflect upon the integrity and reputation of the Department of State Police may be grounds for an immediate suspension and the conviction for such an offense may result in a revocation of the station's appointment.

S. When a station has been suspended or revoked, it must release to an employee of the Department of State Police all inspection supplies, posters, and papers including the certificate of appointment. Failure to do so is a violation of § 46.2-1172 of the Code of Virginia.

T. The authority of the superintendent to suspend the designation or appointment of an official inspection station as provided in § 46.2-1163 of the Code of Virginia, or to suspend the certification of an inspector designated to perform inspections at an official inspection station, and, in keeping with the provisions of § 46.2-1166 of the Code of Virginia, is hereby delegated to any of the following supervisory ranks of the Department of State Police: Lieutenant Colonel, Major, Captain, Lieutenant, First Sergeant and Sergeant.

U. Each station must purchase and keep in proper operating condition the following equipment: computer, printer, internet connection, paper hole punch, black ball point pen or pens or black marker or markers, sticker scraper with replacement razor blades, tire tread depth gauge, amp meter, headlight and auxiliary lamp adjustment tools, 12-inch ruler, 25-foot measuring tape, torque wrench or torque sticks, brake pads/shoes/disc/drum measuring device, dial indicator, micrometer, pry bars, roller jack (at least 4-ton), and an approved type optical headlight aiming device. Each station that requests an additional inspection lane that is not in close proximity to the originally approved inspection lane must purchase an additional approved headlight machine for each lane that meets the minimum requirements. Stations are required to have one of the following headlight aiming devices effective January 1, 2013: the Hopkins Vision1, Hopkins Vision 100, American Aimers Vision 100, American Aimers Vision 2 Pro, or the Symtech (former L.E.T.) HBA-5, PLA-11, and PLA-12. This shall not apply to "trailer-only" inspection stations.

19VAC30-70-20. General inspection requirements.

A. Each official inspection station must inspect every vehicle presented for inspection as prescribed by this chapter, either approving or rejecting it. Inspections will not be performed unless requested.

1. Dealers' vehicles shall be inspected according to these standards. The dealer's name rather than the license number shall be shown on the rear of the ~~approval/rejection~~ approval or rejection sticker.

2. Out-of-state vehicles may be inspected, but shall not be approved unless they meet the requirements of the Official Motor Vehicle Safety Inspection Manual.

3. When a vehicle is presented for inspection, the ~~entire~~ previous approval sticker, if any, on the vehicle ~~must~~ shall be removed and destroyed before any inspection is ~~begun~~ conducted (except a rejection sticker). For purposes of the safety inspection program, "destroyed" shall mean that the previous inspection sticker will be disposed of in a manner so it cannot be reused or placed on another vehicle's

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windshield. After removing the inspection sticker, the safety inspector who is to perform the inspection must drive the vehicle into an approved inspection lane unless the safety inspector is not qualified to operate the vehicle. During the operation of the vehicle, the safety inspector must make application of the service and parking brakes and check for conditions as set forth in the Service Brake Section of the Official Motor Vehicle Safety Inspection Manual applicable to the vehicle being inspected.

WARNING: No razor blades or similar devices should be used to remove stickers from "Securiflex₂", "Anti-Lacerative" or "Inner Shield" type windshield. These windshields are identified as AS-14. Any questions concerning removal should be directed to the nearest Safety Division Area Office.

B. Each inspection shall be a complete, uninterrupted inspection and shall include a check of all applicable items in the Official Motor Vehicle Safety Inspection Manual. All repair tools and testing equipment required prior to a station's appointment shall be properly maintained and available for use during each inspection.

C. The term "inspection" as used in this chapter shall not include repairs or adjustments. Repairs or adjustments necessary to bring the vehicle in conformity with ~~these regulations~~ this chapter may be made by agreement between the owner and such station or whatever repair shop the owner may select. When requested to do so by the person submitting a vehicle for inspection, any repairs or adjustments necessary to bring the vehicle into compliance with the inspection program rules and regulations shall be made by the inspection station performing the inspection. The inspection station management may utilize the option of subcontracting the repairs or adjustments provided the application filed for the station appointment reflected that such repairs or adjustments will be subcontracted.

D. Each vehicle that meets the requirements as set forth in ~~these regulations~~ this chapter shall be issued an approval sticker. Those vehicles that do not meet the inspection requirements shall be issued a rejection sticker. Any trailer required to be inspected under the provisions of the Code of Virginia may, only if the size or configuration of the trailer and the size and configuration of the facilities of the inspection station prevent the trailer from being inspected inside the inspection station, be inspected outside the inspection station. The location on the outside of an inspection station where trailers may be inspected shall be approved by the Department of State Police and shown on the station diagram.

E. Inspections may be made when it is raining or snowing. Care must be exercised when making inspections in inclement weather. Vehicles covered with ice, snow, mud or other debris to the extent that required parts cannot be inspected, may be refused inspection until the operator removes such debris.

19VAC30-70-30. Inspector requirements.

A. The inspection of motor vehicles required by these rules and regulations shall be made only by those individuals who are certified and licensed as safety inspectors by the Department of State Police. The procedures outlined in this section are applicable to the processing of applications for initial certification, reclassification of safety inspector's licenses, and reinstatement of suspended or revoked safety inspector's licenses.

B. All certified inspectors shall: ~~1. Be~~ be at least 18 years of age; ~~and 2. Have~~ a. In addition, all certified inspectors shall have:

1. A minimum of one year's year of practical experience as an automotive mechanic; or have satisfactorily six months of practical experience as an automotive mechanic combined with an additional and separate six months of mirroring a certified state inspector, or

satisfactorily 2. Satisfactorily completed a training program in the field of automotive mechanics approved by the Superintendent of State Police.

A person who has ~~a minimum of one year's practical experience~~ met either of the practical experience requirements in repairing motorcycles may be certified to inspect motorcycles only and a person who ~~has one year's practical experience~~ meets them in repairing trailers may be certified to inspect trailers only.

C. ~~All mechanics~~ Each mechanic entering the inspection program will be required to satisfactorily pass a written and practical examination exhibiting his knowledge of the inspection procedures.

D. Each certified inspector shall possess a valid Virginia driver's license with the following exceptions:

1. An inspector who is a resident of an adjoining state holding a valid driver's license in that state and who commutes regularly to work in Virginia; or

2. A member of the armed forces of the United States on active duty who holds a driver's license from his home state.

E. An inspector whose driver's license is suspended or revoked, including the seven-day administrative suspension for a DUI arrest, must immediately notify the station's supervising trooper or the local Safety Division Area Office of the suspension or revocation. The suspension or revocation of an inspector's driver's license shall automatically act as a suspension of his privilege to inspect motor vehicles until such suspension or revocation is terminated and the reinstatement has been made by the Superintendent of State Police.

F. Each licensed safety inspector must have a valid safety inspector's license in his possession at all times while conducting inspections.

G. Each safety inspector with a valid safety inspector's license need only present such valid license to his new employer to commence participation in the program at his new place of employment. Management of the inspection station is required to notify the Safety Division when a safety inspector begins or ends employment. This may be handled by contacting the Safety Division Headquarters in Richmond by telephone.

