



# VIRGINIA

## REGISTER OF REGULATIONS

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### TABLE OF CONTENTS

<b>Register Information Page</b> .....	1167
<b>Publication Schedule and Deadlines</b> .....	1168
<b>Regulations</b> .....	1169
1VAC50-11. Public Participation Guidelines (Fast-Track) .....	1169
6VAC15-80. Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities (Final) ..	1172
6VAC15-81. Standards for Planning, Design, Construction, and Reimbursement of Local Correctional Facilities (Final) .	1172
11VAC15-40. Charitable Gaming Regulations (Final) .....	1218
12VAC5-490. Virginia Radiation Protection Regulations: Fee Schedule (Proposed) .....	1219
22VAC40-185. Standards for Licensed Child Day Centers (Proposed) .....	1234
22VAC40-661. Child Care Program (Proposed) .....	1262
22VAC40-665. Child Care Program (Proposed) .....	1262
<b>Governor</b> .....	1306
<b>General Notices/Errata</b> .....	1308

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# VIRGINIA REGISTER INFORMATION PAGE

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

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

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

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

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

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

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

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

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

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

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

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

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

## **STATEMENT**

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

## **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. **34:8 VA.R. 763-832 December 11, 2017**, refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

*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; **Gregory D. Habeeb**; **Ryan T. McDougle**; **Robert L. Calhoun**; **Leslie L. Lilley**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Timothy Oksman**; **Charles S. Sharp**; **Noah P. Sullivan**; **Mark J. Vucci**.

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

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## February 2018 through January 2019

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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 ( <b>Tuesday</b> )	July 23, 2018
34:25	July 18, 2018	August 6, 2018
34:26	August 1, 2018	August 20, 2018
35:1	August 15, 2018	September 3, 2018
35:2	August 29, 2018	September 17, 2018
35:3	September 12, 2018	October 1, 2018
35:4	September 26, 2018	October 15, 2018
35:5	October 10, 2018	October 29, 2018
35:6	October 24, 2018	November 12, 2018
35:7	November 7, 2018	November 26, 2018
35:8	November 19, 2018 ( <b>Monday</b> )	December 10, 2018
35:9	December 5, 2018	December 24, 2018
35:10	December 14, 2018 ( <b>Friday</b> )	January 7, 2019

\*Filing deadlines are Wednesdays unless otherwise specified.

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 1. ADMINISTRATION

### COMMISSION ON LOCAL GOVERNMENT

#### Fast-Track Regulation

**Title of Regulation:** **1VAC50-11. Public Participation Guidelines (amending 1VAC50-11-10, 1VAC50-11-20, 1VAC50-11-50, 1VAC50-11-60, 1VAC50-11-90, 1VAC50-11-100).**

**Statutory Authority:** §§ 2.2-4007.02 and 15.2-2903 of the Code of Virginia.

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

**Public Comment Deadline:** March 8, 2018.

**Effective Date:** March 23, 2018.

**Agency Contact:** David Conmy, Local Government Policy Administrator, Department of Housing and Community Development, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-8010, FAX (804) 371-7090, or email david.conmy@dhcd.virginia.gov.

**Small Business Impact Review Report of Findings:** This fast-track regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

**Basis:** Section 15.2-2903 of the Code of Virginia provides the Commission on Local Government (CLG) the general power and duty to make regulations.

**Purpose:** The goal of this proposal is to update the CLG's regulations for greater clarity and consistency based upon a review by the commission and its staff at the conclusion of its periodic review of the regulation.

The regulations are essential to protect the health, safety, and welfare of citizens because they support the CLG's purpose to ensure that all of the Commonwealth's "localities are maintained as viable communities in which their citizens can live" as stipulated in § 15.2-2900 of the Code of Virginia.

All of the proposed amendments to the regulations are minor in nature and include items such as (i) updating definitions and regulations to correspond to changes in the Code of Virginia, including removal of references to "Commonwealth Calendar" and the right to counsel in rulemaking proceedings (Chapter 795 of the 2012 Acts of Assembly), (ii) adding Oxford commas for greater clarity, (iii) updating terminology to be gender neutral, (iv) generalizing the commission's

regular meeting regulations to allow more meeting flexibility but remain consistent with § 15.2-2904 of the Code of Virginia, and (v) making other minor changes.

**Rationale for Using Fast-Track Rulemaking Process:** This rulemaking is expected to be noncontroversial because the proposed amendments to the regulations are minor in nature. None of the proposed amendments to the regulations are substantive in nature, and they do not have an impact on small businesses or individual citizens.

Furthermore, this rulemaking is expected to be noncontroversial because no comments were received during the periodic review public comment period, which ran from June 12, 2017, to July 3, 2017, and was advertised in the Virginia Register of Regulations on June 12, 2017, in Volume 33, Issue 21.

**Substance:** None of the proposed amendments to the regulations are substantive in nature but include items such as (i) updating definitions and regulations to correspond to changes in the Code of Virginia, including removal of references to "Commonwealth Calendar" and the right to counsel in rulemaking proceedings (Chapter 795 of the 2012 Acts of Assembly), (ii) adding Oxford commas for greater clarity, (iii) updating terminology to be gender neutral, (iv) generalizing the commission's regular meeting regulations to allow more meeting flexibility but remain consistent with § 15.2-2904 of the Code of Virginia, and (v) making other minor changes.

**Issues:** The advantages to the proposed amendments to the regulations are all minor in nature but, overall, allow for greater clarity and for consistency with the Code of Virginia. There are no anticipated disadvantages to the public or the Commonwealth.

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

**Summary of the Proposed Amendments to Regulation:** As the result of a periodic review, the Commission on Local Government (Commission) proposes to amend its public participation guidelines to update definitions and to conform the regulation to changes in statute.

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

**Estimated Economic Impact.** The Commission promulgated these public participation guidelines in 2008 and has not updated them since. As a result of statutory changes since 2008, these guidelines are no longer completely up to date.

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# Regulations

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Because of this, the Commission now proposes to add language that reflects the statutory right of interested parties who are submitting data, views and arguments to "be accompanied by and represented by counsel or other representative." The Commission also proposes to change references to "the Commonwealth Calendar" to "a calendar maintained by the Commonwealth" because that language more closely resembles relevant statutory language. Changes such as these do not add any extra requirements for regulated entities. Consequently, no affected entities are likely to incur costs. To the extent that these changes remove language that is different from what is in statute, they provide the benefit of eliminating possible confusion.

**Businesses and Entities Affected.** This regulatory action will affect all localities as well as the Commission. Commission staff reports that there are 95 counties, 190 towns and 38 cities in the Commonwealth.

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

**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.

Agency's Response to Economic Impact Analysis: The Commission on Local Government staff concurs with the economic impact analysis.

Summary:

*The amendments (i) update definitions, (ii) clarify the regulation, (iii) update terminology, and (iv) pursuant to Chapter 795 of the 2012 Acts of Assembly, add that an individual can be accompanied by and represented by counsel or another representative when submitting data, views, and arguments to the agency.*

## Part I

### Purpose and Definitions

#### **1VAC50-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment, or repeal of the regulations of the Commission on Local Government. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

#### **1VAC50-11-20. Definitions.**

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Commission on Local Government within the Virginia Department of Housing and Community Development, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

~~"Commonwealth Calendar"~~ "Calendar maintained by the Commonwealth" means the electronic calendar for official government meetings open to the public as required by § 2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending, or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at [www.townhall.virginia.gov](http://www.townhall.virginia.gov), which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§ 2.2-4031 et seq.) of the Administrative Process Act.

Part III  
Public Participation Procedures

**1VAC50-11-50. Public comment.**

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity (i) to submit data, views, and arguments, either orally or in writing, to the agency, and (ii) be accompanied by and represented by counsel or other representative. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).
2. For a minimum of 60 calendar days following the publication of a proposed regulation.
3. For a minimum of 30 calendar days following the publication of a repropoed regulation.
4. For a minimum of 30 calendar days following the publication of a final adopted regulation.
5. For a minimum of 30 calendar days following the publication of a fast-track regulation.
6. For a minimum of 21 calendar days following the publication of a notice of periodic review.
7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with § 2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to § 2.2-4012 E of the Code of Virginia.

**1VAC50-11-60. Petition for rulemaking.**

A. As provided in § 2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include ~~but is not limited to~~ the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

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# Regulations

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C. The agency shall receive, consider, and respond to a petition pursuant to § 2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

## **1VAC50-11-90. Meetings.**

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and a calendar maintained by the Commonwealth ~~Calendar~~ at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with § 2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

## **1VAC50-11-100. Public hearings on regulations.**

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and a calendar maintained by the Commonwealth ~~Calendar~~ at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

V.A.R. Doc. No. R18-5292; Filed January 9, 2018, 4:41 p.m.

## **TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS**

### **BOARD OF CORRECTIONS**

#### **Final Regulation**

Titles of Regulations: **6VAC15-80. Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities (repealing 6VAC15-80-10 through 6VAC15-80-1270).**

**6VAC15-81. Standards for Planning, Design, Construction, and Reimbursement of Local Correctional Facilities (adding 6VAC15-81-10 through 6VAC15-81-1480).**

Statutory Authority: §§ 53.1-5, 53.1-80, and 53.1-82 of the Code of Virginia.

Effective Date: March 8, 2018.

Agency Contact: Jim Bruce, Agency Regulatory Coordinator, Department of Corrections, P.O. Box 26963, Richmond, VA 23261-6963, telephone (804) 887-8215, or email james.bruce@vadoc.virginia.gov.

#### Summary:

*The regulatory action repeals the existing Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities (6VAC15-80) and replaces it with a new regulation, 6VAC15-81. The new regulation updates standards to reflect (i) changes in the Code of Virginia and uniform building and fire codes and (ii) best practices for correctional facilities.*

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

### CHAPTER 81 STANDARDS FOR PLANNING, DESIGN, CONSTRUCTION, AND REIMBURSEMENT OF LOCAL CORRECTIONAL FACILITIES

#### [ Part I Definitions and General Instructions ]

**6VAC15-81-10. (Reserved.)**

**6VAC15-81-20. Definitions.**

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

"Acceptable" means those applicable standards or practices with which a registered professional architect, engineer, or other duly licensed or recognized authority must comply.

"Access openings" means panels or doors used for access into areas including ceilings, pipe chases, plumbing chases, or shafts.

"Accessible by inmates" means the same as "inmate accessible."

"ADA accessible" means in compliance with the Americans with Disabilities Act (42 USC § 12101 et seq.).

"ADP" means average daily population.

"A/E" means the architect or engineer and his associated firm hired by the owner for study, design, or construction of the jail project.

"Analysis" means a detailed examination of the local or regional criminal justice system and its elements in order to determine the impact these elements have had on the need for current and future jail space.

"Approved" means an item approved by the reviewing authority.

"Artificial light" means light other than natural light.

"ASTM" means the American Society for Testing and Materials, the most current edition. When ASTM is referenced, the reference is to the Standards in ASTM Standards on Detention and Correctional Facilities, unless otherwise specified. Testing for compliance with ASTM Standards shall be performed by an independent nationally recognized testing laboratory.

"Board" means the Virginia State Board of Corrections.

"Building code" means Virginia Uniform Statewide Building Code (13VAC5-63), the Virginia Industrialized Building Code (13VAC5-91), and the Virginia Statewide Fire Prevention Code (13VAC5-51).

"CCJB" means Community Criminal Justice Board.

"CCTV" means closed circuit television or electronic surveillance system.

"Ceilings" means overhead interior surface that covers the upper limit of an interior room or space.

"Cell" means a space, the size of which [ are is ] specified in this chapter, enclosed by secure construction containing plumbing fixtures and usually a bunk in which an inmate is detained or sleeps. Cells can be single or multiple occupancy depending upon custody level.

"Cell tier" means levels of cells vertically stacked above one another within a housing unit.

"Central intake unit" means an area constructed to provide, at a minimum, space for intake, temporary holding, booking, court and juvenile (if approved for juveniles) holding, classification, and release functions.

"Classification unit" means a cell or unit utilized for short-term holding of inmates for classification purposes after intake or booking and prior to being assigned to general population or other housing.

"Community based corrections plan" or "CBCP" means a comprehensive assessment of an owner's correctional needs and how these needs will be met through submissions of a needs assessment and a planning study.

"Community custody" means inmates incarcerated by the judicial system and classified for involvement in local work forces; participating in work, education, and rehabilitation release; and weekend and nonconsecutive sentencing.

"Construction completion" means the construction of the building is considered complete when a certificate of occupancy or temporary certificate of occupancy is issued for the building to be occupied by inmates.

"Construction documents" means the detailed working drawings and project manual containing detailed specifications and other supporting documents as approved by the reviewing authority.

"Contact visiting" means a space where inmates and visitors at a minimum may pass papers to one another.

"Control room" means a space enclosed by secure walls, secure roof or secure ceiling, and secure floor from which a jail officer may supervise inmates and control security systems in a portion of the jail, such as locks, doors, etc.

"Control station" means a space not enclosed by security walls, roof or ceiling, and floor from which a jail officer may supervise inmates and control security systems in a portion of the jail, such as locks, doors, etc.

"Correctional facility" means the same as "local correctional facility."

"Dayroom" means a secure area contiguous to an inmate sleeping (cells or rooms) area, with controlled access from the inmate sleeping area, to which inmates may be admitted for daytime activities.

"Department" means the Department of Corrections.

"Design capacity" means the maximum number of general beds for which the facility is designed and constructed based on the space requirements in this chapter as established by the Board of Corrections.

"Direct supervision" means a specific style of management where correctional officers are stationed full time inside the dayroom rather than solely observing inmate activity from within secure control points. Within this concept, services are generally brought to the inmate rather than taking the inmate to the service.

"Direct visual observation" means direct line of sight by a correctional officer, not CCTV.

"Dormitory" means an area designed for accommodating five or more inmates and used to house minimum custody and community custody inmates.

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# Regulations

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"Encapsulation" means the same as "secure encapsulation."

"Expansion" means to add an area of new construction to an existing local correctional facility by constructing additional areas.

"Facility" means a jail or lockup including all associated buildings and site.

"50% completion" (of construction value) means the day the project reaches the 50% point between the issuance of a building construction permit and the issuance of the final certificate of occupancy.

"General population housing" means maximum, medium, minimum, and community custody housing. General population excludes special purpose cells and intake or booking.

"Glazing" means any infill material, usually transparent or translucent glass, polycarbonate or combination thereof, and related components, used in a framed assembly.

"Holding" means a space or room designed for temporary containment of detainees or inmates while awaiting actions such as transfer, transportation, release, etc. Holding of this nature usually does not exceed four hours.

"Housing unit" means a group of single person cells, multi-occupancy cells, or group of such cells with a common dayroom, dormitory, intake, special purpose, or classification [ areas area ] that provide accommodations for sleeping, approved personal effects, and personal hygiene.

"IMC" means intermediate metal conduit.

"Indirect supervision" means supervision method other than direct supervision.

"Inmate" means any person committed to a jail by a legal commitment document.

"Inmate accessible" means areas an inmate occupies or utilizes inside the secure perimeter, including all sally ports.

"Intake" means a cell, group of cells, and open seating within a jail designed to hold one or more persons while awaiting processing, booking, classification, or [ assignment ] to the general housing units after booking. Intake holding time does not usually exceed 72 hours. Cells holding more than one person are frequently referred to as group holding.

"Interior partition" means a wall within the secure perimeter, which is not required to be a perimeter security wall or an interior security wall.

"Interior security walls" means walls within but not a part of a secure perimeter that are utilized to restrict movement within the secure area, including housing units, dormitories, corridors, inmate activity areas, intake area, kitchen, laundry, and program areas.

"Jail" means the same as "local correctional facility."

"LIDS" means LIDS-VACORIS, the Compensation Board's inmate data system.

"Life safety operations" means the function of certain electrical, mechanical, and other building equipment provided for the purpose of ensuring the life, health, and safety of building occupants in the case of an emergency situation.

"Light" means the same as "artificial [ light ] or [ \_ ] natural light."

"Local correctional facility" means any jail, jail farm, or other place used for the detention or incarceration of adult inmates, excluding a lockup, which is owned, maintained, or operated by, or under contract with, any political subdivision or combination of political subdivisions of the Commonwealth. This shall also include facilities operated by a private entity under contract with a regional jail authority under provision of § 53.1-71.1 [ of the Code of Virginia ].

"Locality" means a county or city.

"Lockup" means a facility, separate from a jail facility, operated by or for a local government for detention of persons for a short period of time as stated in 6VAC15-40-10.

"Master control" means the principal secure room of the entire facility where the control of safety and security of the jail through electronic equipment for surveillance, communication, fire and smoke detection, and emergency functions. This room is enclosed by walls, roof or ceiling, [ and ] floor assemblies meeting secure perimeter requirements as well as having opening protectives meeting ASTM Grade 1 requirements. This room includes control of the entrances to the jail through the secure perimeter and capability of control of ingress and egress to cells, dayrooms, corridors, and other spaces within the entire jail.

"Maximum custody inmates" means persons who cannot be allowed to mingle physically with other inmates without close supervision, normally because of assaultive and aggressive behavior or high escape risk.

"Medium custody inmates" means those persons who require a moderate level of staff supervision and secure accommodations against escape, but who can be allowed to participate in group activities.

"Mezzanine" means the same as "cell tier."

"Minimum custody inmates" means those inmates classified as not dangerous or likely to escape, but who are of sufficient concern to require a minimum level of supervision.

"Minor renovation project" means renovation project that does not result in an increase in beds and has an estimated cost of less than \$1 million.

"Multiple occupancy cell" means a cell designed for two, three, or four inmates.

"Natural light" means light provided by sunlight as viewed from within a housing unit.

"Needs assessment" means an evaluation of trends and factors at the local or regional level affecting current and future facility needs, and the assessment of resources available to meet such needs. The needs assessment is used as the basis for a request for reimbursement of local correctional facility construction costs.

"New construction" means to build, expand, or replace a local correctional facility.

"Operating capacity" means the same as "design capacity."

"Owner" means the locality, localities, or jail authority responsible for making decisions about the project.

"Owner's agent" means the person or firm designated by an owner to make decisions concerning the project.

"Per inmate" or "per bed" means for each general population bed.

"Piping" means pipes associated with heating, cooling, condensate, domestic water, gas, steam, sewer, storm drain, roof drain, and fire protection.

"Planning study" means a document providing the anticipated operating program, staffing, operating costs, building design, and cost for construction, expansion, or renovation of a local correctional facility that is used as the basis for a request for funding of project costs for reimbursement and initial determination of compliance with this chapter.

"PREA" means the Prison Rape Elimination Act (Public Law 108-79).

"Project" means new construction, renovation, or expansion of a regional or local jail correctional facility. This includes planning, design, and construction.

"Public" means all persons with the exception of professional visitors, such as legal, clergy, counselors, pretrial, probation, parole, and law enforcement, and others as authorized by the local correctional facility.

"Regional jail" means, for purposes of state reimbursement for construction costs, those jails that meet the criteria set forth in §§ 53.1-81, 53.1-82 and 53.1-95.2 of the Code of Virginia, [ and any ] jail having at least three member localities that was created before February 1, 1993, or any jail construction project recommended for approval by the Board of Corrections as a regional jail prior to February 1, 1993. For the purposes of this term, "created" means localities having submitted resolutions of local governing bodies or cooperative agreements, and "cooperative agreements" means a formal contract between those jurisdictions participating in a regional jail that specifies their mutual financial and legal

obligations relating to the ownership, administration, and maintenance of the jail.

"Renovation" means the alteration or other modification of an existing local correctional facility or piece of equipment for the purpose of modernizing or changing the use or capability of such local correctional facility or equipment. Renovation does not include work on or repair or replacement of any part of an existing local correctional facility or equipment, which may be generally associated with normal wear and tear or included in routine maintenance. Renovation renders the facility, item, or area in compliance with this chapter and superior to the original.

"Repair" means the correction of deficiencies in a local correctional facility or of equipment, which have either been damaged or worn by use but which can be economically returned to service without replacement.

"Replacement" means the construction of a local correctional facility in place of a like local correctional facility or the purchasing of like equipment to replace equipment that has been so damaged or has outlived its useful life that it cannot be economically renovated or repaired.

"Reviewing authority" means the representatives of the Department of Corrections or the Department of Criminal Justice Services responsible for reviewing required documents and attending required meetings and whose responsibility it is to interpret and determine compliance with this chapter.

"Sally port" means a secure vestibule constructed of secure walls, secure ceiling, and secure floor with two or more interlocking, secure doors. Fixtures within sally ports shall be maximum security.

"Secure," as relates to construction, means walls, floors, ceilings or roofs, doors, and windows are constructed in accordance with the secure construction requirements of this chapter.