H. An inspector must promptly notify the Safety Division in writing of any change in his home address as shown on the safety inspector's license. In the event the license becomes mutilated, lost or stolen, the inspector must notify the Department of State Police immediately in writing, requesting a duplicate. The Safety Inspector Notification Form shall be used and all requested information should be printed plainly and completely. For those inspectors who are not employed, write "Inactive" in the station name block. In those cases where notification is being made due to an address change, it will be necessary to: (i) fill out the form completely and (ii) retain a copy of the form and license until a permanent (new) license is received. In those cases where the license has been lost, stolen or mutilated, complete steps in clauses (i) and (ii) as set forth in this section subsection. The notification form may be duplicated as necessary.

I. An inspector must immediately notify the station's supervising trooper or local Safety Division Area Office of an arrest for a criminal offense or the institution of a civil action.

J. Requirements for safety inspector applicants with a specific learning disability:

1. Applicants will be required to furnish documentation from the particular school division where the applicant was classified as having a learning disability. The specific learning disability will be clearly identified.
2. Once the learning disability has been documented, and if applicable, the applicant will be allowed to test with the written exam being orally presented.
3. The station management where the applicant is employed or to be employed must agree to have someone present during the hours the employee is conducting inspections to assist with the reading of the Official Motor Vehicle Safety Inspection Manual when necessary during the initial three-year certification period. If the inspector changes stations within the first three-year period, it is the inspector's responsibility to notify station management of his disability and this requirement.

19VAC30-70-50. Approval stickers and decals.

A. If the vehicle meets all inspection requirements, the certified safety inspector performing the inspection shall immediately enter the receipt information via the MVIP system.

The inspection sticker is not valid unless the rear portion is completed with the vehicle make, year built, license plate number (dealer name if a dealer tag is displayed), body type,

and the complete vehicle identification number (VIN). The inspection sticker shall be completed using black indelible ink.

B. Approval stickers and decals shall be issued according to the following schedule:

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- Vehicles inspected in January are issued stickers bearing the Number "1"
- Vehicles inspected in February are issued stickers bearing the Number "2"
- Vehicles inspected in March are issued stickers bearing the Number "3"
- Vehicles inspected in April are issued stickers bearing the Number "4"
- Vehicles inspected in May are issued stickers bearing the Number "5"
- Vehicles inspected in June are issued stickers bearing the Number "6"
- Vehicles inspected in July are issued stickers bearing the Number "7"
- Vehicles inspected in August are issued stickers bearing the Number "8"
- Vehicles inspected in September are issued stickers bearing the Number "9"
- Vehicles inspected in October are issued stickers bearing the Number "10"
- Vehicles inspected in November are issued stickers bearing the Number "11"
- Vehicles inspected in December are issued stickers bearing the Number "12"

All February annual inspection stickers for trailer and motorcycle decals (#2) due to expire at midnight, February 28 automatically will be valid through midnight February 29 each leap year.

C. The numeral decal indicating the month of expiration shall be inserted in the box identified as month and the numeral decal indicating the year of expiration shall be inserted in the box identified as year of the approval sticker and the trailer or motorcycle sticker. Extreme care should be used by inspectors in applying these inserts. On all windshields, except school buses, the sticker is to be placed at the bottom of the windshield so that the inside or left edge of the sticker is one inch to the right of the vertical center of the windshield when looking through the windshield from inside the vehicle. (If the vehicle is normally operated from the right side, the sticker must be placed one inch to the left of the vertical center of the windshield.)

On passenger vehicles not equipped with a windshield, the sticker shall be placed on or under the dash and protected in some manner from the weather.

The approval sticker on official yellow school buses is to be placed at the bottom and in the right corner of the windshield when looking through the windshield from inside the vehicle.

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EXCEPTIONS: The approval sticker shall be placed one inch to the right of the vertical center of the windshield when looking through the windshield from the inside on all new flat-face cowl yellow school buses. On vehicles equipped with heating and grid elements on the inside of the windshield, the sticker shall be placed one inch above the top of the grid element and the inside left edge of the sticker shall be one inch to the right of the vertical center when looking through the windshield from the inside.

Stickers or decals used by counties, cities and towns in lieu of license plates affixed adjacent to the old approval sticker and which are affixed in the location where the new approval sticker is required to be placed will not be removed. In these cases, the approval sticker will be placed as close to one inch to the right of the vertical center of the windshield as it can be placed without removing or overlapping the county, city or town decal.

D. The Code of Virginia requires that the inspection sticker be displayed on the windshield or at other designated places at all times. The inspection sticker cannot be transferred from one vehicle to another.

EXCEPTION: If the windshield in a vehicle is replaced, a valid sticker may be removed from the old windshield and placed on the new windshield.

E. The sticker issued to a motorcycle shall be affixed to the left side of the cycle where it will be most visible after mounting. The sticker may be placed on a plate on the left side where it will be most visible and securely fastened to the motorcycle for the purpose of displaying the sticker. The sticker may be placed horizontally or vertically.

F. Trailer stickers will be issued to all trailers and semitrailers required to be inspected. (No boat, utility, or travel trailer that is not equipped with brakes shall be required to be inspected.)

G. All inspected trailers must display a trailer sticker on that particular vehicle. These stickers are to be placed on the left side of the trailer near the front corner. The sticker must be affixed to the trailer body or frame. In those instances where a metal back container with a removable transparent cover has been permanently affixed to the trailer body, the sticker may be glued to it. The container must be permanently mounted in such a manner that the sticker must be destroyed to remove it.

H. In all other cases involving unusually designed trailers such as pole trailers, the safety inspector is to exercise his own good judgment in placing the sticker at a point where it will be as prominent as possible and visible for examination from the left side.

I. Motorcycles have a separate sticker that is orange and issued with the prefix M. Trailers have a separate sticker that is blue and issued with the prefix T. The trailer and motorcycle receipts are completed in the same manner as other inspection receipts.

J. Appointed stations will keep sufficient inspection supplies on hand to meet their needs. Requests for additional supplies shall be ordered via the MVIP system. Requests for supplies that are to be picked up at the Safety Division Headquarters must be made at least 24 hours prior to pick up.

Packing slips mailed with inspection supplies will be kept on file at the station for at least 24 months.

K. All unused center inserts used to indicate the month that a sticker expires, in possession of the inspection station at the end of each month, shall be retained by the inspection station, properly safeguarded, and used in the inspection of vehicles for that particular month in the following year or be disposed of as directed by the Department of State Police.

All inspection supplies that are voided, damaged, disfigured or become unserviceable in any manner, will be returned to the Safety Division. New replacement supplies will be issued to the station. Expired stickers will be picked up by the station's supervising trooper.

L. All voided ~~approval/rejection~~ approval or rejection stickers will be picked up by the station's supervising trooper.

M. The MVIP system approval or rejection printed receipt shall be given to the owner or operator of the vehicle.

N. All yellow receipt copies of approval stickers and decals will be retained in the books and shall be kept on file at the station for at least 24 six months. They may be inspected by any law-enforcement officer during normal business hours.