"Secure area" means all spaces located within the secure perimeter. (See secure perimeter).

"Secure encapsulation" means protect against vandalism or damage with concrete, masonry, steel, or other approved secure construction meeting the requirements of this chapter.

"Secure enclosure" means secure walls, secure floors, and secure roof or secure ceiling surrounding a space or area.

[ "Secure perimeter" means the outer limits of a jail or lockup where walls, floor, roof, and ceiling, constructed in accordance with the requirements of this chapter, are used to prevent egress by inmates or ingress by unauthorized persons or contraband. ]

"Security cap" means secure protection of the top of a room or space with concrete, sheet metal, or security ceiling as

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# Regulations

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specified in this chapter to complete the secure encapsulation of the room or space.

[ "Secure perimeter" means the outer limits of a jail or lockup where walls, floor, roof, and ceiling, constructed in accordance with the requirements of this chapter, are used to prevent egress by inmates or ingress by unauthorized persons or contraband. ]

"Special purpose cells" means cells within the secure perimeter that include isolation, segregation, medical, protective custody, or other special use cells.

"State responsible inmates" means those inmates with felony sentences and sentenced to the custody of the Department of Corrections in accordance with § 53.1-20 of the Code of Virginia or other applicable state law.

"Supervision" means the act or process of performing responsible care over inmates.

"Support services areas" means all areas within the facility excluding inmate housing units. Also known as core or core space.

"Sustainable design and construction initiatives" means balancing economic, environmental, and equity considerations by reducing negative environmental impacts of site selection and development, optimizing the energy and water performance of the building and site, using environmentally sensitive building materials, and protecting the health and comfort of building occupants. Sustainable design and construction initiatives are benchmarked by third-party rating systems such as LEED or Green Globes or by documenting compliance with ASHRAE 189.1 or the International Green Construction Code.

"Tier" means the same as "cell tier."

"Value management analysis" or "VMA" means an analysis of facility design for the purpose of satisfying required function, and cost effectiveness, while providing the best quality and efficiency for the project.

"Value management team" means a team of people independent from the owner or the owner's A/E headed by a certified value specialist and a combination of the following disciplines based on phase and nature of the project: architecture, security, civil or site engineering, mechanical and electrical engineering, and cost estimator.

"Vehicular sally port" means a drive-in or drive-through made secure preferably by remotely controlled electrically operated interlocking doors for entrance and exit. It is normally located in close proximity to the facility intake.

## **6VAC15-81-30. (Reserved.)**

## **6VAC15-81-40. Expansions or renovations.**

Expansions or renovations to any facility shall conform to the requirements of this chapter for new construction without

requiring the existing portion of the facility to comply with all requirements of this chapter. Exception: Those areas in an existing facility that are impacted by an expansion (such as the adding of bedspace impacting the need for more space in the kitchen, visiting, recreation, etc. if these services are not provided for in the expansion) may be required to be upgraded. The maximum upgrade required would be to provide additional space that would be required for the number of people for whom new bedspace is being built.

## **6VAC15-81-50. Localities with multiple facilities.**

For localities with jail facilities having multiple facilities, compliance with this chapter shall be determined based on all facilities as a whole as well as the needs and functions of each individual facility.

## **6VAC15-81-60. Review and inspections.**

Review of documents by the reviewing authority, fire official, local building official, and other officials or agencies shall be required. These reviews are performed at the preliminary and construction document stages. A final inspection shall be performed and documented in writing by all officials and agencies involved in the review process. The reviewing authority's review and inspections shall be limited to those areas within the scope of the project.

## **6VAC15-81-70. Conflict between this chapter and building codes or other standards.**

In the event of a conflict between this chapter and building codes or other standards, the most restrictive requirement shall apply.

## **6VAC15-81-80. Compliance.**

A. The facility shall be designed and constructed in accordance with this chapter. It shall be the responsibility of every person who performs work regulated by this chapter, including those involved with planning, design, construction, renovation, or installation of a structure or equipment, to comply with this chapter. Review or inspection by the reviewing authority does not relieve the owners or their agents from the requirement to comply with this chapter.

B. Definitions in this chapter are a part of the requirements of this chapter.

C. Any agreement entered into by the owner to design or construct a local correctional facility shall include the requirement to comply with this chapter. This compliance shall be noted on the construction documents.

## **6VAC15-81-90. Modifications.**

A. Any request for modification shall be submitted, separate from the planning study, in the form of a request and resolution from the jail authority or board, city council [ , ] or board of supervisors to the reviewing authority sufficiently in advance of the deadline for submission to the Board of

Corrections to be reviewed, analyzed, and included in the desired Board of Corrections meeting agenda. The request for modification shall include a detailed analysis supported by documentation and historical data to justify the request.

B. A staff analysis shall be prepared by the reviewing authority for each modification request. The staff analysis shall include the section of this chapter being modified, an analysis to determine whether or not the modification meets the intent of the section being modified, an analysis of whether the modification has been granted in the past or has any ramifications that might affect current or future jail construction or security, and the analysis shall include a staff recommendation to the board.

C. Upon consideration, the board may grant modifications to any of the provisions of this chapter provided the spirit and intent of this chapter is observed and inmate, staff, and public welfare, safety, and security are not compromised. The board has the ultimate responsibility to grant modifications to this chapter and shall not be bound by the position of staff and shall also consider information provided by the locality or localities. The final decision of the board on any modification shall be recorded in board minutes.

Part II

Submission of a Community Based Corrections Plan

Article 1

General

**6VAC15-81-100. Document submission schedule and method.**

A. Prior to preparation of a community based corrections plan (CBCP) as required by § 53.1-82.1 of the Code of Virginia, any city or county or combination thereof intending to seek reimbursement for a jail project shall contact the Department of Corrections, Compliance, Certification, and Accreditation Unit to have a meeting to discuss the requirement of completing a CBCP.

B. All documents in this section shall be submitted to the department in accordance with the budgeting time schedule as outlined in § 53.1-82.3 of the Code of Virginia or the appropriation act.

C. Documents shall be as follows:

1. Needs assessment. Four paper copies and one electronic copy of the community based corrections plan, prepared in accordance with this article, shall be submitted to the Department of Corrections, Compliance, Certification, and Accreditation Unit. A needs assessment is not required for projects that do not increase bed capacity and for which the owner does not seek state reimbursement for construction, staffing, or operating cost.

2. Planning study. Three paper copies and one electronic copy of the planning study, prepared in accordance with

this article, shall be submitted to Department of Corrections, Compliance, Certification, and Accreditation Unit.

3. Minor renovation project. Three paper copies and one electronic copy of minor renovation project information prepared in accordance with 6VAC15-81-280 and 6VAC15-81-290 shall be submitted to Department of Corrections, Compliance, Certification, and Accreditation Unit. A needs assessment is not required for minor renovation projects that do not increase capacity.

4. Modifications. Three paper copies and one electronic copy of minor renovation project information prepared in accordance with 6VAC15-81-280 and 6VAC15-81-290 shall be submitted to Department of Corrections, Compliance, Certification, and Accreditation Unit.

5. Resolution and cooperative service agreement. Two paper copies and one electronic copy of minor renovation project information prepared in accordance with 6VAC15-81-280 and 6VAC15-81-290 shall be submitted to Department of Corrections, Compliance, Certification, and Accreditation Unit.

An executed cooperative service agreement, where applicable, and resolution shall be submitted to the reviewing authority prior to board consideration of the project. The owner shall submit the following to the Department of Corrections, Compliance, Certification, and Accreditation Unit:

a. Single locality facility. An ordinance or resolution of the local governing body requesting reimbursement funding [ 7. ]

b. Multijurisdictional facility not qualifying for regional jail status reimbursement pursuant to § 53.1-81 of the Code of Virginia. A joint resolution of or individual resolutions from the local governing bodies requesting reimbursement funding.

c. Regional jail board or jail authority facility. Pursuant to § 53.1-81, a joint resolution of or individual resolutions from the governing bodies of the established regional jail board or a resolution from the regional jail authority requesting reimbursement funding and a cooperative service agreement detailing the financial and operational responsibilities of the participating jurisdictions or jail authority.

6. Financing method. If the project is being financed, detailed information on the financing and financing method shall be provided to the Treasury Board in accordance with its requirements.

[ 7. ] The reviewing authority shall verify documentation has been received by required deadlines and are correct, and advise the locality of any errors or discrepancies in their submittal.

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# Regulations

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## **6VAC15-81-110. Community based corrections plan requirement.**

An owner requesting reimbursement for new construction, expansion, or renovation, staffing, or operating cost of a jail project that results in a net increase of available beds shall prepare and submit for approval a community based corrections plan.

## **6VAC15-81-120. Local responsibility for community based corrections plan.**

A. The community based corrections plan shall be developed by the owner or owners, or an agent of the owner or owners. Pursuant to § 9.1-180 of the Code of Virginia, the community criminal justice board (CCJB) shall review the findings and recommendations of the needs assessment component of the community based corrections plan.

B. Oversight and amendment by CCJB is limited to the following situations:

1. Where a multijurisdictional CCJB, established in accordance with the provisions of § 9.1-178 of the Code of Virginia, has membership of the governing bodies of jurisdictions not involved in the construction, expansion, or renovation of the regional jail project, a subcommittee shall be established comprised of the required members of the CCJB representing the participating jurisdictions and their governing bodies.

2. In those projects in which more than one locality is involved and each locality has a separate CCJB or the localities are members of different multijurisdictional CCJBs, a subcommittee shall be established comprised of the required members of the CCJB representing the participating jurisdictions and their governing bodies.

## **6VAC15-81-130. Community based corrections plan contents.**

A community based corrections plan includes:

1. A needs assessment for projects increasing rated capacity by more than 24 beds or more than 40% of rated capacity, whichever is less per 6VAC16-81-40 through 6VAC15-81-90.

2. A planning study per 6VAC16-81-40 through 6VAC15-81-90.

## **6VAC15-81-140. Localities not operating a jail.**

For a locality not currently operating a jail, the needs assessment portion of the community based corrections plan shall be based on how the locality is managing its current inmate population through utilization of other local correctional facilities and community based alternative programs and services. Localities requesting reimbursement for new single jurisdiction jail or regional jail construction must comply with current appropriation act language.

## Article 2

### Contents of the Community Based Corrections Plan

## **6VAC15-81-150. Needs assessment.**

A. The needs assessment is an evaluation of trends and factors at the local or regional level affecting current and future facility needs, and the assessment of resources available to meet such needs that is used as the basis for a request for reimbursement of local correctional facility construction costs.

B. The needs assessment shall address each of the elements of 6VAC15-81-160 through 6VAC15-81-260.

## **6VAC15-81-160. Funding priority.**

The needs assessment shall include a statement identifying which Board of Corrections funding priority or priorities the plan and jail project addresses, per 6VAC15-81-320.

## **6VAC15-81-170. Analysis of criminal justice and inmate population data.**

A. The needs assessment shall include an analysis of criminal justice and inmate population data as required by this chapter.

B. In order to evaluate the impact of the various criminal justice components on the jail population, the following data shall be provided for each locality participating in the needs assessment for the most recent five calendar years.

1. A table and an analysis of annual trends for the total adult arrests for Part A and B offenses from the latest edition of "Crime in Virginia" published by the Virginia State Police.

2. A table and an analysis of annual trends [ ~~for~~ for the ] total adult arrests currently defined as "On View," "Taken into Custody," and "Summonses" and a comparison of these totals to those presented in subdivision 1 of this subsection. This data is available from the Research Unit of the Virginia Department of Criminal Justice Services.

3. A table and an analysis of annual trends for process data from the Supreme Court of Virginia from the Magistrate Information System including the total number of:

a. Bonds.

b. Commitment orders - bail.

(1) Felony.

(a) Secured.

(b) Unsecured.

(c) Recognizance.

(d) Held without bail.

(e) Release by judicial officer to custody of responsible person or when accused is no longer intoxicated.

(2) Misdemeanor.

(a) Secured.

(b) Unsecured.

(c) Recognizance.

(d) Held without bail.

(e) Release by judicial officer to custody of responsible person or when accused is no longer intoxicated.

(3) Release orders.

4. A table and an analysis of annual trends for data from the State Compensation Board Local Inmate Data System (LIDS).

a. Total new "Pretrial Monthly Commitments" by month and by felony, and misdemeanor or ordinance violators for those awaiting trial. This report is available on the State Compensation Board website under "LIDS, the Forms Maintenance Menu" for individual jails or from any local pretrial services agency that currently serves the jail or jails in question.

b. Comparison and analysis of the total number of new "Pretrial Monthly Commitments" in subdivision 4 a of this subsection, with the total "Commitment Orders" in subdivision 3 b of this subsection.

c. A separate report of the total number of "Pretrial Commitments" in subdivision 4 a of this subsection above that were released for the following LIDS "Reason Release Codes":

(1) 19 - To bond.

(2) 49 - To pretrial service program.

d. Report of the total annual commitments "Serving Sentence" separately by misdemeanor and felony, for the following LIDS "Reason Confined Codes":

(1) 20 - Serving sentence.

(2) 29 - Weekend or nonconsecutive days.

(3) 26 - Work release.

e. Reports of the admissions in subdivision 4 d of this subsection, report the number released for the following LIDS "Release Reason":

(1) 16 - Time served.

(2) 33 - To Department of Corrections.

(3) 39 - Sentence served.

5. A table and an analysis of total average monthly adult ADP for the most recent 60 months by felony, misdemeanor, and ordinance violation categories for local responsible populations and for felony state responsible

populations. Data is available from the State Compensation Board website under LIDS.

6. A table and an analysis of annual trends for identification of the following subpopulations separately:

a. The "overflow" population being held in another jail or jails.

b. The ADP help for:

(1) Federal authorities.

(2) Out-of-state authorities (non-state warrant).

(3) Other localities including payment agreements, courtesy holds for other localities, and exchange agreements. This does not include prisoners held in accordance with regional jail service agreements or jointly operated facilities.

(4) State responsible inmates held by agreement, jail contract bed or JCB or work release.

c. Localities currently without facilities can calculate the average daily population from total prisoner days reported for prisoners held for their locality by another jail or jails (use Federal Information Processing System Code in LIDS for specific locality or localities involved).

7. A table and an analysis of annual trends for total placements by felony and misdemeanor, where applicable, for the following services for each jurisdiction in the project served by the following agencies:

a. Agency.

(1) Pretrial service agency.

(2) Community based probation services agency.

(3) State adult probation and parole district office (probation cases only).

(4) Drug courts.

b. For pretrial and local community based probation services, the average daily caseload under supervision based on total supervision days.

c. For all other programs, the average of the total population under active supervision at the beginning and the end of the calendar or fiscal year.

d. For all programs and services:

(1) The total annual placements, where applicable, for misdemeanors and felony defendants and inmates.

(2) A description of each program including fiscal agent, administration and management, staffing, and annual budget or operating costs.

# Regulations

## **6VAC15-81-180. Assessment of existing resources.**

A. The needs assessment shall include an assessment of existing resources, including existing local correctional facilities, any lockups or other community based facilities that reduce the demand on jail space needs, and all pretrial and post-disposition alternatives, programs, and services.

B. The information provided pursuant to subsection A of this section shall include a description of the existing jail or jails in local lockups and correctional facilities that impact the project including:

1. The date of construction and dates of subsequent renovations or expansions [ §. ]

2. The current rated capacity as established by the Department of Corrections [ §. ]

3. A table indicating the total number of housing units including cell blocks, dormitories, and other housing units used for general population inmates. The tables for existing facilities shall be set up similar to the example table in subdivision 4 of this subsection.

4. A table indicating the design capacity and the total number of beds for each of the housing areas. The description and calculation of the existing facility's needs shall be consistent for each facility. The tables for the existing facility shall be set up using the following examples:

Example table for subdivisions 3 and 4 of this subsection.

<u>Floor</u>	<u>Unit name</u>	<u>Unit type</u>	<u>#Cells/dorm per unit</u>	<u>DOC op. cap.</u>	<u>Unit op. cap. x sq. ft.</u>	<u>Dayroom op. cap. x sq. ft.</u>	<u>#Perm. beds per unit</u>	<u>Sq. ft. per bed</u>	<u>Dayroom sq. ft./bed</u>
<u>1</u>	<u>Block A</u>	<u>Cell</u>	<u>6</u>	<u>6</u>	<u>6x70=420</u>	<u>6x35=210</u>	<u>6x2=12</u>	<u>35.0</u>	<u>17.5</u>

5. A table indicating the existing square footage available per inmate in each cell, dormitory, and dayroom.

Example table for subdivision 5 of this subsection.

<u>Unit Name</u>	<u>Security/Custody Level</u>	<u>Pop. on (Date)</u>	<u>Total sq. ft. per person in unit</u>	<u>Total sq. ft. per person in dayroom</u>	<u>Total Aggr. sq. ft. per inmate</u>
<u>Cell A</u>	<u>Med</u>	<u>16</u>	<u>26.3</u>	<u>13.1</u>	<u>39.4</u>

6. The total number, type, and capacity of special purpose areas.

7. A statement of the number of stories and aggregate floor space in the facility.

8. A statement about the general condition of the facility and the feasibility of continued future use and, if applicable, the status of the action plan to correct physical plant deficiencies identified in the latest inspection or certification audit report.

9. A description and table depicting administrative, operating, and inmate program space and a description of the impact of the limitations that lack of space, inadequate space, or the design of the facility has on administration, operations, and security.

10. Where applicable, the impact that the holding of juveniles has on the design and operation of the facility.

11. A copy of the most current department inspection report for life, health, and safety and a copy of the most current department certification audit shall be submitted.

12. If the facility is to remain open as a jail, a jail condition assessment on major buildings and building systems shall be performed by a licensed A/E, and costs associated with necessary upgrades shall be provided. The cost of staffing and documentation of staff efficiency for continued operation shall also be provided. Analysis of the condition assessment shall be based on health safety issues, excessive maintenance costs, excessive repair costs, excessive staffing due to design, limited capacity, program space, and distance to other facilities associated with a regional jail.

C. The needs assessment shall include for the last fiscal year, a description of each program and a data table providing the number of placements, the average daily population, and where applicable, the annual number of bed days saved by each jail-based program, and a plan to increase the utilization of the impact of the various criminal justice components on the jail population to include:

1. Jail work force.

2. Work release.

3. Home or electronic incarceration.

4. Weekend sentencing work options.

**6VAC15-81-190. Analysis of existing criminal justice practices.**

A. The needs assessment shall include an analysis of existing criminal justice practices and the impact they have on the use of existing and the need for future jail space, including arrest, bail, pretrial alternatives, commitments, sentencing practices, post-trial alternatives, Department of Corrections probation and parole violators, and state responsible felony inmate populations.

B. A description of the effect of current magistrate; court; public defender; and prosecutorial case management practices, policies, and procedures on the length of stay in jail. Included shall be a plan to improve criminal justice services, to include the staff and other resources necessary to effect a reduction in pretrial and post-dispositional length of stay in jail. Strategies to improve these practices and services shall be included and shall address such factors as:

1. The current use of summonses issued by law-enforcement agencies in lieu of arrest in certain criminal misdemeanor offences.
2. The current use of unsecured bond or pretrial services by magistrates.
3. Video arraignment in lieu of transportation to court.
4. Specifically for regional projects.
  - a. Cross court arraignments for confined defendants awaiting trial.
  - b. The need and solutions for [ ~~short-term~~ short-term ] holding of defendants following arrest.
  - c. An assessment of travel distance and times to a proposed regional facility.
  - d. Where applicable, a collocated juvenile detention facility.

**6VAC15-81-200. Recommended resources to improve or expand existing and establish new alternatives.**

The needs assessment shall include recommended resources, including the necessary funding, necessary to improve or expand existing and establish new pretrial and post-disposition alternatives.

**6VAC15-81-210. Impact from the loss of local jails.**

The needs assessment shall include an examination of transportation costs, costs associated with closing of existing facilities, and the impact that the loss of local jails will have on the operation of local sheriff's offices and law-enforcement departments related to the current and future need for:

1. Lockups.
2. Short-term holding.

3. Court holding.

4. Staff availability for law-enforcement activities.

**6VAC15-81-220. Specific jail population forecast.**

A. The needs assessment shall include a forecast of the future total average daily population as follows:

1. A table of data utilized shall be included in the forecast section and shall be based on a minimum of 60 monthly data points including a description of the timeframes and the unit of analysis.

2. A graph that plots the local responsible inmate and state responsible inmate population separately and a table with the calculation of the percent local responsible and state responsible population during the period of analysis presented in the forecast data base.

3. A calculation of the average percent of the local responsible inmates and state responsible inmates in the total jail population including state responsible inmates greater than 90 days as reported by State Compensation Board.

4. The results of the preliminary population data analysis such as trends and correlation structure.

5. A presentation of three to five forecasts (the specification, parameters, and diagnostic information from each model) selected from any of the following models:

- a. Linear regression analysis.
- b. Exponential smoothing models.
- c. Autoregressive integrated moving average models.
- d. Structural forecasting models (multiple regression analysis).
- e. Other forecasting models preapproved by the reviewing authority.

6. The forecast shall exclude the ADP of detainees:

- a. Held for other localities (includes those held for payment, by courtesy, or for exchange) for jurisdictions not participating in a jointly operated or regional jail, or held in a single jurisdiction jail.
- b. Held for federal authorities.
- c. Contract inmates.
- d. Held for out-of-state authorities (non-state warrant).

B. The needs assessment shall include a forecast consisting of:

1. A year-by-year forecast based on the projected year of occupancy plus a minimum of 10 years.
2. A test of the model selected demonstrating its ability to forecast the most recent year's population.

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# Regulations

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3. The presentation of a forecast based on one of the models and the discussion of why it was selected for the jail project.

4. An additional 10-year estimate in yearly increments (based on the year of occupancy plus 20 years) for use in estimating the facility support service areas needs in the planning study. For new facilities if future expansion is anticipated, consideration shall be given to increasing support services areas by 50% to accommodate future expansion.

C. The needs assessment shall include the impact of state responsible prisoner population in local jails for each of the last five calendar or fiscal years.

1. The year-to-year growth trend for the state responsible felon population.

2. The percentage of the total for which state responsible population accounted.

3. The mean, median, and mode state responsible population.

D. The needs assessment shall include a report for the last calendar or fiscal year:

1. Separately, the number of inmates committed to jail solely for a probation violation (confinement awaiting probation revocation hearing) or for a parole violation (confinement awaiting parole revocation hearing).

2. The total prisoner days and a calculation of the ADP, separately, for each of the two confinement categories listed in subdivision 1 of this subsection.

3. The total prisoner days or monthly ADP for all state responsible felon inmates calculated from the date of final sentencing to release or transfer to the Department of Corrections.

## **6VAC15-81-230. Analysis of defendant or inmate management practices.**

A. The needs assessment shall include an analysis of the effect that the defendant or inmate management practices of law enforcement, magistrate, court, public defense, prosecution, local and state pretrial and post-trial alternative programs and the Department of Corrections have had on admissions to, releases from, and length of stay in jail.

B. The needs assessment shall include recommendations and agreements to eliminate or reduce the impact on jail bed space needs and to improve the practices of these services, including procedural changes, staffing, and the budget resources necessary to effect or implement these changes.

## **6VAC15-81-240. Program or procedural strategies for reducing the jail population forecast.**

The needs assessment shall include a presentation of the program or procedural strategies for reducing the jail population forecast, which shall be based on strategies for the expansion of existing and the establishment of new programs designed to divert misdemeanor and felon defendants and inmates detained in jail awaiting trial or actively serving sentences or reducing their lengths of stay. The strategies shall include a description of the proposed services, costs for implementing or expanding services, and, if possible, staff and other resources necessary to implement expanded or new programs. Strategies to be considered include:

1. Mental health diversion or alternative programs, services, or facilities.

2. Development or enhancement of a pretrial services agency.

3. Home or electronic incarceration or monitoring.

4. Programs that divert defendants from jail, prosecution, or conviction who have been charged with offenses for which they can receive a sentence to jail.

5. A program that reduces the awaiting trial length of stay through court-approved credit for voluntary work on public property by any adult confined in jail awaiting disposition for a nonviolent misdemeanor or felony offense.

6. Development of or enhancement of local community based probation services for local responsible misdemeanor and felon inmates placed on probation following a sentence of 12 months or less or following a deferred proceeding.

7. Jail based home electronic incarceration program for inmates actively serving sentence in jail. Sentenced inmates can be confined at home in lieu of being held in jail.

8. A jail based public work force program that reduces the post-disposition length of stay through court approved credit for voluntary work on public property by any adult confined in jail serving a sentence for a misdemeanor.

9. A state or local day reporting center that will divert probation and parole violators from jail.

## **6VAC15-81-250. Proposed project.**

A. The needs assessment shall include a table depicting the current jail housing and special purpose spaces in accordance with construction standards at the time that it was built that will be in continued use for the proposed project and the designated spaces proposed for the new construction.

B. The needs assessment shall include the recommended size of the proposed facility including the total number of cells, dormitories, or housing units necessary for general

population, and community custody and special purpose housing, if applicable, special purpose, and short population management. This is the number to be used as the "relative size" of the proposed facility as required by 6VAC15-81-290.

C. The needs assessment shall include the proposed facility size based on future estimates and the need for management bed space in accordance with the requirements for design and construction set out in this chapter. Provide information in [ a ] table [ as ] shown in the example table in this section.

<u>Bed Distribution: Existing or Proposed</u>						<u>Special Purpose</u>	<u>Temporary Housing</u>
<u>Existing Jail</u>							
	<u>Rated Capacity</u>	<u>Maximum</u>	<u>Medium</u>	<u>Minimum</u>	<u>Community Custody</u>		
<u>Existing Jail</u>							
<u>Subtotal</u>							
<u>New Facility</u>							
<u>New Facility</u>							
<u>Total</u>							
<u>Grand Total</u>							
<u>Percentage Distribution</u>							

**6VAC15-81-260. Conclusions and recommendations.**

The needs assessment shall include conclusions and recommendations for implementation or improvement of programs and services as a part of the recommended jail project.

**6VAC15-81-270. Needs assessment review.**

A. The Department of Corrections and the Department of Criminal Justice Services shall review the needs assessment for compliance with this chapter and validation of the need for additional beds.

B. The Department of Corrections shall provide to the Board of Corrections a report on its review of the needs assessment for compliance with this chapter and validation of the need for additional beds.

C. The Board of Corrections shall evaluate the needs assessment to determine whether the assessment complies with this chapter and validates the need for the construction, expansion, or renovation project for which reimbursement is requested. The board may approve the needs assessment as presented. The board may require amendments or it may deny approval.

**6VAC15-81-280. Planning study requirements.**

A. An owner proposing a new construction, expansion, or renovation project shall prepare and submit for approval a planning study in accordance with this article with the

exception of those projects qualifying as a minor renovation project as specified in 6VAC15-81-300.

B. The owner or the owner's agent shall contact the Department of Corrections, Compliance, Certification, and Accreditation Unit for guidance in interpreting these procedures and requirements for planning study documentation submissions.

C. The Department of Corrections shall not assist in the preparation of a planning study but may provide guidance and shall respond to requests for clarification of the requirements.

**6VAC15-81-290. Required information for planning study.**

A. The planning study shall include a statement acknowledging owners' and consultants' responsibilities for compliance with this chapter.

B. The planning study shall include a statement of the planned general population design capacity, as well as the number and capacity of temporary holding and special purpose cells of the proposed facility as detailed and approved in the needs assessment. If the capacity detailed in the planning study deviates from the forecasted capacity need shown in the needs assessment, the proposed interim capacity of the facility and the plan showing future expansion for achieving the approved capacity shall be detailed.

C. The planning study shall include, if applicable, a statement of rated capacity of the existing facility including

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# Regulations

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current capacity of housing for custody levels, temporary holding, and special purpose.

D. The planning study shall include the operating program.

1. For new facilities, a written operating program describing the operating procedures envisioned for key operational functions such as, but not limited to, intake or release, inmate escorting, movement to and from court, medical, visitation, food services, program delivery, use of proposed technology, and related services such as video arraignment and telemedicine.

2. For renovations and expansions, any changes to the operating procedures shall be provided.

E. The planning study shall include a facility planning program setting forth the project requirements for building space by function, size, and quantity and addressing any special design considerations unique to the project.

F. The planning study shall include site data including site size, availability of utilities, and any other features of the site that would impact the facility design or cost.

G. Localities considering a campus style design concept that is designed to require the inmates to walk outdoors to access multiple buildings on the same site shall submit a written statement to the Board of Corrections detailing the management concept, anticipated staffing levels, and cost savings anticipated in construction and operation of the facility by this concept. Included in this request shall be a list of any specific sections of this chapter or 6VAC15-40 that are in conflict with the proposed facility with this management style and for which modification requests will be submitted. Explanation shall be given of how the security of individual buildings is provided in accordance with this chapter.

H. The owner shall submit a written statement to the Board of Corrections detailing the management concept (e.g., direct supervision, indirect supervision, hybrid, etc.) and anticipated operating procedures for the facility and anticipated staffing levels. Included with this statement shall be a request for modifications of specific sections that are in conflict with the proposed facility management style.

I. The planning study shall include a written description of the project setting forth:

1. The rationale for the building design.

2. The type of construction proposed.

3. A description of basic building materials and systems. (structural; heating, ventilation, or air conditioning; security; etc.).

4. The size of the facility in gross square feet of floor area and size of facility in number of general population beds.

5. Building code designations as to the intended use group or groups, building code occupant loads, occupant load per this chapter, and construction type or types.

6. Provisions for future expansion based on findings in the facility program and needs assessment with number of beds, increased core, and support space.

7. Descriptions of proposed technology and related services.

8. Descriptions of sustainable design and construction initiatives proposed including energy conservation, resource management and environmental enhancements that can be benchmarked by third-party rating systems such as LEED, Green Globes, documenting compliance with ASHRAE 189.1, or the International Green Construction Code. Descriptions shall include benefits to the facility's users, environmental benefits and estimated payback [ ~~time frames~~ timeframes ]. Initiatives resulting in an increase in project costs shall be identified and include estimated costs.

9. Identification of specific items or features that increase the project cost of a median or basic jail building.

J. If the original jail is to remain open as a jail, the planning study shall include an assessment of the condition of the jail shall be performed by a licensed A/E, and estimated costs associated with necessary upgrades and phases shall be identified. The cost of staffing and documentation of staff efficiency for continued operation shall also be provided. Analysis of the condition assessment shall address life, health, and safety issues; excessive maintenance costs; excessive repair costs; excessive staffing due to design, limited capacity, program space, and distance to other facilities associated with a regional jail.

K. The planning study shall include conceptual floor plan or plans at a scale not smaller than 1/16 inch per foot, with indication by distinct symbols, overlays, or other means to denote the secure perimeter of the facility.

L. The planning study shall include conceptual building elevations at a scale not smaller than 1/16 inch per foot.

M. The planning study shall include a conceptual site plan at a scale not smaller than one inch per 60 feet indicating existing and proposed buildings, vehicular circulation, parking, outdoor recreation facilities and areas, security fences or walls, and future building expansions.

N. The planning study shall include a conceptual building section at a scale not less than 1/16 inch per foot if required to explain a multilevel building design.

O. The planning study shall include an energy analysis containing comparative fuel costs and energy conservation investigations including construction cost increase and savings, payback energy efficiency initiatives and other

factors supporting the heating, ventilation, and air conditioning systems and fuel selection.

P. The planning study shall include an analysis of staffing needs and a six-year operating budget [ ~~costs~~ cost ] for the proposed facility that includes:

1. Security positions indicating type of inmate supervision system proposed, specific security posts required, and anticipated hours that each post will be manned.

2. Nonsecurity staff functions and anticipated hours the posts will be manned.

3. Operating budget costs, with items such as the cost of heating, ventilation, and air conditioning; utilities maintenance; food service; staff salaries; supplies; etc.

Q. The planning study shall include a construction cost estimate with a detailed description of the basis on which the estimate was made:

1. The construction cost estimate shall be based on the estimated cost as of the date of the planning study and shall also show the inflated values of the estimated costs as of the date of the midpoint of construction as proposed in the construction schedule. A chart shall be prepared in column format showing estimated building construction cost. Other costs as individual line items not included within the building envelope shall be added such as, but not limited to site development, professional fees, contingencies, permits, unusual site work, expanded core, and renovation. The estimate shall also show the sum of total project costs.

2. When projects involve a combination of two or more project types (new construction, renovations, and expansions) the construction cost estimate shall clearly identify the costs associated with each project type.

3. When items proposed exceed median construction costs, the construction cost estimate shall clearly identify such costs, and the need for such extraordinary work shall be fully explained and justified including the examination of alternative solutions. Examples of these items may include:

- a. Expanded facility support services.
- b. Unusual site conditions.
- c. Utility runs beyond the limits of construction.
- d. Virginia Department of Transportation turn lanes.
- e. Sustainable design and construction initiatives.

4. When items proposed exceed median construction cost because of local requirement or desires, the work shall be specifically listed and the anticipated additional cost of each item identified. Portions of the project that are not eligible for funding reimbursement shall be clearly identified and costs tabulated separately. These items may include features such as:

a. Enhancements to meet local zoning or architectural requirements.

b. Stone facades.

c. Site constraints because of locations.

d. Slate roofs.

e. Retail stores.

f. Clock towers.

g. Copper roof.

h. Marble planters.

i. Brick outdoor recreation yard enclosures.

j. Loose equipment.

k. Inmate transportation tunnels or other passageways to courthouse.

5. In accordance with the Code of Virginia, only fixed equipment is reimbursable except in minimum security housing. Loose equipment or furnishings (i.e., those items not permanently or physically attached to the building) that are not reimbursable include the following items:

a. Blankets.

b. Chairs.

c. Curtains.

d. Desks.

e. Fire extinguishers.

f. Lamps.

g. Mattresses and pillows.

h. Medicines and medical equipment.

i. Movable beds.

j. Movable shelving.

k. Office equipment and furnishings.

l. Portable radios and communication devices.

m. Pots, pans, and utensils.

n. Small portable appliances.

o. Smoke machines.

p. Telephone handsets.

q. Televisions.

r. Uniforms.

s. Vehicles and vehicle equipment.

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# Regulations

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6. Additional items that are not considered to be eligible for reimbursement as a construction cost include:

- a. Space for sheriff's functions unrelated to the operation of the jail.
- b. Magistrate's offices.
- c. Cost of financing or interest other than that calculated and provided by the Department of Treasury.
- d. Land already owned by the owner.
- e. Excess land not used exclusively for jail purposes.
- f. Owner's operating or administrative budget or expenses.
- g. Salary of [ ~~employees~~ an employee ] of any locality who is a participant in the jail project.
- h. Owner's advertising fees, master planning, consultants, authority or board expense, legal fees, or similar items unrelated to planning, design and construction of the jail.
- i. Selection of overly expensive design, building materials, or systems.
- j. Repair of existing facility.
- k. Oversized utility lines, central plants, or other similar services, onsite or off site, to provide service to facilities other than the jail now or in the future; if a portion of this is deemed reimbursable, it may be approved on a percentage of use by facility basis.

7. Items deducted from project cost:

- a. Any money realized or planned to be realized from the sale or transfer of any building or real estate associated with existing jail in order to procure a site and construction of the new jail or expansion shall be reported and shall be deducted from the project cost.
- b. Any grants received for construction shall be reported and shall be deducted from the project cost.

R. The planning study shall include a schedule for planning and construction of the project including at a minimum milestone dates for completion of design development drawings, completion of contract documents, start of construction (an executed construction contract and a notice to proceed), midpoint of construction, completion of construction, and projected date of occupancy.

S. The planning study shall include any other information that would be of value to a reviewing agency or the reviewing authority.

T. The planning study shall include a list of the sources of all allocated and projected construction or capital funds involved in the project.

**6VAC15-81-300. Minor renovation projects; required information.**

A. A locality or regional jail proposing a renovation project that does not increase design capacity and for which the cost is less than \$5 million or higher if approved by the board shall submit the following in lieu of the planning study:

1. Identification of the problem, need, or reason for the project.
2. Description of current situation including:
  - a. Analysis of existing facilities to include space utilization, condition, and capacity of facilities.
  - b. Determination of existing and recommended facility procedures related to the need.
  - c. Examination of existing and recommended alternatives to fulfill the need and the feasibility of implementing such alternatives.
3. Detailed written description of the planned project including an analysis of any existing facility function that would be displaced, replaced, or enhanced by the proposed renovation.
4. Statement of who will be responsible for designing, supervising, and accepting the project for the owner.
5. Conceptual floor plans, at a scale not smaller than 1/16 inch per foot, with indication by distinct symbols, overlays, or other means to denote work to be done.
6. Analysis of the project impact on staffing.
7. Analysis of the project impact on operating costs.
8. Analysis of impact on the security of the facility.
9. Total estimated project cost with a description of the basis and a breakdown of the estimate into construction costs, fees, and other expenses.
10. Proposed construction schedule to include anticipated completion date.
11. Other project-specific information as determined by the reviewing authority.

B. Nonreimbursable items as listed in 6VAC15-81-290 Q also apply to minor renovation projects.

## Article 3

### Funding and Reimbursement

**6VAC15-81-310. Criteria for board funding recommendation.**

A. The board shall evaluate the need for the project as demonstrated by the information provided in the needs assessment, planning study, or the minor renovation project information.

B. The board shall take into consideration the operational cost efficiency of the interior design of the facility with special concern for the number of security staff required, functional layout, material selection, and utilities costs.

1. Security staffing levels will be generally based on the operational capacity of the facility and in accordance with the staffing ratio requirements of the appropriation act.

2. Any proposed facility requiring a less efficient staffing ratio than the appropriation act requirement shall be justified and approved by the board in order to be considered for reimbursement.

C. Economy of construction cost is necessary and will be reviewed as follows:

1. Projects or portions of projects involving renovation of existing facilities shall be reviewed in relation to the efficiency of the renovated spaces, the appropriateness of the proposed changes, and the relationship of the changes to the project as a whole.

2. Projects or portions of projects involving renovation of existing facilities shall be reviewed in relation to the adjusted median cost of local correctional facilities. The comparison of project costs to the adjusted median cost shall be made utilizing the appropriate estimated construction costs that were based on current cost values.

3. Increases and decreases in funding shall be based on costs listed in the latest edition of "Means Square Foot Costs" or "Means Facilities Cost Data" published by RSMMeans Company Inc., adjusted for appropriate variables. When reviewing the construction costs, the reviewing authority may recommend adjustment of the amount being requested for reimbursement funding for the following reasons:

a. When support service areas of the facility are not included, included at a size not in conformance with this chapter, or are included at sizes larger than necessary in anticipation of future expansion of the facility;

b. When planned facilities vary from the recommended custody level percentages contained in [ ~~6VAC15-81-610~~ 6VAC15-81-650 ] by more than 10% of each custody level;

c. When construction is proposed for space or spaces to be utilized for inmate industries; or

d. When site location circumstances warrant consideration.

D. The adjusted median cost of local correctional facilities shall be calculated by the department using national area averages based on the number of beds and the following procedure:

1. For jails housing maximum, medium, and minimum custody inmates, a cost per square foot base figure shall be the national median square-foot unit cost published in the latest edition of "Means Facilities Cost Data" or "Means Square Foot Costs" published by RSMMeans Company Inc.

2. For dormitories providing only community custody housing a cost per square foot base figure shall be the national median square-foot cost for college dormitory from the latest edition of "Means Square Foot Costs" or "Means Facilities Cost Data" published by RSMMeans Company Inc.

3. The national square-foot cost shall be adjusted for applicability to Virginia localities by applying an adjustment factor given for appropriate class of structures in the local building construction multipliers section of the "Marshall Valuation Service Manual" published by Marshall & Swift, latest edition.

4. For the purposes of cost calculations only, the adjusted square-foot costs shall be multiplied by per-bed area allowances based on the national average gross square footage of facilities; the area allowances shall be:

a. Facilities housing maximum, medium, and minimum inmates - 400 square feet per bed;

b. Community custody housing facilities with 50 or fewer beds - 275 square feet per bed; and

c. Community custody housing facilities with more than 50 beds - 250 square feet per bed.

E. The adjusted median state construction cost of local correctional facilities shall be calculated by the [ ~~Department~~ department ] based on the number of beds and the following procedure:

1. Adjusted median cost for the local correctional facility shall equal:

a. National cost per square foot multiplied by local modifier multiplied by area allowance per bed as found in "Means Square Foot Costs" or "Means Facilities Cost Data" published by RSMMeans Company Inc. plus [ ~~±~~ ]

b. Additives to the cost must be indicated and justified.

2. The amount recommended for project funding shall not exceed the adjusted median construction cost plus 10% plus other costs as addressed in 6VAC15-81-290, or planning study estimated cost, whichever is less. Costs exceeding the state allowed amount as calculated in 6VAC15-81-290 Q must be borne solely by the owner.