O. Safety Division troopers may replace inspection stickers that have separated from the windshield of motor vehicles and become lost or damaged without conducting an inspection of the safety components of the vehicle. Such replacement of inspection stickers shall be made only in accordance with the following provisions:

1. A vehicle owner or operator complaining of the loss or damage to the inspection sticker on the windshield of their vehicle due to separation of the sticker from the windshield shall be directed to the nearest Safety Division Area Office or Safety Division trooper.
2. Safety Division troopers, upon receipt of a complaint from a vehicle owner or operator that their inspection sticker has been stolen, lost or become damaged due to separation from the windshield, will make arrangements to meet the person to effect the replacement of the sticker. A vehicle owner or operator alleging theft of the inspection sticker will furnish proof to the Safety Division trooper that such theft has been reported to the proper law-enforcement authority.
3. The vehicle owner or operator must produce the original safety inspection approval sticker receipt indicating a valid approval inspection sticker was issued to the vehicle within the past 11 months. (The vehicle must be reinspected if the expiration of the original inspection sticker is in the month the request is being made.)

4. The Safety Division trooper will verify by the inspection receipt that the vehicle was issued an approval inspection sticker within the past 11 months and will then issue a replacement inspection sticker to the vehicle. If any obvious equipment defects are detected during the replacement process, the vehicle will not be issued a replacement approval sticker.

5. The Safety Division trooper will complete the inspection sticker receipt for the approval sticker from information contained on the original receipt. The date the replacement sticker is issued will be used in the date space. In the space for Inspection Related Charges, the trooper will insert the word "REPLACEMENT" and the sticker number from the original inspection receipt.

6. The Safety Division trooper will sign the receipt vertically in the O.K. column in the "Equipment Inspected" blocks. These blocks will not otherwise be completed.

7. The Safety Division trooper shall place month and year inserts on the inspection sticker to reflect the expiration as shown on the original approval inspection sticker and place the inspection sticker on the windshield in accordance with the requirements of subsection C of this section.

8. The Safety Division trooper will enter the replacement information into the MVIP system.

P. New vehicle safety inspections.

1. Section 46.2-1158.01 of the Code of Virginia allows an employee who customarily performs the inspection requirement of a manufacturer or distributor of new motor vehicles to place an inspection sticker furnished by the Department of State Police on the vehicle once it has met the requirements of that manufacturer or distributor. This employee does not have to be a certified safety inspector.

2. With the addition of other personnel using Department of State Police inspection supplies, a system shall be developed at each inspection station to afford accountability of all supplies. The system shall include proper safeguards to prevent the loss of supplies through carelessness, neglect, theft, or unauthorized use.

3. Inspection stations shall not mix annual state inspections with predelivery inspections (PDI) in the same book of inspection stickers.

4. All employees shall be reminded that anyone who performs inspections, whether it be for the annual inspection or the PDI inspection, is subject to criminal prosecution if inspection supplies are used illegally or used in some other unauthorized way.

5. Station management and licensed safety inspectors are subject to administrative sanctions for any misuse of inspection supplies.

6. The inspection receipts shall be completed as usual with the following exceptions: On the "inspector" line, the initials "PDI" (for predelivery inspection) and the printed employee's name performing the inspection shall be

entered. On the "inspector's license number" line, the letters "N/A" shall be entered. In the equipment inspected section, the words "New Vehicle" shall be entered in the "adjust" column. The PDI employee performing the inspection shall sign his name in the "O.K." column.

19VAC30-70-160. Auxiliary lamps: backup; cornering; driving; fog; spot and warning.

A. Auxiliary lamps on a vehicle consist of seven general types: backup lamps (SAE-R), cornering lamps (SAE-K), driving lamps (SAE-Y), front fog lamps with an amber or clear lens (SAE-F and rear fog lamps with red lens (SAE-F2), spot lamps (SAE-O), warning lamps (SAE-W, W2, W3), and daytime running lamps (DRLs) (SAE-Y2).

B. School buses may be equipped with an eight-lamp warning system of two red and two amber warning lamps of an approved type (SAE-W2) on the front and rear of such vehicle.

1. School buses may also be equipped with roof-mounted flashing white or amber warning lamps of an approved type (SAE-W2).

2. In addition to required warning lamps, school buses may be equipped with a stop signal arm consisting of an octagonal sign which meets FMVSS specifications (Federal Motor Vehicle Safety Standards, 49 CFR Part 571). The stop signal arm shall be reflectorized or be equipped with two red warning lamps of an approved type.

C. There is no limit on the number of backup lamps that a vehicle may have so long as they are of an approved type (SAE-R).

D. No more than four lamps, including two headlamps, may be lighted at any time to provide general illumination ahead of the vehicle.

E. Approved type (DOT or SAE-W) blue or blue and red lights are permitted on Department of Corrections vehicles designated by the Director of the Department of Corrections and any law-enforcement vehicle.

1. Approved type secondary warning lights installed only on the four corners, on law-enforcement vehicles, Department of Corrections, fire apparatus, government-owned vehicle operated on official business by a local fire chief or other local fire official, rescue squad vehicle, ambulance, or any other emergency medical vehicles. These lights shall also have primary warning lights installed.

2. The hide-away or undercover strobe lights shall be installed in the side marker lights, tail lights or parking lights. The strobe itself must be clear and the lens color must continue to be the same type and color as originally approved. It will not be permissible to install the hide-away lights in the headlights or in the backup lights.

3. Approved type (SAE-W) red warning lights or red and white lights showing to the front are permitted on fire department vehicles, including publicly-owned state forest

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warden vehicles, ambulances, any rescue vehicle used for emergency calls, local department of emergency management, animal warden vehicles, school buses and vehicles used by security personnel at the Newport News Shipbuilding and Drydock Company, Bassett-Walker, Incorporated, the Tultex Corporation, the Winchester Medical Center, or the National Aeronautics and Space Administration's Wallops Flight Facility.

4. No more than two flashing or steady-burning red lights or red and white combination lights of an approved type (SAE-W) may be installed on one vehicle owned by any member of a fire department, volunteer fire company or volunteer rescue squad, any ambulance driver employed by a privately-owned ambulance service, and any police chaplain.

F. Vehicles mentioned in subsection E of this section permitted to be equipped with flashing, blinking or alternating red, red and white, blue, or blue and red emergency lights (except vehicles owned by any member of a fire department, volunteer fire company, volunteer rescue squad or any ambulance driver employed by a privately-owned ambulance service) may be equipped with the means to flash their headlamps when their emergency warning lamps are activated provided:

1. The headlamps are wired to allow either the upper beam or lower beam to flash but not both.
2. The headlamp system includes a switch or device which prevents flashing of headlamps when headlamps are required to be lighted pursuant to current statute.
3. Emergency vehicles in Chesapeake, Poquoson, and York County may be equipped with flashing headlights that will function whenever their warning lights are activated.

G. Any firefighting vehicle, ambulance, rescue or life-saving vehicle, Virginia Department of Transportation vehicle, or tow truck may be equipped with clear auxiliary lamps which shall be used exclusively for lighting emergency scenes. Such lamps shall be of a type permitted by the superintendent. Any government-owned police vehicle may be equipped with clear auxiliary lamps of a type approved by the superintendent.

H. Approved type (SAE-W) amber flashing, blinking or alternating lights are permitted on vehicles used for the principal purpose of towing or servicing disabled vehicles or in constructing, maintaining and repairing highways or utilities on or along public highways and vehicles used for the principal purpose of removing hazardous or polluting substances from the state waters or drainage areas on or along public highways. Such lamps are permitted on vehicles used for servicing automatic teller machines, refuse collection vehicles, hi-rail vehicles and on vehicles used for towing or escorting over-dimensional materials, equipment, boats, or manufactured housing units by authority of highway hauling permit.