3. Construction cost shall be based on costs as of the midpoint of the construction schedule.

4. The median cost of the local correctional facility is the reasonable cost of items similar to those listed in the cost template shown below:

# Regulations

<u>Cost Analysis</u>		
<u>Name of Jail:</u>		
<u>Date:</u>		
	<u>Locally Requested Cost</u>	<u>Eligible Cost:</u>
<u>Part I - New Construction Costs</u>		
<u>Building cost</u>		
<u>Sitework</u>		
<u>New Construction Cost Subtotal</u>		
<u>Part II - Project Construction Costs</u>		
<u>Building renovation cost (number of square feet and cost per square feet)</u>		
<u>Unusual site conditions</u>		
<u>VDOT access lanes</u>		
<u>Off-site utilities</u>		
<u>Utility relocation</u>		
<u>Project Construction Costs Subtotal</u>		
<u>Part III - Other Project Costs</u>		
<u>A/E fees</u>		
<u>Community based corrections plan/planning study</u>		
<u>Value management analysis</u>		
<u>Construction manager/clerk of the works</u>		
<u>Fixtures, furnishings &amp; equipment</u>		
<u>Communications/data equipment</u>		

<u>Testing/special inspections</u>		
<u>Survey, topo, environmental &amp; utility locator</u>		
<u>Geotech</u>		
<u>Printing, reproduction &amp; advertising</u>		
<u>Permits, fees &amp; connection charges</u>		
<u>Record drawings</u>		
<u>Other Costs Subtotal:</u>		
<u>Contingency Costs (based on total costs less A/E fees and planning study and percentage used):</u>		
<u>Total Project Costs</u>		
<u>Note: Line items are suggested. For example, not all line items may be applicable. However, more line items may be required.</u>		

F. The cost of renovation of an existing facility shall be reviewed on a case-by-case basis and shall be presented in calculations separate from new construction costs.

G. Unless an extension is granted by the board, board approval expires after three years if design development drawings have not been submitted to the reviewing authority. After that time, to proceed with the project, the owner shall resubmit the community based corrections plan to the board for reconsideration.

### **6VAC15-81-320. Funding priorities.**

The following criteria, listed in order of importance, shall serve as a guide for determining the level of priority given to requests for reimbursement:

1. Replacement or renovation of bed space lost due to fire, earthquake, or other disaster.
2. Renovation of an unsafe facility that is documented as out of compliance with board life, health, and safety provisions of 6VAC15-40 (Minimum Standards for Jails and Lockups) or a court-ordered renovation, expansion, or new construction.
3. Construction of a regional facility that results in the replacement or closure of two or more local facilities.

4. Expansion of an existing local correctional facility or regional facility experiencing overcrowding that is expected to continue based upon factors described in the needs assessment.

5. New construction for a locality that does not currently have a facility or is not participating in an existing local correctional facility or regional facility.

6. Expansion or renovation of support facilities.

7. Phased construction projects.

8. Construction project cost overruns.

9. Construction by localities that received reimbursement within the previous five years for beds of construction with a limited life span. These localities shall not receive recommendation for approval for replacement of those beds with another secure or community custody facility.

**6VAC15-81-330. Board recommendations.**

A. The department shall direct a letter to the owner notifying the governing body of the board's decision to recommend, or not to recommend, a project for reimbursement.

B. The department shall notify the Department of Planning and Budget and Treasury Board of the board's approvals and approval expirations of proposed jail construction to include project description and reimbursement recommendation amount.

C. Final appropriations are subject to the Governor's approval and legislative enactment.

**6VAC15-81-340. Reimbursement rates.**

The reimbursement rates to localities for construction, expansion, or renovation of local correctional facilities shall be governed by §§ 53.1-80 [ , ] 53.1-81, and [ § ] 53.1-82 of the Code of Virginia.

**6VAC15-81-350. Required forms.**

Upon project approval by the board, the owner shall be responsible for obtaining and submitting all forms as required by the Treasury Board if the project is to be funded by the Treasury Board.

Part III  
Project Development

**6VAC15-81-360. Project development; reviewing authority.**

The reviewing authority determines adequacy of the usability, functionality, acceptable design relationship, flows, and sightlines of the design of the facility. With the exception of receiving a modification granted by the board, the reviewing authority is the final determination in interpretation of and compliance with this chapter.

**6VAC15-81-370. Schematic design documents.**

A. The owner shall submit schematic design documents to the reviewing authority as specified in this section.

B. The schematic design documents required for an expansion, renovation, or new construction of a local correctional facility shall contain sufficient information to identify basic security construction features and demonstrate intent to comply with this chapter and building code requirements and shall include, as a minimum, the following:

1. The schematic design shall include a basis of design narrative that provides the following information:

a. General and special purpose capacity and type of occupancy.

b. Exterior circulation to include pedestrian and vehicular.

c. Outline description of basic materials including systems, equipment, and proposed finishes for major areas to include administration, inmate housing, inmate programs, kitchen, laundry, receiving, medical, etc.

d. Future construction or expansion to be accommodated.

e. Style and character of building desired.

f. Environmental considerations, if any.

g. A geotechnical report.

h. A description of the HVAC systems being used, including the goals for energy efficiency and for the smoke removal systems.

i. Total square footage per floor and per building.

j. Number of parking spaces.

k. Total estimated construction cost based on the schematic documents with a description of the basis on which the estimate was made.

l. Any changes to the board approved total project budget.

m. Any changes in staffing from the board approved planning study.

2. The schematic design shall include schematic drawings that provide the following information:

a. A table showing type of construction proposed. Building designations as to building code edition used, standards to be met, fire resistive characteristics, intended use group or groups, use condition, gross square footage, design occupancy loads, and construction types.

b. Schematic site plan.

c. Floor plans consisting of single line drawings at a scale not smaller than 1/16 inch per foot, showing each floor

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# Regulations

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layout with space names, nominal room square footage, circulation paths, and security walls (interior and exterior).

d. Longitudinal building section with floor to floor to ceiling dimensions.

e. Exterior elevation views (minimum of two).

f. Any other information that would be of value to the reviewing authority.

## **6VAC15-81-380. Design development documents.**

A. The owner shall submit design development documents to the reviewing authority as specified in this section.

B. The design development documents required for an expansion or new construction of a local correctional facility shall contain sufficient information to identify basic security construction features and demonstrate intent to comply with this chapter, 6VAC15-40, and building code requirements and shall include, as a minimum, the following:

1. Site plan.

2. For new and existing facilities, a table showing the construction type, the size of the facility in gross square feet of floor area, building code designations as to code edition, fire resistive characteristics, intended use group or groups, condition, and design occupancy loads.

3. Architectural floor plans at least 35% complete at a scale not less than 1/8 inch per foot, showing each floor layout complete with space names, nominal room square footage, circulation paths, secure perimeter, interior security walls, and fire walls.

4. Elevations, sections, and details as required to define building materials and security construction features.

5. Mechanical and electrical plans and specifications necessary to define life safety construction features.

6. Security equipment list.

7. Outline specifications.

8. Construction cost estimate.

9. Any change in staffing from planning study.

C. Documents for renovation of a local correctional facility may not require some of the information in subsection B of this section. Requirements shall be as determined by the reviewing authority in consultation with the owner or owner's agent or engineer. In the case of renovations qualifying as minor renovation projects under 6VAC15-81-300, determination of required documents and information shall be made by the reviewing authority in consultation with the person or persons responsible for project design.

D. The owner shall submit two sets of design development documents to the Department of Corrections, Compliance,

Certification, and Accreditation Unit. The owner may also be required to submit design development documents to other regulatory agencies as deemed appropriate at this stage and shall be so notified in writing by the department.

E. The reviewing authority shall review design development documents for compliance with applicable codes, this chapter, and commonly accepted architectural, engineering, and correctional practices.

1. Changes to design development documents may be required. If so, the reviewing authority shall ensure that all changes and comments shall be submitted in writing to the owner.

2. The owner or owner's agent shall respond in writing to the reviewing authority to all comments in the design development review. Necessary revisions to the project documents may be incorporated in the submission of the construction documents. All issues in question between the owner or owner's agent and the reviewing authority shall be resolved before the construction document phase is begun.

## **6VAC15-81-390. Value management analysis.**

A. All jail projects for which reimbursement is being requested for new construction, expansion, or renovation costing \$10 million or more shall have a value management analysis (VMA) performed during design. For renovation projects, a waiver may be requested from the board.

B. VMA shall be performed at the conclusion of the design development (35% to 40% complete) phases of the project design. For large projects in excess of 250 beds, the reviewing authority may require that a second phase of VMA be performed at the construction documents phase (90% to 95% complete).

C. The VMA shall involve a three-day to four-day exercise at the design development phase, or four to five days each at the design development and construction document phases. The first day, or portion thereof, of each analysis consists of a presentation overview by the owner and the A/E design team to the value management team. The final day or portion thereof, consists of a presentation of findings and recommendations by the value management team to the owner and A/E design team and attended by the reviewing authority.

D. The VMA process shall analyze at a minimum the following aspects of the project's design: systems, products and materials, quality, efficiency, functionality, long-term design, and operational needs (beyond 10 years) and cost.

E. The owner shall engage the services of a qualified value management team, as defined in [ ~~the definitions~~ 6VAC15-81-20 ] and headed by a certified value specialist or engineer pursuant to the [ ~~definitions~~ definition of "value management team" ]. The VMA team shall be independent of the A/E

design team and of the contractor. Cost estimators are also recommended as beneficial to the analysis, particularly for projects performing VMA at the construction documents phase.

F. The owner shall advise the reviewing authority in writing at least 15 working days in advance of the meeting dates for the VMA team. A representative of the reviewing authority shall be present at the value management team's formal presentation of results to the owner and A/E design team. The reviewing authority may attend any other portion of the session.

G. Upon completion of the VMA process, a summary report detailing VMA recommendations and the owner's decision on implementation of the recommendations shall be provided in writing to the reviewing authority.

### **6VAC15-81-400. Construction documents.**

The owner or owner's agent shall submit two complete sets of construction documents, one full size, one half size, plus one set of full-size architectural drawings to the reviewing authority, Department of Corrections, Compliance, Certification, and Accreditation Unit as specified in this section.

1. Complete sets of construction documents shall consist of:

- a. Construction documents (at least 95% complete).
- b. Bidding documents.
- c. Cost estimate.
- d. Construction schedule.

2. Review approvals from local building, health, and fire officials.

3. The reviewing authority shall review construction documents for compliance with this chapter, building and fire code requirements, and incorporation of all changes required by the reviewing authority at the design development document review stage.

a. Changes to the construction documents may be required. All required changes and recommendations shall be submitted in writing to the owner or owner's agent.

b. The owner or owner's agent shall respond to all comments in the construction document review in writing to the reviewing authority. All issues in question between the owner or owner's agent and the reviewing authority shall be resolved before the project is bid.

4. Upon satisfactory resolution of all review comments, construction documents shall be approved by the reviewing authority, and the owner shall be advised in writing.

5. The approved plans shall not be construed as authority to omit or amend any of the provisions of this chapter except when a modification is granted by the board.

### **6VAC15-81-410. Changes and delays.**

A. If, during the project, there is any substantive change in the scope of the project, major design change, an increase in the estimated cost of construction exceeding 10%, or any change in the security staff requirements exceeding 10%, the review process shall be suspended until the project is resubmitted to the board for further review and possible change in the status of reimbursement recommendation.

B. Unless an extension is granted by the board, board approval expires after two years if design development drawings have not been submitted to the reviewing authority. After that time, to proceed with the project, the owner shall resubmit the community based corrections plan to the board for reconsideration.

C. Increases in reimbursement funding over the initial amount approved by the board may be considered based on analysis of documentation of bid overage or contract increase, negotiation for cost reduction, and justification for the increase. See 6VAC15-81-430. Increases in the cost of construction above the board approved amount shall be documented, justified, and submitted for board approval. Notification shall be provided to the board of the intent to request increased reimbursement prior to 35% completion of construction. The request for board approval with complete documentation and justification shall be made prior to 50% construction completion.

D. The board shall not approve any request for reimbursement for increases in the cost of construction for any project for which construction was not begun within three years of enacted approval of funding for the project by the General Assembly; provided however, the board may approve such requests if the increased costs resulted from extraordinary circumstances, which must be documented.

E. Final appropriations for increases are subject to the Governor's approval and legislative enactment.

### **6VAC15-81-420. Bids.**

A. Prior experience with jail construction is an element to be considered when selecting a contractor.

B. After bids for construction have been received and opened, and the owner has determined to proceed with the project, the owner or owner's agent shall submit a copy of the bid tabulation to the reviewing authority.

C. For projects utilizing nontraditional process, other than design-bid-build, the schedule of values shall be submitted within 45 days after award of the construction contract.

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# Regulations

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## **6VAC15-81-430. Construction.**

A. To be eligible for reimbursement, the quality control must be independent of the owner. Quality control may be provided by a clerk of the works, construction manager, or by enhanced construction administration by the architect with reports submitted directly to the owner.

B. Any change ordered during the construction phase affecting security, safety, compliance with this chapter, or cost shall be submitted to the reviewing authority in writing.

C. Representatives of the department may visit the project site during the construction period to observe the work in progress. Any observed deviations from the approved documents having the effect of voiding or reducing compliance with this chapter or building or fire code requirements shall be reported in writing to the owner and shall be corrected.

D. Inspections by the reviewing authority shall start at 50% construction completion with at least one additional inspection prior to final inspection. The owner or owner's agent shall notify the reviewing authority and request inspections in a timely manner.

## **6VAC15-81-440. Final inspection.**

A. The reviewing authority shall inspect the facility after substantial completion and prior to acceptance by the owner. This inspection shall be requested by the owner or owner's agent and coordinated with the reviewing authority.

B. Upon completion of the final inspection by the reviewing authority, and corrective actions as required, the owner shall provide to the reviewing authority copies of all regulatory agency letters verifying approval by others of the completed project.

C. Corrective actions taken to resolve comments made by the reviewing authority during final inspection shall be provided by the owner or owner's agent in writing to the reviewing authority.

## **6VAC15-81-450. Record documents.**

The owner or owner's agent shall modify original construction contract documents to reflect the condition of the project as actually constructed and based upon as-built drawings and specifications provided by the general contractor. Such modifications shall include change orders, sketches, addenda, and field clarifications. These documents shall be marked as record documents.

### Part IV Reimbursement

## **6VAC15-81-460. Method of reimbursement.**

A. Reimbursement to an owner shall be [ ~~affected~~ effected ] through one of three methods. Reimbursement shall be made through one lump sum payment or two lump sum payments

or in payments over a specified period of time. The General Assembly determines and approves the method of reimbursement upon evaluation of the jail construction project by the Department of Planning and Budget in consultation with the Treasury Board.

B. Project closeout documentation and request for reimbursement shall be submitted to Department of Corrections, Compliance, Certification, and Accreditation Unit, within six months after construction completion.

C. Failure to comply with this chapter shall delay the review process and recommendation for disbursement of funds and may result in the denial of reimbursement.

D. Project closeout documentation shall be reviewed for completeness and accuracy by the reviewing authority prior to recommendation to the Governor and authorization to the Comptroller or Department of Treasury for issuance of reimbursement payment. The owner or owner's agent shall be notified by the reviewing authority if information is missing, invalid or inaccurate or needs clarification. Such further information requested shall be provided prior to authorization of payment.

E. Project closeout shall be complete upon receipt of all properly prepared final documentation as specified in 6VAC15-81-480 and reimbursement has been made.

## **6VAC15-81-470. Request for interim lump sum reimbursement.**

If interim lump sum reimbursement has been legislatively approved, when construction of the project is 50% complete and payment in two lump sums has been authorized, the following shall be submitted:

1. Schedule of values and calculations confirming 50% completion.
2. Copies of bills and verification of payment (canceled checks or other means of verification as accepted by the reviewing authority) along with copies of original estimated costs to verify payment of 50% of those items for which reimbursement is being requested at that time.
3. Interim affidavit of payment of claims.
4. Further information as deemed necessary by the reviewing authority.

## **6VAC15-81-480. Final lump sum reimbursement closeout documentation.**

If lump sum reimbursement has been legislatively approved, when the project is finished at the local level, the owner shall submit the final documentation listed in this section. Final reimbursement may be requested when the project is complete. The project shall be considered complete when the owner has completely submitted the following items accurately and with all supporting documentation:

1. Project completion report (forms or instructions are provided by the reviewing authority).
2. Final schedule of values (forms or instructions are provided by the reviewing authority).
3. Copies and verification of payment of all bills pertaining to the project for which reimbursement is being requested.
4. Letters from regulatory agencies verifying their inspection and approval of the completed project.
5. Building official's certificate of occupancy.
6. Fire official's concurrence.
7. Health official's approval.
8. Affidavit of payment of claims.
9. 50% completion date and documentation substantiating the date.
10. Verification and certification using industry benchmarks that substantiate that the sustainable design and construction initiatives identified in the planning study have been achieved, if applicable.
11. Verification of correction of the reviewing authority's punch list items or other deficiencies;
12. Copies of all change orders.
13. Closeout documents (drawings and specifications) that shall be submitted to the reviewing authority in accordance with the following:
  - a. One set on CD media: copy of record documents on CD-ROM media, or electronically stored data shall be in a pdf format.
  - b. One set of operation and maintenance manuals for systems provided to the owner shall include all color coding and point-to-point wire run lists for all electrical systems.

### **6VAC15-81-490. Treasury Board reimbursement.**

A. When the construction and closeout of a project being reimbursed by contract with the Treasury Board is complete, the owner shall submit all information as required in 6VAC15-81-480 to the reviewing authority in the Department of Corrections, Compliance, Certification, and Accreditation Unit.

B. An owner approved for reimbursement in payments over a specified period of time shall be paid in accordance with a contractual agreement entered into with the Treasury Board.

## Part V

### Secure Local Correctional Facilities Design and Construction

#### Article 1

##### General Design Requirements

### **6VAC15-81-500. Secure local correctional facilities design and construction - general.**

A. When designing the facility, consideration shall be given to appropriate traffic patterns, groups of functions, facilitating ease of movement to and within functions, clear sightlines to reduce blind spots, efficiency and economy of staffing, PREA, and facilitating a smooth, logical sequence of operation.

B. The reviewing authority may accept materials and systems documented to be equivalent to those required by this chapter.

C. Any deviation requiring a modification or variance of this chapter shall be submitted for review by the reviewing authority and approval by the Board of Corrections.

D. In addition to the minimum requirements, this chapter contains recommendations regarding design, construction, and security that, although not required, should be given serious consideration.

E. The reviewing authority may make recommendations regarding design, construction, and security that, while exceeding minimum requirements, may be desirable to adopt.

F. Review or inspection by the reviewing authority does not relieve the owner or owner's agent from the requirement to comply with this chapter.

### **6VAC15-81-510. Separation of males, females, and juveniles.**

A. Secure housing units, intake cells, and special purpose cells shall be designed and constructed to ensure physical separation and to prohibit normal sight or sound communication between males and females.

1. "Secure housing" means housing for all inmates (maximum, medium, and minimum) not classified as community custody.

2. If the facility is designed to hold juveniles, the areas used for juveniles shall be designed to prohibit normal communications by sight and sound and ensure physical separation of the juvenile from the adult population.

B. Separation of internal movement of juveniles shall be in accordance with 6VAC15-40, Minimum Standards for Jails and Lockups.

### **6VAC15-81-520. Traffic patterns.**

A. If secure and community custody housing are provided in the same building, the design of the facilities shall provide

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# Regulations

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traffic patterns to assure the separation of secure and community custody inmate populations.

B. Design of public access shall be such that the public does not enter into the secure perimeter of the facility, and the traffic pattern for the public shall be separate from that of inmates.

C. The reviewing authority may require that intake, release, and court holding areas be separate and distinct functions and traffic patterns be kept separated from each other. The reviewing authority may require that means of egress for the inmate release area and for the court holding area be separate from the intake and booking area entrance.

D. Exterior pedestrian and vehicular routing shall be designed for separation of traffic patterns.

## **6VAC15-81-530. Related areas.**

The following areas shall be outside the secure perimeter

1. Magistrate offices and law-enforcement lobby (if provided).
2. Parking.
3. Public visitation and waiting area.
4. Armory.
5. Maintenance shop (if provided).
6. Main (primary) mechanical room.
7. Vehicular sally port.

## **6VAC15-81-540. Administration.**

A. The jail shall provide space consistent with the size of the facility for administrative, program, and clerical personnel.

B. Space shall be provided within the secure perimeter for the shift or watch commander's office, counselor's office, and other offices that the jail operation requires.

C. Space shall be provided for staff break or dining. Locating staff break or dining within the secure perimeter shall be considered.

## **6VAC15-81-550. Public areas.**

A. Public areas of the facility shall be located outside the secure perimeter. Public access to the building shall be through a main entrance. The general public shall not have access inside the secure perimeter of the jail. Traffic patterns of the public and inmates shall be distinct, separate, and not intersect.

B. A reception and waiting area with appropriate informational signage shall be provided for the public and shall be so situated that it does not interfere with the administrative office operations. The public waiting area shall include sufficient seating, drinking fountains, toilet facilities, and weapons lockers equipped with individually locked

compartments. Consideration shall be given to provision for public lockers.

C. All exterior areas, including parking, shall be adequately lighted.

## **6VAC15-81-560. Secure perimeter.**

The secure perimeter of the facility shall be composed of a complete and continuous security envelope consisting of walls, roofs, ceiling, floors, doors, door locks, and other hardware, windows and glazing constructed in accordance with the security perimeter requirements of this chapter. The secure perimeter shall be clearly indicated on the plans.

## **6VAC15-81-570. Interior security walls, interior partitions.**

A. Interior security walls shall be provided around and between all housing units, cells, dormitories, armories, sally ports, central intake units, classification units, control rooms, recreation areas, kitchens, inmate dining halls (if separate from housing), canteens (commissaries), multipurpose rooms with toilets, central laundry, laundry chemical rooms, pharmacies, medical units, records rooms within the secure perimeter, and property rooms. Interior security walls, and opening protectives shall be constructed in accordance with 6VAC15-81-930.

B. Interior partitions.

1. Interior partitions may be provided between support services such as but not limited to multipurpose rooms without adjacent toilets and staff dining.

2. Interior partitions shall not be substituted for required interior security walls.

3. Interior partitions shall be constructed in accordance with 6VAC15-81-930.

## **6VAC15-81-580. Exterior areas.**

A. Exterior areas, including parking and building exterior where CCTV is utilized, shall be lighted as recommended by the equipment manufacturer.

B. When landscaping, consideration shall be given to size and density of plantings within 25 feet of the building for security and fire safety reasons.

## **6VAC15-81-590. Fencing.**

A. Security fencing or security walls shall be provided for outdoor recreation areas. Exterior building configurations that create containment areas and all other areas shall be fenced as required by this chapter.

B. Access for maintenance shall be provided for all fenced areas.

**6VAC15-81-600. Emergency containment.**

A. Alternate means for inmate containment shall be provided for in case of disaster, mass arrests, or emergency evacuation.

B. These areas may include outdoor recreation area, an enclosed vehicular sally port, or any other approved area that shall afford adequate security.

C. When planned for this purpose, these areas shall provide access to toilets and drinking water. Fixtures and equipment shall meet the requirements for temporary holding.

**6VAC15-81-610. Armory.**

A. Secure storage for security equipment, restraining devices, firearms, chemical agents, etc. shall be located outside the secure perimeter and convenient to security personnel responding to emergency situations.

B. Walls, floor, opening protectives, and roof or ceiling of this area shall meet requirements for secure construction.

C. This area shall have a dedicated exhaust system.

**6VAC15-81-620. Pedestrian sally ports.**

A. Sally ports shall be provided at any point the secure perimeter of the building is penetrated unless specifically exempted by this chapter.

B. Sally ports shall be provided at all exterior openings from security areas and at the entrances to housing units designed for maximum and medium security inmates.

C. Any stairwell with a door that penetrates the secure perimeter shall be constructed as a sally port.

D. For an emergency exits only, an exterior area enclosed with bar grille or woven rod may serve as the second barrier of a sally port. This sally port shall be provided with a top barrier at least equivalent to the vertical enclosure fence mesh and the area is supervised by CCTV.

E. Exterior security doors used solely to meet emergency evacuation requirements are not required to be sally ported, however, fencing the area to be utilized for evacuation is required if no sally port is provided.

F. Commercial grade sectional doors or overhead rolling doors are not considered secure and shall not be part of a sally port.

G. Consideration shall be given to providing weapon lockers equipped with individually locked compartments at the entry of staff and law-enforcement sally ports penetrating the secure perimeter.

**6VAC15-81-630. Vehicular sally port.**

A. The vehicular sally port shall be provided with weapons lockers equipped with individually locked compartments.

B. Vehicular sally ports shall be weather protected. As a minimum the lower eight feet of the vehicular sally port walls shall be solid. This sally port shall be separated from adjacent spaces by secure and fire-rated construction and shall be observable by staff with CCTV as backup. If this sally port is to be used for emergency containment, an upgrade of the security level shall be considered.

Article 2

Central Intake Unit Design, General Population, and Other Areas Design Requirements

**6VAC15-81-640. Intake and processing.**

A. The central intake unit shall be located within the secure perimeter of the facility, outside the general population housing units and shall be separated from other areas by an interior security wall.

B. The central intake unit shall be constructed to provide the following areas:

1. Booking or processing, including photographing and fingerprinting.
2. Clothing storage and issue.
3. Control room or station.
4. Custody transfer.
5. Intake cells and group cells.
6. Interview.
7. Medical screening.
8. Orientation.
9. Property storage.
10. Provisions for telephone calls.
11. Records storage (if not provided elsewhere).
12. Release and staging for court (if applicable).
13. Strip search and shower.
14. Video arraignment if arraignment is not provided elsewhere.

C. Intake cells and group areas.

1. Space shall be provided for intake of inmates at a minimum of one for every 10 inmates for which the facility is designed up to the first 400 beds of design capacity.

a. Intake cells, group cells, and open seating shall be provided at a ratio of one for every 40 beds of additional design capacity above 400.

b. Consideration shall be made for future expansion.

c. At least 50% of this required capacity shall be single cells with the remainder being a combination of group cells and open seating area. Exception: The number of

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# Regulations

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single cells may be reduced based on approved statistical documentation or needs identified in the needs assessment.

2. Intake cells shall be designed to contain a minimum of 45 square feet for single occupancy cells plus 15 square feet per inmate for each additional inmate for which the cell is designed.

3. Each cell shall contain at least one stationary bench or bunk, hot and cold running water, a combination stainless steel toilet and lavatory with push button metering activators, and a sanitary bubbler.

4. Intake cells shall provide optimized observation of the interior of the cell. Modesty screening is required for toilets in cells with grillage or glazed openings greater than a total of 120 square inches in any cell wall. Exception: An observation cell with flushing floor drain and a bunk sized slab or platform raised a minimum of six inches above floor for sleeping is not required to have a toilet, lavatory, or privacy screening.

5. Lighting in cells, toilets, and showers shall be provided from a maximum security fixture of sufficient intensity to permit sight supervision.

6. Natural light and dayrooms are not required for intake cells or areas.

7. Intake cells shall be constructed as maximum security cells with maximum security doors, hardware, fixtures, equipment, and glazing or bar grille woven rod or combination thereof.

8. Toilets and lavatories shall be provided for use by those in open seating holding [ 3. ] Plumbing fixtures in this area shall be maximum security.

9. Showers shall be provided as follows:

a. For facilities with a design capacity of 200 or less: a minimum of two showers.

b. For facilities with a design capacity of 201 or more: a minimum of one additional shower for every 300 beds, or portion thereof, of additional design capacity.

D. Nonperimeter entrances and exits for the intake and release area shall be capable of being controlled from intake or local control. Security perimeter doors shall be controlled from master control only.

E. Secure storage space for inmate personal property shall be provided adjacent in proximity to the intake or release area.

1. The recommended amount of space is four to six inches of linear hanging space per inmate for which the facility is designed plus one cubic foot in bins or lockers, per inmate, for items that cannot be hung.

2. Consideration shall be given to providing washers and dryers in this area.

F. Release and court holding.

1. Consideration shall be given to separation of traffic patterns and additional holding for inmate release area and for court holding.

2. Number of cells shall be as defined in the needs assessment.

3. Egress for these areas shall be separate from the area serving the intake and booking entrance.

G. Temporary juvenile holding, pursuant to § 16.1-249 G of the Code of Virginia, if provided, shall be as follows:

1. Construction of juvenile cells or units shall be in accordance with this chapter as required for maximum security adult housing.

2. This ward or unit shall be physically, audibly, and visually separated from adult areas.

H. Consideration shall be given to future expansion.

## **6VAC15-81-650. Security levels of housing.**

A. Secure housing shall be constructed to provide housing for maximum, medium, and minimum custody inmates. Consideration shall be given to the mental health needs of inmates which may require dedicated housing areas with additional space for mental health professionals, treatment, and counseling. "Secure housing" means housing for all maximum, medium, and minimum inmates not classified as community custody.

1. The basic distribution of custody levels is expected to be 30% maximum, 40% medium, and 30% minimum or may vary based on documentation provided in the needs assessment.

2. Female housing shall consist of at least two separate units of which at least 50% of the female design capacity is medium security or higher.

3. Up to 25% of minimum custody may be community custody. Community custody beds do not require construction of special purpose cells.

B. Maximum security housing units shall be designed as groupings of single cells with dayrooms to afford protection for persons requiring maximum supervision.

1. The number of inmates per housing unit shall depend upon the degree of surveillance and security provided, but for facilities designed for an occupancy of 240 or fewer inmates, the unit shall be designed not to exceed 24 inmates per housing unit. For facilities designed for an occupancy in excess of 240 inmates, the number of occupants for which the unit is designed may be increased but shall not exceed 48 inmates per unit. A minimum of

two maximum security housing units shall be provided. For indirect supervision facilities, all units shall be provided with direct visual observation from a control room. For direct supervision facilities, the reviewing authority may require that units be provided with direct visual observation from a control room.

2. 20% to 25% of maximum security cells may be dedicated as a classification unit. The classification unit shall be located in proximity to the intake unit. Consideration shall be given to male and female population. The classification unit shall include at least one private interview room, office space for classification personnel, medical room, and record storage.

C. Medium security housing units shall be designed as single, double, or four-inmate cells with common dayroom. The owner shall determine the number and type of cells per housing unit. The owner shall determine the number and type of cells per housing unit; however, no less than 30% of these cells shall be designed for single occupancy. These units shall be designed to accommodate no more than 64 inmates per housing unit for direct supervision or 48 inmates per housing unit for indirect supervision. At least two housing units shall be provided. For indirect supervision facilities, the reviewing authority may require that all units provide direct visual observation from a control room.

D. Minimum security housing units shall be designed as dormitories or multiple occupancy cells. Minimum security areas shall be designed to accommodate no more than 48 inmates per housing unit in dormitories or 64 inmates per unit with multiple occupancy cells. At least two housing units shall be provided.

E. Community custody facilities shall be constructed in accordance with Part VI (6VAC15-81-1130 et seq.) of this chapter. Consideration should be given to male and female populations.

#### F. Juvenile housing.

1. If the facility is to hold juveniles, housing units shall be physically, audibly, and visually separated from adult areas to prohibit adult and juvenile communication in accordance with the "Guidance Manual for Monitoring Facilities under the Juvenile Justice and Delinquency Prevention (OJJDP) Act of 2002," published by OJJDP in October 2010. Showers, personal hygiene, and dressing areas shall be designed to comply with PREA.

2. Juvenile housing units shall provide general purpose housing designed and constructed in accordance with maximum security requirements of this chapter.

#### **6VAC15-81-660. Cells and dayrooms.**

##### Maximum and medium security:

1. All single cells shall be sized in accordance with the latest edition of the American Correctional Association Standards for Adult Local Detention Facilities and have a ceiling height no less than eight feet. Single occupancy cells, with the exception of special purpose cells, shall be configured to open into a dayroom or activity space.

2. Multiple occupancy cells shall be designed for no more than four inmates per cell and shall be sized in accordance with the current American Correctional Association Standards for Adult Local Detention Facilities concerning multiple occupancy cells and have a ceiling height of no less than eight feet. Multiple occupancy cells shall be configured to open into a dayroom.

#### **6VAC15-81-670. Cell requirements.**

A. All cells shall be enclosed within secure walls, floor, and ceiling, as specified in this section, and shall include secure opening protectives. Each cell shall be provided with artificial light, toilet and lavatory fixtures with metering push button activators, hot and cold running water, a security type mirror mounted at standard height, a stationary bed or bunk and storage.

B. Maximum security cells shall have maximum security walls, maximum security doors, fixtures, equipment, and hardware meeting a minimum of ASTM Grade 1 requirements.

C. Medium security cells shall have interior security walls surrounding each housing unit meeting a minimum of ASTM Grade 2 requirements; however, the walls separating individual cells may be interior partitions.

D. Minimum security cells shall have walls, doors, fixtures, equipment, and hardware meeting a minimum of ASTM Grade 3 requirements.

#### **6VAC15-81-680. Dayroom requirements.**

A. Dayroom space shall contain no less than 35 square feet of space for each inmate for whom the unit is designed to serve. Calculation of this space shall not include sally ports, visitation booths, stairs, area under stairs, toilet, shower, and lavatory areas. On the first level an 18-inch wide path in front of all cell fronts, toilets, and showers, and the tiered walkway in front of upper level cells shall not be counted as dayroom space.

B. Each dayroom shall be equipped with a shower, toilet, lavatory with hot and cold running water activated by metering push button activators, and a drinking fountain or the lavatory equipped with sanitary bubbler. Fixtures shall be security type in accordance with the security level for which the unit is designed.

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# Regulations

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C. Stationary security type tables and dayroom seating shall be provided in maximum and medium security areas of the facilities designed for indirect supervision. Stationary security type tables and seating shall be provided for facilities designed for maximum security with direct supervision. Tables and seating for medium security direct supervision living areas may be loose but shall be designed for detention facilities and be fire retardant and vandal resistant. In accordance with the Code of Virginia only fixed equipment is reimbursable and loose equipment is not considered reimbursable except in minimum security housing.

D. Tables and seating shall be sufficient to accommodate the number of inmates for whom the area is designed.

E. Stairs in multilevel dayrooms shall have open risers.

F. If a housing unit is provided with an ADA accessible cell, the dayroom toilet shall be provided with an ADA accessible fixture.

G. Showers and toilets shall be located to provide visual supervision from a control station or control room and to provide privacy from the housing unit occupants and from visibility from circulation corridors. Showers, personal hygiene, and dressing areas shall be designed to comply with PREA.

H. If video visitation monitors are provided in the dayroom, they shall be positioned to maximize privacy for both the visiting inmate and visitor.

## **6VAC15-81-690. Dormitory requirements.**

A. Dormitories shall have walls, doors, fixtures, equipment, and hardware meeting a minimum of ASTM Grade 3 requirements.

B. All dormitories shall be constructed to provide 85 square feet of space per inmate for each inmate for whom the area is designed. The 85 square feet associated with dormitory space is normally separated into 50 square feet for sleeping and 35 square feet for activity. Calculation of this space shall not include sally ports, stairs, area under stairs, toilet, shower, and lavatory areas.

C. All dormitories shall be provided with artificial light, toilet and lavatory fixtures, hot and cold running water, and a drinking fountain or lavatory equipped with sanitary bubbler, security type mirrors at standard height, tables, and chairs or benches in sufficient number to accommodate the dormitory's design capacity.

D. Tables and seating shall be sufficient to accommodate the number of inmates for whom the area is designed.

E. Showers and toilets shall be located to provide visual supervision from a control station or control room as well as privacy from the housing unit occupants and from visibility from circulation corridors.

F. Stairs in multilevel dormitories shall have open risers.

## **6VAC15-81-700. Natural light.**

Natural light is required in general population housing units in new construction. Consideration shall be given to providing natural light in renovation projects that provide new inmate housing.

## **6VAC15-81-710. Artificial light.**

A. Artificial light shall be provided in all cells, dayrooms, and dormitories to provide at least 20 foot-candles at personal grooming areas, tables, and desk tops, if desks are provided. Night lighting is required.

B. Light fixtures used within the secure perimeter shall be equivalent to the security level of the area in which they are designed.

## **6VAC15-81-720. Climate control.**

Heat and air conditioning shall be provided in all rooms in the facility so that a temperature not less than 65 degrees F or more than 85 degrees F is maintained. Exceptions to this requirement include warehouses, industrial spaces, and mechanical and electrical spaces, which may be mechanically ventilated. Special consideration shall be afforded to additional cooling in kitchen, food storage areas, and rooms containing heat sensitive and electronic equipment.

## **6VAC15-81-730. Equipment and fixtures.**

Equipment and fixtures used within the secure perimeter shall be equivalent to the security level of the area in which they are designed.

## **6VAC15-81-740. Special purpose cells.**

A. There shall be a minimum of one special purpose cell (e.g., isolation, medical, or segregation) for each 10 secure inmates for whom the facility is designed.

B. The number of ADA accessible special purpose cells shall meet the percentage required by the building code.

C. All cells shall be provided with lighting from a maximum security fixture and be in accordance with artificial light requirements in 6VAC15-81-710.

D. Special purpose cells shall be sized in accordance with the American Correctional Association Standards for Local Detention Facilities for restrictive housing units with a ceiling height of at least eight feet and are not required to open onto an adjacent dayroom space.

E. A minimum of 80% of special purpose cells shall be constructed as maximum security cells. Up to 20% of special purpose cells may be of less secure construction if designed for medical usage.

F. Cells specifically designed for persons who are violent or self-destructive may be equipped with a flushing floor drain

in lieu of a stainless steel combination plumbing fixture and a bunk sized slab or platform raised a minimum of six inches above finished floor.

G. Showers shall be provided within the special purpose housing unit. Consideration shall be given to providing cuff slots in doors for enclosed showers in special purpose housing units.

H. Special purpose cells shall not open directly into a main corridor or general population activity space.

## **6VAC15-81-750. Multipurpose space.**

A. Multipurpose spaces shall be provided in sufficient number and size to allow for and include multipurpose rooms, educational classrooms, religious services, group counseling services, program services, and library (if inmates are to be moved to the service). For purposes of this chapter, jail industry programs, as defined in §§ 53.1-133.1 through 53.1-133.9 of the Code of Virginia, are not considered multipurpose space.

B. The total multipurpose area square footage shall be designed and constructed to provide a minimum of 20 square feet per inmate for design capacity of the facility up to 480 inmates. No additional multipurpose space is required for facilities with a design capacity of over 480 inmates.

## **6VAC15-81-760. Recreation.**

A. Recreation space shall be provided at a rate of 10 square feet for each inmate for which the facility is designed up to 480 inmates. For facilities with a design capacity of over 480, no additional recreation space is required. A minimum of two recreation areas shall be provided in facilities with a design capacity of up to 240 inmates. For facilities with a design capacity greater than 240 inmates, a minimum of three recreation spaces shall be provided.

B. Indoor recreation is required, and consideration shall be given to outdoor recreation. At least one indoor recreation area shall have a minimum of 1000 square feet with an 18 foot ceiling height or overhead clearance. At least one outdoor recreation area, if provided, shall have a minimum of 1500 square feet with an 18 foot overhead clearance. Additional recreation areas, if indoors, may have lower clearance or ceiling heights if being utilized for activities such as a weight room or ping-pong. No recreation area shall have less than 600 square feet or measure less than 20 feet in any one direction.

## **6VAC15-81-770. Library.**

Library space shall be provided for an inmate library or provisions made for alternative library services.

## **6VAC15-81-780. Commissary.**

Space shall be provided for an inmate commissary and associated storage or provisions shall be made for alternative commissary services.

## **6VAC15-81-790. Facility visiting area.**

A. Accommodations for public visitors shall be designed to provide flexibility in the degree of physical security and supervision commensurate with security requirements of variously classified inmates. Paths of ingress or egress for inmates shall be designed to be separate from and not intersect ingress or egress paths of public visitors.

B. Consideration shall be given to providing lockers or areas for storage of handbags or other articles in the public lobby.

### C. Noncontact visitation.

1. Noncontact visiting shall be provided at a rate of not less than one noncontact visiting space for each 20 inmates for whom the facility is designed, up to 240 inmates. Facilities designed for more than 240 inmates shall provide one additional noncontact visiting space for each additional 50 inmates.

2. In noncontact visiting areas, means shall be provided for audible communication between visitors and inmates. The communication system provided shall be designed to prevent passage of contraband.

3. If video visitation is utilized, a combination of on-site and off-site video visitation units for the public may comply with the requirements of subdivisions 1 and 2 of this subsection. In no event shall off-site video visitation be the only form of noncontact visitation.

4. At least 25% of public noncontact visitation shall be on site.

5. If inmate video visitation spaces are provided in the housing units, at least eight square feet shall be provided per video visitation space. This space shall not be counted towards calculation of dayroom or multipurpose room space.

### D. Contact visitation.

1. Not less than two secure contact visiting rooms of at least 60 square feet each shall be provided for the first 100 inmates of design capacity for contact visits from law-enforcement officers, attorneys, clergy, and probation officers or parole officers. For facilities having a design capacity in excess of 100 inmates, one additional secure contact visiting room shall be provided for every additional 200 inmates of design capacity. These rooms shall be located to be either visually supervised or monitored by a control station or room.

2. Provisions shall be made to prevent transmission of intelligible communication to adjacent areas.

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# Regulations

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## **6VAC15-81-800. Food service.**

A. If a kitchen is provided, it shall be equipped to meet the standards of the Department of Health and the following:

1. The kitchen and kitchen storage shall be sized in accordance with the design capacity of the facility and include consideration for future expansion.