1. Approved type (SAE-W) amber flashing, blinking or alternating lights are permitted on fire apparatus, government-owned vehicles operated on official business by a local fire chief or other local fire official, rescue squad vehicles, ambulances, and any other emergency medical vehicles to be equipped with alternating blinking or flashing red, or red and white secondary lights mounted inside the vehicle's tail lights or marker lights.

2. Approved type (SAE-W) amber flashing, blinking or alternating lights are permitted on vehicles owned and used by municipal safety officers in the performance of their official duties, businesses providing security services and vehicles used to collect and deliver the United States mail, vehicles used by law-enforcement personnel in the enforcement of laws governing motor vehicle parking, government-owned law-enforcement vehicles provided the lights are used for giving directional warning and vehicles used to provide escort for funeral processions.

3. Approved type (SAE-W) amber flashing, blinking or alternating lights are permitted on vehicles used as pace cars, security vehicles, or firefighting vehicles by any speedway or motor vehicle race track.

4. An approved type (SAE-W) amber flashing, blinking or alternating light may be mounted on the rear of any vehicle used to transport petroleum products. The light must be wired through the reverse gear circuit and activate in conjunction with the back-up lights and audible alarm.

5. An approved type (SAE-W) green warning light is permitted on vehicles used by police, firefighting, or rescue personnel as command centers at the scene of incidents. Such lights shall not be activated while the vehicle is operating upon the highway.

I. Inspect for and reject if:

1. Vehicle has an auxiliary lamp being used for a purpose other than for which it was approved.

EXCEPTION: Any lighting device that is both covered and not illuminated, other than lamps required, shall not be considered for inspection. Fog and driving lamps mounted below the level of the regular headlamps must be checked for aim as outlined in subdivisions I 10 i and I 11 g of this section if not covered.

NOTE: The covers shall be a type that would be installed as original equipment and not tape, paper bags, aluminum foil or similar materials per subdivision I 11 g (2) of this section.

2. A vehicle has installed on it a warning lamp (DOT or SAE-W) that is not of an approved type or has been altered.

Reject if the vehicle has wire, unapproved lens or plastic covers, any other materials that are not original equipment or any colored material placed on or in front of any auxiliary lamps: backup, cornering, driving, fog, spot, or warning lamps.

3. Motor vehicles may be equipped with more than two fog or auxiliary lights; however, only two of these types of lights can be illuminated at any time. Reject a vehicle equipped with a headlamp mounted or used as an auxiliary lamp.

4. Vehicle is equipped with an auxiliary lamp that does not function properly. (If an auxiliary lamp has been modified by removing the wiring, bulb and socket, the unit will be considered an ornament and not a lamp and will not be considered in inspection.)

5. Vehicle is equipped with a lighted advertising sign, except commercial motor vehicles, buses operated as public carriers, taxicabs, and privately-owned passenger cars used for home delivery of commercially prepared food. Commercial motor vehicles, buses operated as public carriers, and taxicabs may be equipped with vacant and destination signs and one steady burning white light for the nighttime illumination of external advertising. Privately-owned passenger cars used for home delivery of commercially prepared food may be equipped with one steady burning white light for the nighttime illumination of a sign identifying the business delivering the food. Do not reject approved identification lights.

6. Any lamp is not of an approved type or if lamps to be burned together as a pair do not emit the same color light.

7. The lens has a piece broken from it. The lens may have one or more cracks provided an off-color light does not project through the crack or cracks. Taping or gluing cracks or pieces is not permitted.

8. Backup lamps are not required. However, if installed they must operate and be inspected.

Inspect for and reject if:

- a. Lamps are not of an approved type (DOT or SAE-R) or a lamp has been altered;
- b. Wiring or electrical connections are defective or filaments do not burn;
- c. The lens has a piece broken from it. The lens may have one or more cracks provided an off-color light does not project through the crack or cracks. Taping or gluing cracks or pieces is not permitted;
- d. Lens is other than clear. LED (light-emitting diode) lights with a clear lens are acceptable if of an approved type. For those vehicles that are equipped with a multiple LED light (not filament-burning bulbs), they will pass inspection if more than 50% of the diode lights are burning;
- e. Lamps are not wired into the reverse gear. Vehicles manufactured without backup lamps may be wired into an independent circuit.

9. Cornering lamps are not required. However, if installed they must operate and be inspected.

Inspect for and reject if:

a. Lamps are not of an approved type (DOT or SAE-K) or a lamp has been altered;

b. Wiring or electrical connections are defective or filaments do not burn;

c. The lens has a piece broken from it. The lens may have one or more cracks provided an off-color light does not project through the crack or cracks. Taping or gluing cracks or pieces is not permitted;

d. The color of the light is other than clear or amber;

e. The lamps do not burn in conjunction with the turn signals.

10. Driving lamps are not required. However, if installed they must operate and be inspected.

Inspect for and reject if:

a. Driving lamps are installed on vehicles equipped with the four-headlamp system, except the "F" type headlamp system;

b. A vehicle is equipped with more than two driving lamps;

c. Driving lamps are not of an approved type or have been altered;

d. The color of the lamp is other than white;

e. The lens has a piece broken from it or is rotated away from its proper position. The lens may have one or more cracks provided an off-color light does not project through the crack or cracks. Taping or gluing cracks or pieces is not permitted;

f. Wiring or electrical connections are defective;

g. Any driving lamp is mounted above the level of the regular headlamps, or is not mounted firmly to prevent excessive vibration;

h. Driving lamps are not wired so that they will burn only when the high beams of the regular headlamps are activated;

i. Driving lamps are not aimed so that the center of the hot spot drops three inches in 25 feet so that the hot spot is directly ahead of the lamp;

NOTE: Driving lamps must be aimed using the optical headlight aimer. A tolerance of four inches in 25 feet is allowed in both the horizontal and the vertical adjustment.

11. Fog lamps are not required. However, if installed they must operate and be inspected.

Inspect for and reject if:

a. A vehicle may be equipped with more than two fog lamps; however, not more than two fog lamps can be illuminated at any time;

b. Lamps are not of an approved type (DOT or SAE-F on front or F2 on rear plus two-digit year and manufacturer) or a lamp has been altered;

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- c. The lens is other than clear or amber. Fog lamps may have black-end bulbs or small metal caps over the end of the bulb;
- d. The lens has a piece broken from it or is rotated away from its proper position. The lens may have one or more cracks provided an off-color light does not project through the crack or cracks. Taping or gluing cracks or pieces is not permitted;
- e. Wiring or electrical connections are defective or filaments do not burn;
- f. Any fog lamp is mounted above the level of the regular headlamps, or is not mounted firmly;
- g. Lamps are not wired and aimed according to the following instructions:

(1) Fog lamps are general illumination lamps as covered in subsection A of this section. They must burn through the tail light circuit even if on a separate switch. If installed on a vehicle with a four-headlamp system, or a vehicle equipped with driving lamps, they must be wired into the low beam circuit.

(2) Fog lamps must be aimed so that the top edge of the high intensity zone is set at the horizontal centerline and the left edge of the high intensity zone is set at the vertical centerline. (Same as low beam headlights.)

NOTE: Fog lamps must be aimed using the optical headlight aimer. A tolerance of four inches in 25 feet is allowed in both the horizontal and the vertical adjustment.