2. The kitchen area, exclusive of dining and serving areas, shall be a minimum of 1500 square feet and for facilities in excess of 100 inmates of design capacity an additional three square feet per inmate shall be provided. The kitchen shall be located with consideration for ease of serving the inmate population and where supplies can readily be received without breaching security. Space for food storage rooms is in addition [ to ] the above minimum square footage.

3. Consideration shall be given to providing an inmate break area within the kitchen area. This shall not reduce the size of the kitchen or other spaces associated with the kitchen.

4. A janitor's closet and mop sink shall be located within the kitchen for exclusive use in the kitchen.

5. Storage space of adequate size and type to accommodate perishable, frozen, and bulk dry food storage shall be provided.

a. For facilities with a design capacity up to 1000 inmates, the storage space shall be sized not less than three square feet of floor space per inmate. For design capacity in excess of 1000, the sizing may be 2.7 square feet of floor space per inmate for the next 800 inmates. Further reductions may be approved for jails with a design capacity of greater than 1800 inmates. Storage space requirements are based on a seven-day supply need. Aggregate kitchen storage space shall be a minimum of 300 square feet of floor space.

b. The following breakdown of storage space is recommended: 40% dry, 36% refrigerated and 24% freezer.

c. Walls for food storage shall extend to the structure above.

6. All kitchen counters and table tops, legs, and bases; shelving; and fixed equipment shall be stainless steel.

7. The floors, walls, and ceilings in the food service areas shall be a smooth durable finish, shall withstand food spillage, and shall be easily cleanable.

8. Adequately sized separate lockable storage shall be provided for caustic, toxic, and flammable kitchen supplies. Secure storage or space for secure storage shall be provided for kitchen inventory of sharp implements and

other potential weapons. Consideration shall be given for locating lockable storage in a separate locked room.

9. Provisions shall be made for kitchen waste removal from the kitchen area without crossing the food preparation area.

10. Hand washing sinks for inmate toilets shall be located outside the toilet room and in view of the staff.

11. Consideration shall be given to locating an emergency eye wash station in the kitchen.

12. Consideration shall be given to providing a smoke removal system for the kitchen.

B. In addition to kitchen and kitchen storage areas, a staff dining or break area shall be provided with a minimum of 15 square feet for each person the area is designed to serve. Floors, walls and ceilings shall be a smooth, durable finish and easily cleanable.

## **6VAC15-81-810. Laundry.**

A. If a central laundry is provided, commercial or institutional grade equipment shall be provided.

B. Finishes shall be durable and easily cleanable. Electrical, plumbing, and ventilation shall be as described in Article 5 (6VAC15-81-980 et seq.) of this part.

C. The guidance for washer capacity is to provide 15 to 20 pounds of laundry per inmate per week. The minimum recommended ratio for dryer to washer load poundage shall be a minimum of 1.5 to 1.

D. There shall be sufficient storage for linen and laundry supplies. Separate lockable storage shall be provided for caustic, toxic, and flammable supplies.

E. Secure lockable storage shall be provided for chemical containers serving laundry machines.

F. All gas supply and exhaust venting on dryers shall be protected from exposure to and vandalism by inmates.

G. A janitor's closet and mop sink shall be located within the laundry for exclusive use in the laundry.

H. Consideration shall be given to providing a smoke removal system for the central laundry area.

I. Consideration shall be given to locating an emergency eye wash station in the central laundry area.

J. Consideration may be given to providing small load capacity laundry equipment in property storage, community custody, and minimum security housing areas in addition to the central laundry.

K. Provisions for future expansion shall be considered.

## **6VAC15-81-820. Storage.**

In addition to storage required for particular areas, the following shall be provided to accommodate facility design capacity at a minimum:

1. Storage for inmate clothing, linens, towels, etc.
2. Storage for recreation and related equipment located in or near indoor and outdoor recreation areas.
3. Secure storage for medical supplies and biohazard waste.
4. Storage for extra inmate mattresses and bunks.
5. Secure storage for janitorial supplies in janitorial closets located conveniently to areas serviced.
6. Secure storage for inmate records.
7. Storage space in the administration area for equipment, records, and supplies for established and projected population needs.
8. Staff uniforms and equipment.
9. Secure storage for evidence and contraband.

### Article 3 Additional Design Requirements

## **6VAC15-81-830. Elevators.**

A. Facilities with three or more stories shall be provided with at least two elevators.

B. Elevators within the secure perimeter shall be capable of being securely controlled and managed locally and from a control room. Consideration shall be given in all elevators to provide visual and audio communication with the control room.

## **6VAC15-81-840. Corridors.**

Corridors used for the movement of inmates, stretchers, food and utility carts, etc. shall be constructed to provide a minimum width of five feet.

## **6VAC15-81-850. Intercom, closed circuit television, video, and sound services.**

A. As a minimum, each housing unit shall be equipped with an electronic sound monitoring system that allows inmates to notify staff in the case of an emergency. This system shall be monitored by master control or other remote control room or control station.

B. Two-way intercoms shall be provided at all remotely controlled security doors other than cell doors.

C. The facility shall be designed to maximize direct visual sightlines. As a supplement to direct visual observation, CCTV shall be installed to observe, at a minimum, blind

spots in corridors, sally ports, building entrances, and the building exterior.

D. If video conferencing or arraignment is to be utilized, adequate space shall be provided.

E. Consideration shall be given to the requirements of PREA when installing video monitoring, electronic surveillance, or other monitoring technology.

F. In areas where voice communications through the glazing is desired, such as a magistrate, visitation, and control rooms, a system utilizing vandal resistant individual speakers, microphones, intercom, telephone, speak-around frames, or an approved equivalent shall be specified.

## **6VAC15-81-860. Telephone.**

Inmate telephone service shall be provided in all inmate housing units, including intake and special purpose housing, within the jail.

## **6VAC15-81-870. Glazing in doors.**

Glazed view panels shall be provided in all doors for security and safety, with the following exceptions:

1. Doors to janitorial closets, plumbing chases, storage areas, employee dining, staff break room, pharmacy, toilets, maintenance rooms, property storage rooms, evidence rooms, armory, mechanical rooms, electrical rooms, telecommunication rooms, security electronics rooms, offices outside the secure perimeter, and similar rooms.

2. Doors required by the building code to have a three-hour fire-resistance rating are not required to have view panels.

## **6VAC15-81-880. Mechanical, maintenance, security electronics.**

A. The main mechanical room shall be located outside the secure perimeter and shall be accessible from the outside.

B. If a separate maintenance shop is provided, it shall be located outside the secure perimeter and shall be accessible from the outside.

C. The main security electronics shall be contained in a room specifically designed for that purpose or shall be securely separated from other equipment. Security electronic rooms shall not provide access to other spaces or services. An independent cooling system shall be provided for this room.

## **6VAC15-81-890. Access for replacement of mechanical equipment.**

Design shall provide access for replacement of larger pieces of mechanical equipment without having to relocate other equipment or cut holes through walls, floors, roofs, or ceilings.

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# Regulations

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## **6VAC15-81-900. Plumbing.**

A. Walk-in type plumbing chases shall be provided with lights and electrical outlets to facilitate maintenance.

B. Sufficient floor water drains shall be provided throughout the jail to enable water to be easily removed from areas subject to water spillage or flooding (i.e., shower, group toilet areas, dayrooms, kitchens, etc.).

C. At a minimum, the capability of shutting off the domestic water supply shall be provided for each individual housing unit with one control per housing unit.

D. Plumbing fixtures in special purpose and intake cells shall have individual shutoff controls for domestic water supply.

E. Domestic water shutoff controls shall be in a remote location in proximity to each housing unit and shall be easily accessed by staff, but not inmate accessible.

## **6VAC15-81-910. Housing unit stair and cell tier guard rails.**

Guard rails shall be a minimum height of 48 inches above the floor or stair treads in housing units and inmate stairs, including egress stairs and tiers.

### Article 4

### Construction Requirements

## **6VAC15-81-920. Building systems - general.**

A. The requirements set forth in this article establish the requirements for building materials, equipment, and systems to be designed and constructed in facilities within the Commonwealth of Virginia.

B. The building components and design criteria denoted in this article are intended to relate the facilities' security and custody level and expected use conditions, with the materials, equipment, and systems expected performance, particularly as related to strength, safety, and durability characteristics.

C. Matching the performance levels of the various components which make up a security enclosure or system is of equal importance. They shall be comparable and compatible.

D. All work shall be done in accordance with acceptable design and construction practices and material shall be installed in accordance with manufacturer recommendations or as otherwise noted.

## **6VAC15-81-930. Structural systems - walls, floors, roofs, ceilings.**

A. Wall systems - general. Walls encompassing areas occupied by inmates shall provide a secure barrier for their entire height and length, both horizontally and vertically, to prevent unauthorized ingress or egress. Security walls shall provide continuity at adjacent security walls, horizontal

security barriers or the secure perimeter. The joints and voids between secure walls and horizontal security barrier shall be protected with materials of security level equivalent to the remainder of the wall.

### 1. Security walls.

a. Security perimeter walls shall be of masonry, concrete, steel, or other approved noncombustible building material and shall comply with ASTM F2322 testing method Grade 1 to a minimum of 1,000 blow counts.

b. Interior security walls shall be of masonry, concrete, steel, or other approved noncombustible building material and shall comply with ASTM F2322 Grade 1. Security shall be maintained for the entire height of the wall and integrated with the next horizontal security barrier.

c. Security walls may be of the following materials and construction:

(1) Concrete masonry units with block cores filled solid with 3,000 psi grout in accordance with ASTM C476. All masonry mortar shall be a minimum of 2,500 psi compressive strength and comply with ASTM C270.

(a) Security perimeter walls shall have vertical #4 reinforcing rods in every masonry core spaced eight inches on center maximum. Every masonry core shall be grout filled.

(b) Interior security walls shall have vertical #4 reinforcing rods in every other masonry core spaced 16 inches on center maximum. Every masonry core shall be grout filled.

(2) Concrete walls may be cast in place or precast reinforced high-strength concrete panel. Walls shall be a minimum of 4,000 psi compressive strength (28-day break). Minimum thickness of solid core concrete shall be four inches. Refer to the Prestressed/Precast Concrete Institute to calculate the equivalent thickness of hollow core concrete panels. Hollow core plank shall not be used for security walls.

(3) Steel wall assemblies shall meet ASTM F2322 testing requirements Grade 1 or better and shall be coated with a zinc-iron-alloy (galvanneal) coating meeting ASTM A653, Commercial Steel (CS), coating designation A60 (Z180) designation or better. Walls shall be securely anchored to structural slabs in floor, adjacent security walls, and horizontal security barrier.

(4) Bar grille security walls shall be 2-1/4 inches by 3/8-inch steel flat bar frame with vertical 7/8-inch round double ribbed bars spaced five inches or less on center with 2-1/4 inches by 3/8-inch horizontal steel bars approximately 16 inches on center. Bar grille shall be

securely anchored to adjacent security walls and horizontal security barriers.

(5) Woven rod security walls shall be fabricated from 3/8-inch diameter mild steel rods spaced not more than two inches on center in two directions, interwoven, and crimp-locked. Rods shall be anchored securely into a heavy gage (10-gage minimum) tubular steel frame or structural equivalent flat steel bar or channel. Frame shall be securely anchored to adjacent security walls and horizontal security barriers.

(6) Nonload bearing walls in inmate housing units less than 12 feet high shall have 12-gage steel continuous angles between overhead horizontal structural members on both sides. Voids located at the top of the wall shall be sealed with concrete masonry units grouted solid, solid concrete masonry units, or 3/16-inch metal plate. Walls in excess of 12 feet shall be stabilized but may use clip angles in lieu of continuous angles.

## 2. Wall penetrations.

a. Access doors or panels shall be the same security grade as the wall in which they are installed.

b. Access doors or panels to access building systems and equipment shall be a minimum of two-feet by two-feet.

c. Consideration shall be given to designing mechanical, electrical, fire protection, and security electronics systems to minimize access doors or panels in walls.

d. Ceiling access panels or doors within the secure perimeter shall be provided with panels and locks equivalent to the security level of the ceiling in which it is used.

e. Consideration shall be given to locating balancing dampers close to or integral with diffusers so they can be adjusted and checked without the installation of access panels.

f. Any opening behind a toilet fixture shall be protected in accordance with the requirements of the wall where it is installed.

## 3. Interior partitions within the secure perimeter.

a. Interior partitions shall be constructed of a minimum of six-inch concrete masonry units or equivalent.

b. Mortar utilized when the wall is of masonry unit construction shall be a minimum of 2000 psi compressive strength.

c. Openings in interior partitions.

(1) Doors and frames shall be a minimum of 1-3/4 inches thick commercial grade hollow metal with a minimum 16-gage door and 14-gage frame.

(2) Door hardware shall be a minimum of commercial grade.

(3) Windows shall have security glazing or tempered glass in accordance with 6VAC15-81-970.

## B. Floor systems.

1. Floor systems within and including the secure perimeter shall be one of the following:

a. A poured-in-place concrete slab on grade with a minimum thickness of four inches and not less than continuous six-inch by six-inch by 10-gage embedded welded wire fabric reinforcing or equivalent.

b. Hollow core concrete plank system providing a minimum equivalent concrete thickness of:

(1) Three inches if cores are oval or round; or

(2) Four inches if cores are square or rectangular.

For purposes of calculating equivalent thickness for security, topping is not included.

c. Precast concrete tees providing a minimum equivalent concrete thickness of four inches at the flange. If topping is used, it shall be a normal weight concrete of a minimum of two inches thick and provide adequate cover for #4 rebar eight-inch on center in one direction or W4 welded wire mesh six-inch on center in both directions.

2. Floors in six-sided steel cells and six-sided precast concrete cells shall be tested in accordance with ASTM F2697 testing requirements Grade 1 to a minimum of 1,000 blows for horizontal assemblies.

## C. Roof and ceiling systems.

1. Upper secure perimeter shall consist of a roof or ceiling as follows:

a. Roofs. The roof construction or uppermost secure perimeter shall be one of the following:

(1) A minimum of four inch standard weight concrete with a minimum strength of 3000 psi. Reinforcing shall consist of not less than continuous six-inch by six-inch by 10-gage embedded welded wire fabric reinforcing.

(2) Precast concrete plank or panels providing a minimum total concrete thickness of four inches.

(3) Hollow core concrete plank providing a minimum equivalent concrete thickness of:

(a) Three inches if cores are oval or round; or

(b) Four inches if cores are square or rectangular.

For purposes of calculating equivalent thickness for security, topping is not included.

# Regulations

(4) Three-inch standard weight concrete with a minimum strength of 3000 psi on 16 gage steel form (or decking) on concrete or steel support members.

(5) Three-inch standard weight concrete with a minimum strength of 3,000 psi with six-inch by six-inch by 10-gage wire fabric on a 22-gage steel form (or decking) on concrete or steel supporting members.

(6) Precast concrete tees providing a minimum equivalent concrete thickness of four inches. If topping is used, it shall be a normal weight concrete of a minimum of two inches thick and provide adequate cover for #4

rebar eight-inch on center in one direction or W4 welded wire mesh six-inch on center in both directions.

b. Ceilings. A ceiling used for the uppermost horizontal secure perimeter is acceptable if tested in accordance with ASTM F2697 testing requirements to a minimum of 1,000 blows.

2. Interior ceilings. Ceilings within the secure perimeter, but not serving as the secure perimeter, shall have or exceed the level of protection specified in the table in this subdivision.

<u>Ceiling Location (within the secure perimeter):</u>	<u>Minimum ceiling height / min. clear ht. <sup>2</sup></u>	<u>Security steel systems as approved by reviewing authority</u>	<u>Security gypsum board<sup>6,7</sup></u>	<u>CWFAM w/hold-down clips<sup>3</sup></u>	<u>Gypsum board - single layer</u>	<u>Lay-in ACT with hold-down clips<sup>4</sup></u>	<u>Exposed structure not requiring a ceiling<sup>1,2</sup></u>
<u>Corridor in housing unit</u>	<u>10'</u>	<u>X</u>					<u>15'</u>
<u>Corridors in other than housing unit</u>	<u>8'</u>			<u>X</u>			<u>15'</u>
<u>Personnel sally port</u>	<u>8'</u>		<u>X</u>				<u>10'</u>
<u>Vehicular sally port</u>	<u>15'</u>						<u>15'</u>
<u>Inmate toilet</u>	<u>9'</u>		<u>X</u>				
<u>Staff toilet</u>	<u>8'</u>					<u>X</u>	
<u>Janitorial closet</u>	<u>8'</u>				<u>X</u>		<u>10'</u>
<u>Mechanical/electrical/maintenance rooms</u>	<u>9'</u>						<u>9'</u>
<u>Security electronics room<sup>5</sup></u>	<u>9'</u>						<u>9'</u>
<u>Storage room</u>	<u>8'</u>				<u>X</u>		<u>15'</u>
<u>Office areas</u>	<u>8'</u>					<u>X</u>	
<u>Tool rooms</u>	<u>8'</u>						<u>8'</u>
<u>Control room<sup>5</sup></u>	<u>8'</u>					<u>X</u>	
<u>Intake/booking/processing</u>	<u>9'</u>			<u>X</u>			<u>15'</u>
<u>Cells</u>	<u>7'6"</u>	<u>X</u>					
<u>GP dayrooms-single level:</u>	<u>10'</u>			<u>X</u>			<u>15'</u>
<u>GP dayrooms-two level:</u> <u>Perimeter ceiling areas above the tier walkway to a point 6'0" from the edge of tier railing</u>	<u>8'</u>		<u>X</u>				

## Regulations

<u>Center part of dayroom ceilings, starting at 6'0" minimum horizontally from edge of tier railing</u>	<u>15'-AFF of dayroom</u>					<u>X</u>	<u>15'</u>
<u>Cells</u>	<u>7'6"</u>	<u>X</u>					
<u>Dormitories</u>	<u>10'</u>			<u>X</u>			<u>15'</u>
<u>Inmate toilet areas<sup>9</sup></u>	<u>9'</u>		<u>X</u>				
<u>Inmate showers<sup>9</sup></u>	<u>7'6"</u>						
<u>Kitchen<sup>9</sup></u>	<u>9'</u>				<u>X</u>		
<u>Staff dining room</u>	<u>9'</u>					<u>X</u>	
<u>Food storage</u>	<u>10'</u>				<u>X</u>		<u>12'</u>
<u>Laundry</u>	<u>10'</u>		<u>X</u>				<u>12'</u>
<u>Vocational shops</u>	<u>9'</u>				<u>X</u>		<u>12'</u>
<u>Indoor recreation main recreation</u>	<u>18'</u>						<u>18'</u>
<u>Classrooms, library, multipurpose and other similar spaces</u>	<u>10'</u>			<u>X</u>			
<u>Visiting:</u>							
<u>Contact visiting room</u>	<u>9'</u>		<u>X</u>				
<u>Inmate search</u>	<u>9'</u>		<u>X</u>				
<u>Noncontact visiting</u>	<u>9'</u>		<u>X</u>				
<u>Medical:</u>							
<u>Waiting rooms</u>	<u>9'</u>		<u>X</u>				
<u>Exam rooms &amp; treatment areas</u>	<u>9'</u>		<u>X</u>				
<u>Medical offices, records</u>	<u>9'</u>					<u>X</u>	
<u>Pharmacy<sup>5</sup></u>	<u>9'</u>						
<u>Warehouse</u>							<u>12'</u>
<u>Canteen</u>	<u>9'</u>				<u>X</u>		<u>12'</u>
<u>Property storage</u>							<u>12'</u>
<b><u>Ceiling Location (outside the secure perimeter):</u></b>							
<u>Armory<sup>5</sup></u>	<u>9'</u>						
<b><u>Community Custody</u></b>							
<u>Corridor - community custody<sup>8</sup></u>	<u>8'</u>					<u>X</u>	<u>12'</u>
<u>Community custody housing</u>	<u>10'</u>				<u>X</u>		<u>15'</u>
<u>Community custody entry/processing<sup>8</sup></u>	<u>9'</u>					<u>X</u>	<u>12'</u>
<u>Multipurpose spaces</u>	<u>10'</u>					<u>X</u>	<u>12'</u>

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# Regulations

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<sup>1</sup>Minimum clear height that does not require a ceiling. Clear height means distance from the floor to the ceiling or roof or lowest hanging or suspended utilities or fixture.

<sup>2</sup>Minimum clear height to lowest structure, ceiling panel, utility or fixture.

<sup>3</sup>Hold-down clips on cementitious wood fiber acoustical material (CWFAM) shall be equivalent to hurricane strength clips secured with screws.