12. Spot lamps are not required; however, if installed they must operate and be inspected.

Inspect for and reject if:

- a. Vehicle is equipped with more than two spot lamps;
- b. Lamps are not of an approved type (DOT or SAE-O) or a lamp has been altered;
- c. The lens in any spot lamp is other than clear;
- d. The lens has a piece broken from it or is rotated away from its proper position. The lens may have one or more cracks provided an off-color light does not project through the crack or cracks. Taping or gluing cracks or pieces is not permitted;
- e. Wiring or electrical connections are defective or filaments do not burn.

13. Daytime running lamps (DRLs) are not required. However, if installed they must operate and be inspected. DRLs must be installed in pairs.

NOTE: DRLs may or may not be wired into the tail light circuit.

Inspect for and reject if:

- a. Any lamp, except headlamps, used as DRLs if not an approved type (SAE-Y2) and is not marked "DRL";
- b. Fog lamps or parking lamps are used as DRLs;

- c. More than one pair of lamps is used ~~and/or~~ and designated as DRLs;
- d. A DRL is mounted higher than 34 inches measured to the center of the lamp;
- e. The color is other than white to amber;
- f. DRLs do not deactivate when the headlamps are in any "on" position.

Any DRL optically combined with a turn signal or hazard lamp must deactivate when the turn signal or hazard lamp is activated and then reactivate when the turn signal or hazard lamp deactivates.

VA.R. Doc. No. R17-5173; Filed July 6, 2017, 10:33 a.m.

TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Fast-Track Regulation

Title of Regulation: **23VAC10-330. Bank Franchise Tax (amending 23VAC10-330-20, 23VAC10-330-30).**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 6, 2017.

Effective Date: October 23, 2017.

Agency Contact: James Savage, Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261, telephone (804) 371-2301, or email james.savage@tax.virginia.gov.

Basis: Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

Purpose: This regulatory action is needed to amend two sections of the Bank Franchise Tax Regulation, 23VAC10-330-20 and 23VAC10-330-30, that do not conform to legislative changes and current tax policy. Some of the language in these sections can be repealed because it refers to tax forms that the department no longer uses. Other language will be updated so that it conforms to legislative changes and current tax policy. Amendment of these sections does not reflect any change in existing tax policy and will have no impact on the administration of the tax. As this regulatory action does not reflect a change in existing departmental policy, it will have no effect on the health, safety, and welfare of citizens.

Rationale for Using Fast-Track Rulemaking Process: The fast-track rulemaking process is intended for regulatory

actions that are expected to be noncontroversial. As the regulation will be amended to reflect current law and will not make any changes to the department's current policy regarding the Bank Franchise Tax, this action is not expected to be controversial. Current law and tax policy form the basis for the proposed changes to this regulation.

Substance: This regulatory action will amend Bank Franchise Tax Regulation sections, 23VAC10-330-20 and 23VAC10-330-30, relating to the computation of net capital and deductions from gross capital. Some language is outdated because it has not been amended to conform to the following legislation enacted by the General Assembly:

- Chapter 84 of the 1999 Acts of Assembly: This legislation replaced a deduction for any reserve for loan losses with an addback to gross capital in the amount of one half of any reserve for loan losses net of applicable deferred tax.
- Chapter 667 of the 2002 Acts of Assembly: This legislation created a deduction equal to 90% of goodwill created in connection with any acquisition or merger occurring on or after July 1, 2001, and provided that "goodwill" must be determined using generally accepted accounting principles.
- Chapter 3 of the 2004 Acts of Assembly: This legislation created a deduction for any portion of the amount added to federal taxable income pursuant to subdivision B 9 of § 58.1-402 of the Code of Virginia by a corporation that is for interest expenses and costs paid to the bank for a loan or other obligation made by the bank to such corporation, provided that certain conditions are met.

Some language is also outdated because it refers to Schedule A of Form 64, which the department no longer uses. Therefore, this regulatory action will repeal language that is outdated and will update other language to conform to legislative changes and current tax policy. Amending this section does not reflect any change in existing tax policy and will have no impact on the administration of tax.

Issues: The advantage of this regulatory action is that it will ease voluntary taxpayer compliance and the department's administration of the state tax laws by amending regulation sections that do not conform to legislative changes and current policy. Amending this regulatory section will result in no disadvantage to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Taxation (Tax) proposes to amend its bank franchise tax regulation to remove references to an obsolete tax form schedule and to conform language dealing with the calculation of gross capital and deductions to legislative changes that were passed in 1999, 2002 and 2004.

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

Estimated Economic Impact. The sections of this regulation that this regulatory action changes (23VAC10-330-20 and 23VAC10-330-30) were promulgated in 1985 and have not been changed since. Tax now proposes to update this regulation to remove a reference to Schedule A of Form 64 (the Bank Franchise Tax Return) that is no longer used. Tax also proposes to make changes to these sections to conform them to legislative changes passed in 1999¹, 2002² and 2004.³ Since all proposed changes to this regulation have already been in force as statutory law, no entity is likely to incur costs on account of this regulatory action. Interested parties who read this regulation will likely benefit from these changes as they remove and amend obsolete language that may cause confusion.

Businesses and Entities Affected. These proposed regulatory changes will affect all banks that pay the bank franchise tax. Tax reports that 123 banks in Virginia paid this tax in fiscal year 2016.

Localities Particularly Affected. No locality is likely to be particularly affected by these proposed regulatory changes.

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 incur any additional costs on account of these proposed regulatory changes.

Alternative Method that Minimizes Adverse Impact. No small businesses are likely to incur any additional costs on account of these proposed regulatory changes.

Adverse Impacts:

Businesses. No businesses are likely to incur any additional costs on account of these proposed regulatory changes.

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

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

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¹Chapter 84 of the 1999 Acts of Assembly replaced a deduction for any reserve for loan losses with an addback to gross capital in the amount of one half of any reserve for loan losses net of applicable deferred tax.

²Chapter 667 of the 2002 Acts of Assembly created a deduction equal to 90 percent of the value of "goodwill" created in connection with any acquisition or merger occurring on or after July 1, 2001 and specified that the value of "goodwill" must be determined using generally accepted accounting principles.

³Chapter 3 of the 2004 Acts of Assembly created a deduction for any portion of the amount added to federal taxable income pursuant to subdivision B 9 of § 58.1-402 of the Code of Virginia by a corporation that is for interest expenses and costs paid to a bank for a loan or other obligation made by the bank to such corporation (so long as certain conditions are met).

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

Summary:

The amendments (i) repeal language that is outdated and (ii) make updates to conform the regulation to changes in statute and current tax policy relating to computation of net capital and deductions from gross capital.

23VAC10-330-20. Computation of net capital.

A. Generally. The net capital of a bank is computed as follows:

1. Compute gross capital by adding the following accounts as reported on the report of condition: (1) (i) preferred stock, (2) (ii) common stock, (3) (iii) surplus, (4) (iv) undivided profits and reserve for contingencies and other capital reserves, and (v) one half of any reserve for loan losses net of applicable deferred tax.

2. Deducting from the gross capital: (1) (i) assessed value of real estate as set forth in 23VAC10-330-30, (2) (ii) book value of certain tangible personal property as set forth in 23VAC10-330-30, (3) (iii) the pro rata share of capital attributed to U.S. government obligations as set forth in 23VAC10-330-30, (4) (iv) certain capital accounts of bank subsidiaries as set forth in 23VAC10-330-30, (5) ~~the total of (a) the applicable amount of any reserve for loan losses as regulated herein and (b) (v) the applicable amount of any reserve for marketable securities valuation as regulated herein in this section, and (vi) the value of goodwill as defined by subdivision B 8 of this section.~~

B. Terms used in this section. The terms used in this section, requiring further explanation, and ~~which that~~ are not regulated elsewhere are as follows:

1. ~~Capital stock.~~ "Capital stock" shall include all outstanding shares of capital stock of all classes as shown on the official report of condition of the bank or trust company.

2. ~~Surplus.~~ "Surplus" shall be the amount as shown on the official report of condition of the bank or trust company and shall include, if any, reserves for contingencies and other capital account reserves.

3. ~~Undivided profits.~~ "Undivided profits" shall be the amount as shown on the official report of condition of the bank or trust company.

4. ~~Gross capital.~~ "Gross capital" shall be the total of capital stock, surplus, ~~and undivided profits, and one half of any reserve for loan losses net of applicable deferred tax as regulated herein in this section.~~

5. ~~Reserve for loan losses.~~ ~~An established reserve for loan losses, not in excess of the amount of reserve allowable by the Internal Revenue Service for federal taxable income tax purposes, is allowable in computing the net taxable capital of a bank.~~

~~If a portion of the reserve for loan losses allowable for federal income tax purposes is included in gross capital (surplus, undivided profits or surplus reserves) on the bank's official report of condition, such portion may be deducted from total capital in computing net taxable capital.~~

~~If the amount of reserve for loan losses deducted by the bank in computing total capital accounts shown on its report of condition exceeds the amount of reserve for loan losses allowable for federal income tax purposes, such excess must be added to total capital accounts in computing net taxable capital.~~

~~The details of all reserves for loan losses and any such deduction or addition must be reflected in Schedule G of Form 64, Bank Franchise Tax Return.~~

5. Reserve for loan losses. An addition to gross capital must be made equal to one half of the reserve for loan losses net of applicable deferred tax.

a. "Reserve for loan losses" is the amount of the reserve for loan losses as shown on the bank's official report of condition.

b. "Applicable deferred tax" equals the "reserve for loan losses" divided by two and then multiplied by the bank's effective federal and state income tax rates that were used to calculate any deferred tax amounts included in the bank's official report of condition, but not less than zero.

6. Valuation reserve for marketable securities. For purposes of computing net taxable capital, an established reserve carried on the books of the bank for valuation of marketable securities is allowable to the extent that such valuation reserve does not decrease the carrying value of securities (gross value of securities included in report of condition less valuation reserve) below the current market value of the securities on December 31 next preceding the due date for filing the bank franchise tax return.

If any portion of such allowable reserve is included in total capital accounts on the bank's report of condition, such portion may be deducted from total capital in computing net taxable capital.

Any portion of a valuation reserve included in computing total capital accounts which is in excess of an allowable reserve must be added to total capital in computing net taxable capital.

~~The details of all valuation reserves for marketable securities and the details of any such deduction or addition must be reflected on Schedule A of Form 64, Bank Franchise Tax Return.~~

7. Official report of condition. "Official report of condition" shall be the report of condition required by the Comptroller of the Currency, Department of the Treasury, or the Bureau of Financial Institutions, State Corporation Commission.

8. "Goodwill" shall be determined using generally accepted accounting principles.

23VAC10-330-30. Deductions from gross capital.

A. Generally. In addition to items explained in 23VAC10-330-20 B, deductions from gross capital include the ~~(4)~~ (i) assessed value of real estate, ~~(2)~~ (ii) book value of certain tangible personal property, ~~(3)~~ (iii) capital attributable to qualifying U.S. government obligations, and ~~(4)~~ (iv) amount of capital accounts of certain bank subsidiaries. These items are regulated herein in this section.

B. Assessed value of real estate.

1. Deductible assessed value of real estate for bank franchise tax purposes is limited to the assessed value of real estate ~~if~~:

a. If otherwise taxed in this Commonwealth ~~which that~~ is ~~(4)~~ (i) owned by such bank, or ~~(2)~~ (ii) used or occupied by such bank if held in the name of (a) ~~of~~ a majority-owned subsidiary of the bank or (b) ~~of~~ a bank holding company ~~which that~~ owns a majority of the capital stock of such bank, or (c) ~~of~~ any wholly owned subsidiary of the bank holding company ~~which that~~ owns a majority of the capital stock of such bank.

b. If real estate is in the nature of improvements to real estate owned by and assessed in the name of another person (the underlying land owner) and such improvements are ~~(a)~~ (i) owned by the bank, or ~~(b)~~ (ii) used or occupied by the bank and owned by a majority-owned subsidiary or by a wholly owned subsidiary of a bank holding company, the assessed value up to the amount of unencumbered equity is deductible. The unencumbered equity shall be deemed to mean the assessed value of such improvements less the unpaid balance of all encumbrances thereto.

Example—1: Bank F constructs a bank building on land owned by and leased from Corporation C. While the total value is assessed in the name of Corporation C, the land owner, Bank F may deduct the portion of the total real estate tax assessment attributable to the value of the building to the extent not encumbered.

2. Real estate used or occupied by a subsidiary or real estate originally conveyed as collateral for loans made by a subsidiary of the bank and reacquired upon foreclosure of mortgage loans will be deemed to be used or occupied by the bank.

1. a. The assessed value for the deduction of real estate shall be the value for the most recent tax assessment made prior to January 1 of the current bank franchise tax year for real estate owned by the bank or affiliate on January 1 of the current franchise tax return year and shall include the assessment for real estate acquired during the preceding year even though assessed for such preceding year in the name of the prior owner.

2. b. If the same real estate is assessed by more than one taxing jurisdiction, such as town, district and county, the assessed value of only one of such jurisdictions may be deducted from gross capital.

3. c. If the real estate is owned by a majority-owned subsidiary of a bank, and the bank does not own all the stock of such subsidiary, the bank shall be entitled to deduct only such portion of the assessed value of the real estate as the common stock it owns in such subsidiary bears to the outstanding common stock of such corporation.

C. Book value of certain tangible personal property. Tangible personal property qualifying for deduction must be ~~(4)~~ (i) owned by the bank or a majority-owned subsidiary of the bank, and ~~(2)~~ must be (ii) held for lease, and ~~(3)~~ must be (iii) otherwise taxed in Virginia.

1. The deductible amount shall be the book value of the qualifying tangible personal property owned as of January 1 of the current year franchise tax return.

2. If the tangible personal property is owned by a majority-owned subsidiary, and the bank does not own all the stock of such subsidiary, the bank shall be entitled to deduct only such portion of the book value of such tangible personal property as the common stock it owns in such subsidiary bears to the whole issue of common stock of such corporation.

D. Capital attributed to U.S. ~~government~~ obligations. The allowable deduction for ~~government~~ U.S. obligations shall be an amount which shall equal the same percentage of the gross capital account at December 31 next preceding the bank franchise tax year, as the obligations of the United States bear to the total assets of the bank. Qualifying ~~government~~ U.S. obligations means all obligations of ~~(4)~~ (i) the United States exempt from taxation under 31 U.S.C. Section USC § 3124, or the United States Constitution, or any other statute, or ~~(2)~~ (ii) any instrumentality or agency of the United States which obligations shall be exempt from ~~State state~~ or local taxation under the United States Constitution, or any statute of the United States.