<sup>4</sup>Hold-down clips on lay-in ceiling must not release under upward pressure without breaking or hold dislodging of panels without damage to the panels.

<sup>5</sup>Walls shall go up to floor or ceiling above or the area has a security cap.

<sup>6</sup>Security gypsum ceiling shall be constructed in accordance with the following: two layers of 5/8-inch gypsum wall board with 0.66 pounds per square foot, on 1/2-inch by 13-gage or 3/4-inch by nine-gage diamond mesh metal lath, per ASTM F1267, Type I or Type II securely fastened to the structure or structural supports.

<sup>7</sup>Cement plaster ceilings of not less than three-coat Portland cement plaster installed on approved heavy metal lath may be used in these locations.

<sup>8</sup>No hold-down clips are required.

<sup>9</sup>Moisture resistant material appropriate to wet locations shall be used.

3. Secure ceilings shall be provided in other areas where inmates are unsupervised.

4. Consideration shall be given to ensure that adequate space (a minimum of eight inches) is provided between the ceiling (including recessed lighting fixtures) and above ceiling building systems (e.g., duct, conduit, wiring, piping, tubing, structure, etc.) to allow for installation of the ceiling at the specified height.

5. Ceilings over showers and toilets shall be equivalent to security requirements of space in which it is located.

#### 6. Security capping.

a. Any space surrounded by interior security walls that does not extend to a secure floor or roof structure above or uppermost horizontal secure perimeter shall be capped to comply with a material or assembly meeting the requirements of ASTM F2322 testing method to Grade 1 or with four inches of concrete or equivalent. This includes cells, control rooms, sally ports, and armories.

b. Open spaces above areas required to be security capped shall be protected to eliminate blind spots or access for hiding.

7. All penetrations of the uppermost secure perimeter shall be protected by maximum security opening protectives equivalent to types specified in 6VAC15-81-940, 6VAC15-81-950, and 6VAC15-81-960. Where operable, opening protective shall be equipped with maximum security locks in accordance with 6VAC15-81-950.

#### 8. Access openings.

a. Consideration shall be given to designing mechanical, electrical, fire protection, and security electronics systems to minimize access doors or panels in ceilings.

b. Protection of openings shall be the same security grade as the ceiling in which it is installed.

c. All access openings to the space above security ceilings shall be protected by hinged metal access panels or doors equipped with keyed locks.

d. Access doors or panels to access building systems and equipment shall be a minimum of two-feet by two-feet.

e. Ceiling access panels or doors within the secure perimeter shall be independently and securely supported to prevent vertical displacement.

f. Consideration shall be given to locating balancing dampers close to or integral with diffusers so they can be adjusted and checked without the installation of access panels.

#### **6VAC15-81-940. Doors and frames - security and nonsecurity.**

A. Security doors used where perimeter security and interior security walls are required shall be one of the following:

1. Hollow metal security doors shall meet the requirements of ASTM F1450 as follows:

a. Maximum security and perimeter security doors shall be ASTM Grade 1.

b. Doors in interior security walls and associated with medium security housing shall be ASTM Grade 2 or better.

c. Minimum security doors shall be ASTM Grade 3 or better, except doors shall be [ ASTM ] Grade 2 or better if in interior security walls.

2. Bar grille doors shall include double ribbed steel bars measuring 7/8-inch diameter at five inches on center with flat steel crossbars measuring 3/8-inch by 2-1/4 inches at 18 inches on center with punched holes for ribbed bars at five inches on center. Door frames shall be installed in accordance with Hollow Metal Manufacturers Association (HMMA) 863 and ASTM F1450.

3. Woven rod door.

a. Woven rod door frames shall be constructed of tubular shaped 12-gage steel channel or 3/16-inch right-angle bent steel plate, punched to receive woven rods.

b. The cap channel shall be 12-gage steel plate.

c. The woven rod door mesh shall be 3/8-inch in diameter steel rod woven at two inches on center each way and double crimped.

d. Welds shall be placed a minimum on every other rod where it cannot be accessed by the inmate.

e. The frame shall be mounted into a 10-gage formed steel channel, expansion anchored to the wall, and field welded to the mount channel.

f. Door frames shall be installed in accordance with HMMA 863 and ASTM F1450.

4. Access opening protection.

a. Access panels, doors, frames, locks, and hardware shall at a minimum be equivalent to the security level of the wall, roof, or floor where they are installed.

b. Steel plate doors may be used as an alternate. If used, access doors or panels shall meet the following requirements:

(1) Shall be a minimum of 3/16-inch thick plate steel.

(2) Shall have minimum of 3/16-inch bent steel plate or equivalent rolled steel shape door frame. Each jamb for security access openings shall be anchored with wall anchors not to exceed 18 inches on center with a minimum of two wall anchors per jamb.

(3) Frame and bracing shall be sufficient to prevent the door or panels from flexing or warping from abuse.

B. Nonsecurity doors shall be steel commercial grade minimum 1-3/4 inches thick hollow metal doors with 16-gage face sheets with rigid inner core. Frames shall be commercial grade 14-gage hollow metal or equal.

C. Solid core wood doors are an acceptable alternative as a nonsecurity door in walls designated as nonsecure.

D. Additional features.

1. Where doors and hardware are required by the building code to be fire-rated construction, such construction shall

not reduce or compromise the security requirements or present a hindrance to emergency evacuation.

2. Security frames shall be completely filled with 3,000 psi fine grout meeting the requirements of ASTM C476.

3. Doors for any room utilized by inmates shall open out away from the inmate occupied side.

4. Doors in inmate occupied areas shall not have loop pulls on the inside of the door. Finger pulls are recommended in those locations.

5. Passproof thresholds shall be installed at doors to prevent passing of contraband between housing units.

6. Sliding doors, door mechanisms, and food passes shall be oriented and installed to minimize inmate interference with door operation.

**6VAC15-81-950. Locks and locking systems.**

A. Security level. Locks shall meet the requirements of ASTM F1577 for swinging doors and ASTM F1643 for sliding doors. Locks on perimeter security doors and maximum security doors shall be Security Grade 1. Locks in interior security walls shall be Security Grade 2 or better. Locks in interior security partitions shall be Security Grade 3 or better.

B. Locking devices. Where a high degree of security and positive door control is required in cells, dayrooms, and corridors, sliding door locking devices capable of being operated from a control room are recommended.

C. Magnetic and electromagnetic locks shall not be used as security locks.

D. Controls shall be provided to operate the locks and locking devices in the required modes.

1. The switches, relays, and other devices shall make up a control system compatible with the locks and locking devices and shall be capable of providing the switching necessary to satisfy all desired operational modes.

2. A master control console or panel shall be designed to display all switches to the operator. Normally installed in a secure room (i.e., officer control room) the console shall be equipped with a control for each door, a group control for each wing of the building (or cell block), and controls for the corridor and sally port doors that control access to those wings.

3. In housing control stations and control rooms, door controls shall release cell doors individually, as a group, and as emergency release.

4. Housing control stations and control rooms shall have a local and remote power cutoff and the ability to transfer operation to the master control room.

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# Regulations

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5. Control panels shall have position, lock, and roller bolt or locking bar indication for security gates and doors.

6. In the event of a power failure the locking system shall be fail secure.

7. Emergency release provisions shall be made for unlocking or group-release of cell doors in case of fire, power failure, or other emergencies.

a. Standby power from a generator is required.

b. Other forms of emergency release shall be reviewed and approved by the reviewing authority.

E. Master keying shall be provided for all security locks. Master keying shall utilize a minimum of two keys so that no one key can be used to get from any point in the facility through multiple doors to the outside of the facility. All secure perimeter doors shall be keyed separately from interior doors.

F. Locks on inmate toilet room doors, with the exception of within housing units, shall be lockable from the outside but not lockable from the inside.

G. Within housing units, locking shall be as follows:

1. Inmate showers and toilet rooms with full height doors shall be staff lockable from the outside but shall not be capable of being locked or latched from the inside.

2. Inmate showers and toilet rooms with partial height doors may be latched from the inside.

H. Staff toilets shall be key locked from the outside and thumb turn operable or not lockable from the inside.

I. Plumbing chases shall not be lockable from the inside.

J. Sally ports interlocking requirements.

1. Sally port doors shall be interlocked in a manner that only one sally port door or gate shall be openable at a time under normal operation. All sally port doors or gates shall be installed so they are confirmed to be locked by mechanical or electronic means prior to the opening of any other door or gate. Sally port locking and unlocking shall be remotely controlled from a secure control room.

2. Vehicular sally port gates or doors shall be capable of being operated and locked from a remote location with provisions for manual operation and locking when power is off or in the event of emergency action.

3. Vehicular sally port doors shall be a minimum of 12 feet high.

4. Rollup and bifold doors in vehicular sally ports, warehouse, and loading docks are not considered security doors.

5. Cell door release shall be separate from housing unit entry door release locking.

6. Doors between adjacent housing units shall not be interlocked with sally ports.

## **6VAC15-81-960. Window frames.**

A. Performance requirements and criteria for the selection and intended use of windows shall include the following considerations: security, natural lighting, ventilation, and weather protection.

B. Security requirements.

1. Security frames shall have 1-1/4-inch glazing stops with a one-inch bite and be secured with security screws on the non-inmate side.

2. Security frames shall be completely filled with 3,000 psi fine grout meeting the requirements of ASTM C476.

3. Windows shall have security glazing in accordance with 6VAC15-81-970.

4. Where necessary because of field conditions in renovations or replacements, field fabricated security windows shall have a minimum 14-gage window frame and be approved by the reviewing authority.

C. Secure perimeter. Windows frames that are to be installed in the building perimeter security (exterior and interior walls and clearstory/skylight assemblies) shall meet the requirements of ASTM F1592 Grade 1 or better

D. Interior security.

1. Maximum security window frames shall be Security Grade 1 or better.

2. Window frames in other interior security walls shall be Security Grade 2 or better.

E. Non-security windows may be provided in an exterior security wall to provide a noninstitutional appearance. When such windows are used, however, the window opening shall be protected on the interior side of the opening by a steel bar grille or woven rod with security frame comparable to the security assemblies described in this section.

## **6VAC15-81-970. Security glazing.**

A. When selecting glazing, consideration shall be given to ballistic attack, whether penetration of glazing would compromise security or allow passage of contraband, degree of staff supervision or surveillance, and anticipated amount of vandalism.

1. Glazing security grade level shall be in accordance with ASTM F1915.

2. Bullet resistant glazing shall meet ballistics requirements of ASTM F1233 for weapons capable of concealment and UL 752 Level III, super power small arms. This glazing shall be low spalling or no spalling.

B. The level of glazing resistance to penetration or ballistic attack shall be consistent with the security level of walls and other building components in which it is located.

1. Where openings exceed five inches in one direction and are not protected by bar grille or woven rod:

a. Glazing in maximum security walls and doors shall be Security Grade 1 or better.

b. Glazing in interior security walls and doors shall be Security Grade 2 or better.

c. Glazing in interior partitions inside the secure perimeter shall be Security Grade 4 or better.

2. Glazing in control rooms shall be:

a. Security Grade 1 in master control room.

b. Security Grade 1 and bullet resistant where glazing separates a control room from a public area.

c. Security Grade 2 or better for other control rooms.

3. Glazing associated with visitation or magistrate areas that form a part of the secure perimeter shall be one of the following:

a. Security Grade 1 glazing with bar grille or woven rod.

b. Security Grade 1 glazing and bullet resistant.

c. Glazing in visitation between the public and inmate may be Security Grade 1 glazing supplemented by an additional secure perimeter wall with sally port enclosing the public side of the visitation area.

4. Security glazing panels shall be no larger than 36 inches by 48 inches unless located a minimum of seven feet above floor level.

5. Glazing security grade may be reduced one level if lowest portion of glazing is 12 feet above adjacent floor level.

6. Tempered or insulated glass or both may be used in openings five inches or less in one direction unless bullet resistant or contraband resistance is required, in which case glazing rated for such shall be used.

7. Glass security glazing or glass clad security glazing shall not be used unless required for fire rating or unless approved by the reviewing authority on a case by case basis for specific locations.

8. Plate glass, float glass, and other conventional glass other than wire or tempered glass shall not be used in any openings located within the secure perimeter or in any interior security walls, interior partitions, doors, or other openings within the area enclosed by the secure perimeter. Wire glass may only be used where required for fire rating purposes.

9. Tempered glass, if used, shall meet the requirements of (American National Standards Institute) ANSI Z97.1 Class A safety test or Consumer Products Safety Commission Category II safety test.

10. Where bar grille or woven rod is required to be used for windows, it shall be similar in design and constructed in accordance with bar grille or woven rod indicated in 6VAC15-81-930.

11. Where the frame or frame and mullions provide the security for the window opening, the maximum clear dimension of the opening shall be no more than five inches in one direction.

12. All openings, such as windows, louvers, clearstories, and skylights, penetrating the secure perimeter walls, floors, or roof shall be protected by bar grille or woven rod partitions constructed as required by subdivisions A 1 c (4) and A 1 c (5) of 6VAC15-81-930 when they are larger than:

a. Eight inches by eight inches or;

b. Five inches in one direction if the other dimension is larger than eight inches.

Exception: Glazed areas protected and located in accordance with subdivision 3 of this subsection.

13. To avoid tampering, removable glazing stops shall be applied, wherever possible, on the side opposite the inmate occupied area. Where stops are placed in an inmate area, they shall be secured with an ample number of strong, properly installed, tamper resistant fasteners of design required by 6VAC15-81-930 or approved by the reviewing authority. Junctions of horizontal and vertical glazing stops on the inmate side shall be welded to prevent removal of portions of stop members.

14. Exterior windows in security areas in new construction shall be fixed. Exception: In renovations where windows are operable, exterior windows in security areas that are capable of being opened shall have additional protection of heavy duty stainless steel, security wire contraband, and insect screen.

## Article 5

### Mechanical, Plumbing, Electrical, Smoke Control, and Fire Protection

#### **6VAC15-81-980. Mechanical, plumbing, electrical, smoke control, and fire protection installation.**

Unless indicated otherwise by this chapter, all components of mechanical, plumbing, electrical, smoke control, and fire protection systems, including air handlers, fans, duct work, terminal boxes, dampers, heating and cooling equipment, water heaters, pumps, piping, valves, sensors, control wiring, thermostats, tubing, conduit, wiring, motors, lighting fixtures,

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# Regulations

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and associated equipment within the secure perimeter shall be mounted as follows:

1. As high as possible for the intended function and securely fastened to the structure or walls.
2. If located less than 12 feet above the finished floor or within six feet horizontally of guard rails enclosing tier floor and landing levels in dayrooms, the components shall be specifically designed for the security level of the space where it is installed, protected by a secure enclosure, or protected by secure encapsulation. Exceptions include spaces dedicated for staff use. "Secure enclosure" means secure walls, secure floors, and secure roof or secure ceiling surrounding a space or area.
3. Piping, wiring, conduit, control wiring, and tubing shall not be exposed in cells.

## **6VAC15-81-990. Mechanical.**

A. Within the secure perimeter of the facility, flexible duct work shall not be installed within six feet of any opening (e.g., register, grille, diffuser, etc.) that can be accessed by inmates.

### B. Air inlets and outlets.

1. Maximum security grills shall be provided in the following areas:
  - a. All cells.
  - b. Maximum security housing units.
2. Maximum security grills shall have a 3/16-inch steel face plate interconnected to a 3/16-inch thick steel sleeve. Openings in the face shall be no larger than 3/16-inch each. Alternatively, a security grille specifically designed for suicide resistance may be allowed as approved by the reviewing authority.
3. In inmate accessible areas, other than maximum security, security grilles, security diffusers and security face plates shall be 12-gage or protected by 12-gage steel full face protection.
4. Commercial grade grilles, diffusers and face plates may be provided in:
  - a. Areas where lay-in ceiling tiles or single layer gypsum board ceilings are allowed.
  - b. Areas located greater than 12 feet above the floor.
  - c. Areas greater than six feet measured horizontally from any tier.
  - d. Staff areas within the security perimeter.
5. Grilles, diffusers, and face plates shall be constructed of stainless steel in inmate shower areas and stainless steel or aluminum in kitchen areas. Thickness of stainless steel

grilles and diffusers for shower areas shall be as required for the security level indicated in this section.

6. Consideration shall be given to upsizing grille and diffuser sizes, but not openings in face, to compensate for pressure drop due to anticipated paint buildup.

7. Consideration shall be given to locating inlets and outlets to provide proper distribution of air and prevent short circuiting.

C. Opening protectives. Duct and other penetrations of security walls, security floors, security ceilings or security roof shall be protected by bar grille or woven rod meeting the dimensional requirements for walls in this chapter when they are larger than:

1. Eight inches by eight inches.
2. Five inches in one direction if the other dimension is larger than eight inches.

### 3. Exceptions:

- a. Duct bars are not required in wall penetrations in the interior security walls located within an individual housing unit, or the inner wall of their integral sally port. Duct bars are required in penetrations of control rooms.
- b. Duct bars are not required if maximum security grilles are provided in interior security walls or interior security ceilings in accordance with subsection B of this section.

D. Within the secure perimeter, portions of the mechanical system requiring maintenance or inspection shall be located so it cannot be accessed by inmates.

E. Supply, return, or exhaust through chases shall be ducted.

F. Armories shall have a dedicated exhaust to the outside of the building.

G. Control rooms shall have dedicated HVAC systems.

## **6VAC15-81-1000. Plumbing.**

### A. Showers.

1. Showers shall include a soap dish and drain. Shower heads shall be positioned to confine water flow to shower stall.
2. Hot and cold or tempered running water shall be available in all showers. Hot and cold running water shall be available in all lavatories. Hot water, which is accessible by inmates, shall be controlled by a temperature limiting device to preclude temperatures in excess of 105 degrees F.
3. Toilet area wall, floor, and ceiling surface finishes shall be durable, washable, and resistant to water, mold, and mildew.

4. Shower ceiling, wall, and floor surface finishes shall be durable, washable, and resistant to water, mold, and mildew. Shower and shower area floor surface finishes shall be slip resistant. The reviewing authority may require that inmate showers be constructed from stainless steel.

5. All showers for inmate use shall be operated by metering push button control.

## B. Plumbing fixtures.

1. Plumbing fixtures in maximum security housing units shall be stainless steel [ . ]

2. In indirect supervision medium security housing units, toilets and lavatories shall be stainless steel.

3. In minimum security housing units and direct supervision medium security housing areas, toilets shall be a minimum of commercial grade tankless toilets and commercial grade lavatories.

4. Soap holders in showers and toilet paper holders shall be the recessed type.

5. Showers providing ADA accessibility designed with fixed low shower head shall have a second head at standard height.

6. Where an ADA accessible mirror is provided, a regular height mirror shall also be provided. Height to bottom of regular height mirror is recommended at 53 to 57 inches.

7. Consideration shall be given to maintenance and sanitation (ponding water and soap) and suicide resistance when selecting grab bars in ADA accessible showers.

8. All toilets for inmate use shall be operated by push button activators. Lavatories for inmate use shall be operated by metering push button activators.

9. Inmate plumbing fixtures in sally ports shall be maximum security.

10. Gooseneck faucets shall not be allowed on lavatories in inmate accessible areas.

C. All floors and tiers in housing units shall be provided with adequate drainage to handle standing water associated with shower areas, toilet or sprinkler overflows, and cleaning.

D. Kitchens and laundries shall be provided with adequate drainage.

E. Janitorial closets with mop sinks and storage shall be provided in every inmate housing unit. Janitorial closets shall be provided in proximity to intake and to serve corridors.

F. Toilet facilities for the use of security and administrative staff and inmates shall be located throughout the building. Staff toilet facilities shall be provided in master control stations. Staff toilet facilities shall be provided in, or convenient to, other control stations or control rooms.

G. PVC or other plastic piping, one-half inch or greater, shall not be used above the ground floor slab within the secure perimeter of the jail. For transitions, PVC piping may extend not more than six inches above [ the ] floor.

H. Plumbing fixtures and lines shall not be located above security electronic rooms.

I. Isolation valves and balancing valves are recommended to facilitate maintenance. Butterfly valves are not recommended.

J. As a minimum, a water supply shutoff controllable from outside each housing unit shall be provided from a location readily accessible by staff but not by inmates. Remotely controlled water supply shutoff valves should be considered for individual inmate cells, especially at special housing.

K. Gravity sanitary drainage mains and fittings serving two or more fixtures in housing units shall have a minimum inside dimension of six inches.

L. For inmate toilets with a gravity sewer, a cleanout with interceptor pin at each tee in chases is recommended.

M. All sanitary and stormwater piping penetrating a secure perimeter wall, security floor, secure recreation yard, or vehicular sally ports shall not exceed eight inches in diameter. If flow calculations require a pipe diameter greater than eight inches, a series of eight-inch or smaller pipes equivalent to or greater than the flow area calculated shall be used. It is expected that multiple pipes be installed as a duct bank.