Regulations

1. Computation of deduction. The percentage of U.S. obligations shall be determined by averaging the percentage of U.S. obligations to total assets for the four most recent (or less in case of a new bank) Reports of Condition. The average percentage shall be multiplied by the gross capital of the bank as defined in 23VAC10-330-20. The result shall be the capital attributed to U.S. obligations and is the deduction.

2. Merger of banks. Banks merging during the year must use the four most recent quarterly Reports of Condition, including any reports filed in the name of the banks prior to merger, to compute the capital attributable to U.S. ~~government~~ obligations. Those quarterly Reports of Condition filed in the name of each bank prior to merger, and used in the computation of capital attributed to U.S. obligations, must be combined on a quarterly basis to properly reflect the total U.S. obligations and total assets of the merging banks.

Gross capital account means the capital, surplus and undivided profits at December 31 next preceding the tax year. See 23VAC10-330-20.

E. Retained earnings and surplus of certain subsidiaries. The deduction from gross capital of the bank is limited to the amount of increase in the bank's recorded investment in its subsidiaries resulting from undistributed earnings of such subsidiaries.

The deduction from gross capital of the bank is limited to the amount included in gross capital on the bank's report of condition which represents the undistributed earnings of its subsidiaries during the period of the bank's investment in such subsidiaries. Accordingly, it may be applicable only if a bank reports its subsidiary investment accounts at equity values.

F. Interest expenses and costs paid by a related member. Any portion of the amount added to federal taxable income pursuant to subdivision B 9 of § 58.1-402 of the Code of Virginia by a corporation that is for interest expenses and costs paid to the bank for a loan or other obligation made by the bank to such corporation shall be deducted from the gross capital of the bank provided that the requirements set forth in subdivision A 4 of § 58.1-1206 of the Code of Virginia are satisfied.

VA.R. Doc. No. R17-4854; Filed July 10, 2017, 9:41 a.m.

GENERAL NOTICES/ERRATA

DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Behavioral Health and Developmental Services is conducting a periodic review and small business impact review of **12VAC35-12, Public Participation Guidelines**.

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 August 7, 2017, and ends August 28, 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 Ruth Anne Walker, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 225-2252, FAX (804) 786-8623, or email ruthanne.walker@dbhds.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.

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Behavioral Health and Developmental Services 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.

12VAC35-190, Regulations for Voluntarily Admissions to State Training Centers

12VAC35-200, Regulations for Emergency and Respite Care Admission to State Training Centers

12VAC35-210, Regulations to Govern Temporary Leave from State Mental Health and State Mental Retardation Facilities

The comment period begins August 7, 2017, and ends September 7, 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 Ruth Anne Walker, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 225-2252, FAX (804) 786-8623, or email ruthanne.walker@dbhds.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 Virginia Regulatory Town Hall, and a report of the small business impact review will be published in the Virginia Register of Regulations.

DEPARTMENT OF ENVIRONMENTAL QUALITY

2016 Water Quality Assessment Integrated Report

The Virginia Department of Environmental Quality (DEQ) will release the Draft 2016 Water Quality Assessment Integrated Report (Integrated Report) on August 7, 2017, for public comment.

The Integrated Report combines both the 305(b) Water Quality Assessment and the 303(d) Report on Impaired Waters. Both are required by the Federal Clean Water Act and the Virginia Water Quality Monitoring Information and Restoration Act. The report will be available for download on the DEQ website at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityAssessments.aspx> throughout the public comment period, which will end September 6, 2017.

A public webinar summarizing the Integrated Report is scheduled for August 24, 2017. The public is invited to submit questions pertaining to the report during this event. All submitted questions will be addressed in a "FAQ"

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document that will be subsequently posted on the DEQ webpage. Registration information for the webinar can be found at <https://attendee.gotowebinar.com/register/8931096941103573505>.

Written comments on the draft Integrated Report can be sent to Sandra Mueller, Department of Environmental Quality, Office of Water Monitoring and Assessment, P.O. Box 1105, Richmond, VA 23218, by telephone at (804) 698-4324, or via email to sandra.mueller@deq.virginia.gov. Please include name, (U.S. mail) address, telephone number, and email address.

DEPARTMENT OF FORENSIC SCIENCE

Approved Marijuana Field Tests for Detection of Marijuana Plant Material

In accordance with the Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material (6VAC40-50) and under the authority of the Code of Virginia, the following marijuana field tests for detection of marijuana plant material are approved field tests:

THE SAFARILAND GROUP
13386 INTERNATIONAL
PARKWAY
JACKSONVILLE, FLORIDA
32218-2383

NIK

Drug or Drug Type:	Manufacturer's Field Test:
Marijuana	Test E Duquenois-Levine Reagent

ODV NarcoPouch

Drug or Drug Type:	Manufacturer's Field Test:
Marijuana	908 Duquenois-Levine Reagent

SIRCHIE FINGERPRINT
LABORATORIES
100 HUNTER PLACE
YOUNGSVILLE, NORTH
CAROLINA 27596

NARK II

Drug or Drug Type:	Manufacturer's Field Test:
Marijuana	05-Duquenois-Levine Reagent

LYNN PEAVEY COMPANY
10749 WEST 84th TERRACE
LENEXA, KANSAS 66214-3612

QuickCheck

Drug or Drug Type:	Manufacturer's Field Test:
Marijuana	Marijuana (Duquenois-Levine Reagent)-10120

Contact Information: Amy M. Curtis, Department Counsel, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857, or email amy.curtis@dfs.virginia.gov.

BOARD OF PHARMACY

Scheduling of Chemicals in Schedule I

Pursuant to § 54.1-3443 D of the Code of Virginia, the Board of Pharmacy is giving notice of a public hearing to consider placement of chemical substances in Schedule I of the Drug Control Act. The public hearing will be conducted at 9 a.m. on September 26, 2017, at the Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, VA 23233. Public comment may also be submitted electronically or in writing prior to June 13, 2017, to Caroline Juran, Executive Director of the Board of Pharmacy to caroline.juran@dhp.virginia.gov.

Public comment period: August 7, 2017, through September 7, 2017.

The following compounds are classified as research chemicals. Compounds of this type have been placed in Schedule I (subdivision 3 of § 54.1-3446 of the Code of Virginia) in previous legislative sessions.

1. 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT), its optical, position, and geometric isomers, salts and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.
2. 5-methoxy-N-methyl-N-isopropyltryptamine (5-MeO-MIPT), its optical, position, and geometric isomers, salts and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.
3. 5-methoxy-N-ethyl-N-isopropyltryptamine (5-MeO-EIPT), its optical, position, and geometric isomers, salts and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

4. 4-hydroxy-N,N-diisopropyltryptamine (4-OH-DIPT), its optical, position, and geometric isomers, salts and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

5. (N-methyl aminopropyl)-2,3-dihydrobenzofuran (MAPDB), its optical, position, and geometric isomers, salts and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

6. 3,4-tetramethylene-alpha-pyrrolidinovalerophenone (TH-PVP), its optical, position, and geometric isomers, salts and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

7. 4-chloro-alpha-methylamino-valerophenone (4-chloropentedrone), its optical, position, and geometric isomers, salts and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The following compounds are powerful synthetic opioids. Compounds of this type have been placed in Schedule I (subdivision 1 of § 54.1-3446 of the Code of Virginia) in previous legislative sessions.

1. 2-methoxy-N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-acetamide (Methoxyacetyl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation.

2. N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopropanecarboxamide (Cyclopropyl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation.

The following compound is classified as a cannabimimetic agent. Compounds of this type have been placed in Schedule I (subdivision 6 of § 54.1-3446 of the Code of Virginia) in previous legislative sessions.

N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)indazole-3-carboxamide (5-fluoro-ADB-PINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

Contact Information: Caroline Juran, RPh, Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Order for Attack Investors, LLC

An enforcement action has been proposed for Attack Investors, LLC. The consent order describes a proposed action to resolve certain violations of State Water Control Law and the applicable regulations. A description of the proposed action is available online at www.deq.virginia.gov. Lee Crowell will accept comments by email at lee.crowell@deq.virginia.gov or postal mail at Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, from August 7, 2017, through September 6, 2017.

Proposed Consent Special Order for Conny Oil Inc.

An enforcement action has been proposed with Conny Oil Inc. for violations in Roanoke, 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 August 7, 2017, to September 6, 2017.

Proposed Consent Order for Nutley Street Service Center, LLC

An enforcement action has been proposed for Nutley Street Service Center, LLC for violations of the State Water Control Law and regulations at the Nutley Street Service Center located in Fairfax, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Nutley Street Service Center. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from August 8, 2017, through September 7, 2017.

Amendment of Water Quality Management Planning Regulation

Notice of action: The State Water Control Board is considering the amendment of the regulation on water quality management planning in accordance with the public participation procedures for water quality management planning. A regulation is a general rule governing people's rights or conduct that is upheld by a state agency.

Purpose of notice: The board is seeking comments through the Department of Environmental Quality (DEQ) on the proposed amendment. The purpose of the amendment to the state's Water Quality Management Planning Regulation

General Notices/Errata

(9VAC25-720) is to adopt 12 new and three revised total maximum daily load (TMDL) wasteload allocations.

Public comment period: August 7, 2017, through September 6, 2017.

Description of proposed action: DEQ staff will propose amendments of the state's Water Quality Management Planning Regulation for the James River Basin (9VAC25-720-60 A), the Roanoke River Basin (9VAC25-720-80 A), the Tennessee-Big Sandy River Basin (9VAC25-720-90 A), and the Chesapeake Bay-Small Coastal-Eastern Shore River Basin (9VAC25-720-110 A). Statutory authority for promulgating these amendments can be found in § 62.1-44.15(10) of the Code of Virginia.

Staff intends to recommend (1) that the board approve the five TMDL reports as the plan for the pollutant reductions necessary for attainment of water quality goals in the impaired segments, (2) that the board authorize inclusion of the five TMDL reports in the appropriate Water Quality Management Plan, and (3) that the board adopt 12 new and three revised TMDL wasteload allocations (WLAs) as part of the state's Water Quality Management Planning Regulation in accordance with § 2.2-4006 A 14 and § 2.2-4006 B of the Code of Virginia.

The TMDL reports were developed in accordance with federal regulations (40 CFR 130.7) and are exempt from the provisions of Article 2 (§ 2.2-4006 et seq.) of the Virginia Administrative Process Act. The reports were subject to the TMDL public participation process contained in DEQ's Public Participation Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDL.

As of July 1, 2014, TMDL WLAs can receive State Water Control Board approval prior to EPA approval due to amendments outlined in § 2.2-4006 A 14 of the Code of Virginia. The five TMDL reports in this public notice have been reviewed by EPA for required TMDL elements but remain in draft form awaiting State Water Control Board approval. The draft reports can be found at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLR eports.aspx>.

Affected waterbodies and localities for the 12 new and three revised TMDL wasteload allocations:

James River Basin (9VAC25-720-60 A):

"Bacteria TMDL Development and a Proactive Approach to Address the Benthic Impairment for Woods Creek, Rockbridge County and City of Lexington, Virginia"

- The Woods Creek TMDL, located in the City of Lexington and Rockbridge County, proposes E. coli

reductions for the Woods Creek watershed and provides a new E. coli wasteload allocation of 3.95E+11 cfu/year.

- The Woods Creek TMDL, located in the City of Lexington and Rockbridge County, proposes a proactive approach to address the benthic impairment on Woods Creek therefore no wasteload allocation is provided.

Roanoke River Basin (9VAC25-720-80 A):

"Bacterial TMDL Development for the Kerr Reservoir Tributaries Watersheds"

- The Kerr Reservoir Tributaries TMDLs, located in Mecklenburg, Charlotte, and Brunswick Counties, proposes E. coli reductions for the Bluestone Creek, Little Bluestone Creek, Upper Allen Creek, Layton Creek, Lower Allen Creek, Kettles Creek, Cotton Creek, Smith Creek, Lizard Creek, and Unnamed Tributary-XUQ01A04 to Allen Creek watersheds and provides new E. coli wasteload allocations of 1.37E+11 cfu/year, 1.49E+12 cfu/year, 2.25E+11 cfu/year, 1.94E+11 cfu/year, 1.28E+12 cfu/year, 5.63E+10 cfu/year, 6.59E+10 cfu/year, 6.56E+11 cfu/year, 9.67E+10 cfu/year, 4.84E+9 cfu/year.

Tennessee-Big Sandy River Basin (9VAC25-720-90 A):

"Bacteria TMDL for McClure River Dickenson County, Virginia"

- The McClure River TMDL, located in Dickenson County, proposes E. coli reductions for the McClure River watershed and provides a new E. coli wasteload allocation of 4.56E+12 cfu/year.

Chesapeake Bay-Small Coastal-Eastern Shore River Basin (9VAC25-720-110 A):

1. "Total Maximum Daily Loads of Bacteria for Poquoson River and Back Creek in the City of Poquoson and York County, Virginia"

- The Poquoson River and Back Creek TMDLs, located in York County and the City of Poquoson, proposes fecal coliform reductions for the Poquoson River and Back Creek watersheds and provides revised fecal coliform wasteload allocations of 3.01E+14 counts/year and 1.76E+13 counts/year.

2. "Total Maximum Daily Loads of Bacteria for Back River in York County and the Cities of Hampton, Poquoson, and Newport News, Virginia"

- The Back River TMDL, located in York County and the Cities of Hampton, Poquoson, and Newport News, proposes fecal coliform reductions for the Back River watershed and provides a revised fecal coliform wasteload allocation of 4.38E+14 counts/year

How to comment: The DEQ accepts written comments by email, fax, and postal mail. All written comments must

include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision. Citizens who submit statements during the comment period may address the board members during the board meeting at which a final decision is made on the proposal.

To review documents: The TMDL reports are available on the DEQ website at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLR eports.aspx>, and by contacting the DEQ representative named below for any report. The electronic copies are in PDF format and may be read online or downloaded.

For public comments, document requests, and additional information contact Kelly Meadows; Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4291, FAX (804) 698-4032, or email kelly.meadows@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *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 <https://commonwealthcalendar.virginia.gov>.

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

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: 22VAC40-61. Standards and Regulations for Licensed Adult Day Care Centers.

Publication: 33:23 V.A.R. 2614 - 2644 July 10, 2017.

Correction to Proposed Regulation:

Page 2641, 22VAC40-61-480 C,

after "of" insert "(i)"

after "with" remove "(i)"

V.A.R. Doc. No. R17-4545; Filed July 20, 2017