N. All showers shall be provided with mechanical exhaust directly from the shower compartment. Single showers shall be exhausted individually. In the case of multiple showers without full height partitions between the showers, the exhaust may be from a central [ ~~one~~ ] location from the shower area.

O. All fixtures shall be low flow, water saving type.

P. Inmate lavatories, drinking fountains, toilets, and urinals inside the secure perimeter shall not have exposed piping and components.

## **6VAC15-81-1010. Electrical.**

A. All wiring, conductors, and control tubing shall be concealed to the greatest extent possible.

1. Where wiring is exposed and accessible by inmates, it shall be housed in intermediate metal conduit (IMC) or rigid metal conduit (RMC) with threaded fittings.

2. Rigid nonmetallic conduit (PVC or CPVC) shall not be used above ground floor slab within the secure perimeter except when encapsulated in concrete or grouted concrete masonry units. For transitions, rigid nonmetallic conduit may extend not more than six inches above floor.

3. Flexible metallic conduit not exceeding six feet in length shall be allowed above ceilings.

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# Regulations

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4. Flexible conduit, if required for a moving part of a device (e.g., pan-tilt-zoom camera), shall not exceed 12 inches exposed and shall be liquid tight or equivalent.

5. Electrical metallic tubing (EMT) and other types of conduits are not permitted within the secure perimeter.

B. The intensity of artificial lighting shall be in accordance with the requirements of 6VAC15-40, Minimum Standards for Jails and Lockups.

C. Standby power.

1. A standby power source shall be provided sufficient to sustain, as a minimum, life safety operations, security systems, refrigerators, and freezers.

a. "Life safety operations" means the function of certain electrical, mechanical, and other building equipment provided for the purpose of ensuring the life, health, and safety of building occupants in an emergency situation.

b. Fuel capacity shall be provided for a minimum of 72 hours of operation without refueling.

c. Consideration shall be given to emergency power for nonemergency lighting.

2. Consideration shall be given to protection of generators, standby power source, and fuel sources from unauthorized access or damage by location, fencing, or enclosure.

D. Light fixtures.

1. The security level of fixtures shall be consistent with the security level of the area where located.

2. Security light fixtures shall be surface mounted to any ceiling that is the secure perimeter. Exception: Security fixtures that are designed for, integral to, and maintain the security level of the ceiling, which is not the secure perimeter, may be recessed.

3. Fixtures installed in nonsecure lay-in ceilings may be standard fixtures with vandal resistant lenses.

4. Suspended ceiling mounted lighting fixtures in maximum and medium security housing units shall be supported from the structure above with threaded rods, independent of any ceiling grid or framework.

E. Placement of receptacles and lighting switches in individual cells is discouraged. Consideration should be given for access to power for medical devices.

F. Surge protection shall be provided on power supplies for electrically powered systems and service to include those that leave the building.

G. Lightning protection with a UL Master Certification is required for the facility.

**6VAC15-81-1020. Smoke control.**

A. A smoke control system shall be provided for dormitory and celled areas such as intake, medical, special purpose, and general population housing.

B. The pressurization method, with a minimum of 24 air changes per hour of exhaust and 20 air changes per hour of makeup air, is preferred, but the exhaust method may be used.

C. Exit corridors shall be positively pressurized to minimize smoke migration into the area and keep the path of egress clear of smoke.

D. A smoke test shall be performed prior to acceptance of the building. The local fire department, local building official, facility safety officer, or their designees shall be invited to witness the smoke tests, and the tests shall be witnessed by the reviewing authority. The areas to be tested shall be at least one each of a typical dormitory and one of each typical celled [ areas area ], such as intake, medical, segregation and each configuration of general housing, as determined by the reviewing authority.

E. Smoke machines to perform the tests shall be furnished by the owner or the owner's contractor. Smoke machines provided shall be of sufficient size and capacity to perform the tests in a short period of time.

F. Understanding that there are many variables involved, the desired results of the tests are as follows: from start of smoke machine to system alarm shall be two minutes or less; from system alarm to system activation shall be 30 seconds or less; from system activation to distinguish an egress path from the center of the room to an exit shall be two minutes or less; and from system activation to the space being sufficiently clear to reset the system shall be 30 minutes or less.

**6VAC15-81-1030. Fire protection.**

A. Sprinkler heads in inmate accessible areas shall be detention type heads.

B. Exposed fire alarms, smoke detectors, heat detectors, and audible and visual signaling devices shall be mounted as high as practicable, and if below 12 feet, they shall be covered with heavy-gage tamper-resistant protective cages securely fastened to the surface. All exposed devices including sprinkler heads in gymnasiums or indoor recreation areas shall be covered with protective cages.

Article 6

Miscellaneous Construction Features

**6VAC15-81-1040. Jail equipment.**

A. All jail security equipment, fixtures, hardware, etc. shall be of a design to meet the security level consistent with the intended use of the space.

B. Bunks installed in maximum and medium security cells shall be bolted through the wall, welded to imbeds, or bolted or welded to inserts cast into the wall or floor.

C. Fixed tables and seats shall be through-bolted through the wall, welded to imbeds, or bolted or welded to inserts cast into the wall or floor.

D. Door closers within the secure perimeter shall be the concealed arm type.

E. All equipment and systems shall be installed in accordance with manufacturer instructions unless otherwise required by this chapter or approved by the reviewing authority to be installed differently.

F. Exposed surfaces of all metal tables, bunks, seats, cabinets, grab rails, stringers, hand and guard rails, food passes, windows, doors, frames, shelves, and similar items shall have smooth edges to reduce risk of cutting or other injury.

#### **6VAC15-81-1050. Interstitial spaces.**

Interstitial spaces above cells, freezers, refrigerators, dryers, showers, stand-alone offices, and similar shall be enclosed to facilitate detection of tampering and prevent unauthorized access and to eliminate blind spots.

#### **6VAC15-81-1060. Security fasteners.**

A. Fasteners within the secure perimeter shall be pinned Torx or flush break-off head style fasteners installed with thread locking fluid. Spanner type screws are prohibited.

B. Security fasteners are required in locations as follows:

1. Direct supervision control panels.
2. Inmate accessible elevator cabs and control panels.
3. Security lock mounting plates.
4. Glazing stops for security windows.
5. Security light fixtures.
6. Hinges for security doors.
7. Field fabricated equipment.
8. Installed furnishings and equipment including annunciator panels, fire extinguisher cabinets, thresholds, kickplates, grab bars, mirrors, floor drains, air diffusers, light switch plates, outlet covers, intercoms, thermostats, and cameras in inmate accessible areas.

C. Fixed tables and bunks shall be secured with fasteners as specified in this section or with peened or tack-welded anchor bolts and nuts to prevent removal.

D. Security fasteners are not required for the following:

1. Mechanical, electrical, generator, elevator equipment, or communication equipment in locked rooms with security

doors not accessible to inmates or inside enclosed control rooms.

2. Above security ceilings, behind secure locked access doors or panels, and within secure pipe and duct chases.

3. Movable furnishings, storage shelving, or cabinet hardware.

4. Laundry and kitchen equipment.

5. Equipment mounted higher than 15 feet above finished floor or within six feet of the tier.

6. Outside the secure perimeter.

#### **6VAC15-81-1070. Food, paper, and medicine passes.**

A. A pass for food and medicine shall be installed in all maximum security cell doors. For purposes of this requirement, holding, intake, maximum security housing, classification, and special purpose cells are considered maximum security.

B. A pass for food shall be installed in a wall or inner sally port door of each housing unit. The food pass shall be lockable and operable from the sally port interior and shall not interfere with the operation of the door.

C. Locking passes shall be installed with the lock and fold down shelf on the side of the door or wall away from the inmates.

D. The size of a food or medicine pass shall be no more than five inches high and at least 15 inches wide or designed to facilitate passage of trays to be used. Food passes shall be installed at a maximum height of 36 inches to the top of the opening.

E. A minimum of a paper pass shall be installed from each control room to the adjoining corridor.

#### **6VAC15-81-1080. Communication.**

A. A secure means of communication and a paper pass shall be provided between control room and each dayroom and between magistrate's office and intake.

B. A secure means of communication and a paper pass shall be provided between law-enforcement lobby and intake.

C. In areas where voice communications through the glazing is required or desired, such as magistrate, visitation, and control rooms, a system utilizing vandal resistant individual speakers, microphones, intercom, telephone, [~~speak-around~~ speak-around] frames or approved equivalent shall be specified.

#### **6VAC15-81-1090. Interior finishes.**

A. In secure areas, all interior exposed walls, partitions, and ceilings shall have a low maintenance, nonabsorbent durable finish.

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# Regulations

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B. All floor surfaces shall be of a durable, low maintenance, nonabsorbent material.

C. If concrete floor surfaces are used, they shall be finished with a sealer or coating.

D. Base molding is not recommended in inmate accessible areas within the secure perimeter.

## **6VAC15-81-1100. Acoustics.**

A. Acoustical treatment shall be provided at a minimum in housing units, activity areas, and intake.

B. Acoustical treatment shall be damage resistant.

## **6VAC15-81-1110. Security sealants.**

### A. General.

1. Security sealants shall be either elastomeric (tamper resistant: hardness 50 or greater) or low-mod gel (pick-resistant: hardness 70 or greater) type.

a. Tamper resistant sealants shall be provided within all inmate occupied areas subject to continuous supervision.

b. Pick resistant sealants shall be provided within all inmate occupied areas not subject to continuous supervision, such as cells.

2. Where open joints exceed security sealant capabilities to provide a full seal, a metal cover shall be provided with security sealant at its full perimeter.

3. Tamper resistant sealant with range of movements suitable for the application shall be used. Pick resistant sealant shall not be used in movable building joints.

4. Joints above ceilings, those covered by expansion joint covers or otherwise concealed are excluded from requirements for security sealants.

5. Security sealants shall be installed with a primer and in accordance with manufacturer written recommendations.

### B. Inmate occupied areas.

1. Tamper resistant sealant shall be provided as transition between surface applied floor finish and transition to wall face in lieu of an applied wall base.

2. Within all cells, pick resistant sealants shall be provided for gaps and open joints at the perimeter of all permanent materials, furnishings, fixtures, and devices.

3. Tamper resistant sealant shall be provided for gaps and open joints in other than inmate cells at the perimeter of all fixtures and devices that are removable if not designed to be continuously supervised.

4. Locations for application of tamper resistant sealant include the following:

a. Dayrooms.

b. Visitation (inmate side).

c. Classrooms.

d. Indoor recreation and multipurpose rooms.

e. Inmate toilets, lavatories, and shower areas.

5. Security sealant is not required higher than 12 feet above the finished floor or beyond six feet horizontally of guard rails enclosing tier floor and landing levels in dayrooms.

## **6VAC15-81-1120. Fencing.**

A. Two levels of security fencing are as follows:

1. Inmate containment fencing designed for outdoor recreation areas outside the secure perimeter shall consist of:

a. Two fences at least 12 feet in height and at least 10 feet apart.

b. Fence fabric shall be at least nine-gage, 2-1/2-inch mesh maximum opening, galvanized steel interwoven wire.

c. Razor wire shall be provided and installed per manufacturer recommendations on the top of both fences in the vee arms or on the outrigger arm on the inmate side at the top.

d. A third row of razor wire shall be located between the fences on the inmate side, adjacent to the outside fence.

e. All razor wire shall be a minimum of 24/30 inch double helix coil constructed of [ ~~100 percent~~ 100% ] stainless steel.

2. Fencing designed for short-term supervised emergency containment shall be:

a. At least 12 feet high.

b. At least nine-gage and 2-1/2-inch maximum opening mesh.

c. Galvanized steel wire interwoven fence fabric.

d. Topped with a minimum of three rows of barbed wire securely fastened to support arms at the top of line and corner posts angled to the inmate side.

B. Fence components including the top and bottom rails, line posts, terminal posts, tension bars, attachments, concrete footings for the fence, walk gates and truck gates, shall be in accordance with manufacturer recommendations.

C. Both top and bottom selvage of the fence fabric shall be twisted and barbed.

D. All exterior fencing shall be effectively grounded.

E. After installation, all threaded fittings, connectors, and bolts shall be tack welded or peened to prevent nuts and pins from being removed. All exposed threads and connector

twisted wire tie ends shall face away from the inmate side of the fence, except for double fences where the exposed threads and connector twisted wire tie ends shall face between the fences.

F. All twisted wire tie down wires shall be minimum nine-gage galvanized steel and twisted a minimum of two turns at each end.

G. Hog ring type connectors are not allowed in fencing construction.

H. Fences are not required to have barbed wire if protected by razor wire.

I. Openings between the fence post and building shall not exceed two inches.

J. Bracing shall be shielded or installed on the side of fenced away from inmates, except for double fences where the connectors and bolts shall be between fences.

K. Lock assemblies for gates in fence shall be protected from unauthorized access and tampering.

L. Tension wires are not permitted in lieu of bottom rails.

Part VI

Community Custody Facilities Design and Construction

Article 1

General

**6VAC15-81-1130. Community custody facilities design and construction - general.**

A. For localities or regional facilities that demonstrate a need based on the needs assessment, a community custody facility meeting the requirements in this section may be constructed with a number of beds in accordance with 6VAC15-81-220 A.

B. These structures are designed to house community custody inmates as defined in this chapter.

C. When designing the facility, specific consideration shall be given to appropriate traffic patterns; groups of functions; facilitating ease of movement to, from, and within functions; clear sightlines to eliminate blindspots; efficiency and economy of staffing; PREA; and facilitating a smooth, logical sequence of operation.

D. Material and installation shall be in accordance with manufacturer recommendations or as otherwise noted in this chapter.

Article 2

Housing Design

**6VAC15-81-1140. Separate building.**

Community custody housing shall be constructed as a building separate from the secure portion of the jail or

separated from the secure portion of the facility by the secure perimeter.

**6VAC15-81-1150. Traffic pattern separation.**

If secure and community custody housing are provided in the same building, the design of the facility shall provide exterior and interior traffic patterns to assure separation of secure and community custody populations.

**6VAC15-81-1160. Type of construction.**

Perimeter walls shall be of masonry, concrete, stone, metal, or other similar durable nonfabric, noncombustible material. The reviewing authority may require that perimeter walls, floor, and roof or ceiling meet secure perimeter requirements.

**6VAC15-81-1170. Occupancy.**

Community custody housing shall be designed to consist of multiple occupancy cells or dormitories. If dormitories are utilized and design capacity of community custody exceeds 24, at least two housing units are required.

**6VAC15-81-1180. Separation of males and females.**

A community custody facility that contains housing units for both males and females shall have the housing units designed and constructed to prohibit normal communication by sight and sound between the two.

**6VAC15-81-1190. Housing unit size.**

A. Housing units shall be dormitories or multiple occupancy cells.

1. Multiple occupancy cells shall be designed for no more than four inmates per cell and shall be sized in accordance with the current American Correctional Association Standards for Adult Local Detention Facilities. Multiple occupancy cells shall be configured to open into a dayroom.

2. Dayroom space shall contain no less than 35 square feet of space for each inmate for which the unit is designed to serve. Calculation of this space shall not include sally ports, visitation booths, stairs, area under stairs, toilet, shower, and lavatory areas. On the first level an, 18-inch wide path in front of all cell fronts, toilets, and showers shall not be counted as dayroom space.

3. Dormitories shall be constructed to provide 85 square feet of space per inmate for each inmate for which the area is designed. The 85 square feet associated with dormitory space is normally separated into 50 square feet for sleeping and 35 square feet for activity. Calculation of this space shall not include sally ports, stairs, area under stairs, or toilet, shower, and lavatory areas.

B. Ceiling heights in these cells areas shall meet the requirements of the table in 6VAC15-81-930 C 2.

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# Regulations

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C. Housing units shall be designed to accommodate no more than 48 inmates per dormitory or 64 inmates per housing unit with multiple occupancy cells.

## **6VAC15-81-1200. Building access.**

The facility shall be designed for the capability to monitor ingress and egress to the facility. Space shall be provided outside of the housing unit for search, work clothes lockers, showers, and toilet facilities. If attached to a secure facility, the primary entrance and exit to the facility shall be separate from that of the secure portion of the facility. Any connection between the secure portion and the community custody portion shall be [ ~~sally ported~~ sally ported ].

## **6VAC15-81-1210. Fixtures and furnishings.**

A. Each housing unit shall be provided with natural light, toilet fixtures, hot and cold running water, drinking fountain or lavatory with a sanitary bubbler, mirrors, bed or bunk, tables and seating, and storage space for personal items to accommodate the number of inmates for whom it is designed.

B. Showers, lavatories, and toilets shall be located within the dayroom or dormitory.

## **6VAC15-81-1220. Services.**

Space or provisions shall be made for food service, laundry, commissary, and other support services.

### Article 3 Additional Design Features

## **6VAC15-81-1230. Elevators.**

Elevators, if provided, shall be of sufficient size to transport food carts and at least one elevator per facility shall be of sufficient size to transport wheeled stretchers or gurneys.

## **6VAC15-81-1240. Corridors.**

Corridors used for the movement of inmates, stretchers, food carts, etc. shall be constructed to provide a minimum of five feet in width and height meeting the requirements of the table in 6VAC15-81-930 C 2.

## **6VAC15-81-1250. Door swing.**

Door swings for any space utilized by inmates shall open away from the inmate occupied side.

## **6VAC15-81-1260. Voice and visual communication.**

A. The facility shall be equipped with a system capable of communicating with the master control of its associated facility.

B. To enhance operations and security, intercom and CCTV systems shall be considered.

## **6VAC15-81-1270. Telephone.**

Provisions shall be made for inmate telephone and video communication services available at appropriate locations within the facility.

## **6VAC15-81-1280. Multipurpose space.**

A minimum of 15 square feet per inmate expected to use the space at any one time, but not less than 360 square feet of space shall be provided for indoor recreation or multipurpose use.

## **6VAC15-81-1290. Drains, storage, and janitorial closets.**

A. Floor water drains shall be centrally located in all housing units and adjacent to shower, toilet, and lavatory areas.

B. Storage and janitorial closets with mop sinks shall be provided in or in proximity to housing units.

## **6VAC15-81-1300. Standby power and emergency release provisions.**

A. A standby power source shall be provided sufficient to sustain, as a minimum, life safety operations, security systems, refrigerators, and freezers.

1. "Life safety operations" means the function of certain electrical, mechanical, and other building equipment provided for the purpose of ensuring the life, health, and safety of building occupants in an emergency situation.

2. Fuel capacity shall be provided for a minimum of 72 hours of operation without refueling.

3. Consideration shall be given to standby power for nonemergency lighting.

B. Emergency release provisions shall be made for unlocking or group release of cell doors in case of fire, power failure, or other emergencies.

### Article 4 Construction, Mechanical, Plumbing, and Electrical Requirements

## **6VAC15-81-1310. Interior finishes.**

A. All interior exposed walls, partitions, and ceilings shall have a low maintenance, nonabsorbent durable finish.

B. All floor surfaces shall be of a durable, low maintenance, nonabsorbent material.

C. If concrete floor surfaces are used they shall be finished with a sealer or coating.

## **6VAC15-81-1320. Windows, doors, and locks.**

A. Doors, windows and frames shall be commercial grade or detention type.

B. Window openings shall be screened, locked, fixed, or otherwise controlled or designed to prevent unauthorized entry or passage of contraband.

C. Magnetic locks are prohibited.

### **6VAC15-81-1330. Climate control.**

A. Heat and air conditioning shall be provided in all rooms in the facility so that a temperature not less than 65 degrees F or more than 85 degrees F is maintained.

B. Mechanical, electrical, and laundry spaces may be mechanically ventilated.

C. Special consideration shall be afforded to additional cooling in kitchen, food storage areas, and rooms containing heat sensitive and electronic equipment.

### **6VAC15-81-1340. Mechanical.**

A. Thermostats, sensors, control wiring, and control and pneumatic tubing for the mechanical system shall not be inmate accessible.

B. Consideration shall be given to locating balancing dampers close to or integral with diffusers so they can be adjusted and checked without the installation of access panels.

### **6VAC15-81-1350. Plumbing.**

A. Shower and toilet areas, including ceilings, shall be provided with a durable surface finish to withstand humidity and cleaning.

B. All exposed plumbing shall be kept flush with the walls and ceilings. Exposed pipes shall not be inmate accessible.

C. Hot water for inmates shall be controlled by a temperature limiting device to preclude temperatures in excess of 105 degrees F.

D. Actuating valves provided on lavatories and showers shall be the metering type.

E. Toilets equipped with tanks are prohibited.

### **6VAC15-81-1360. Electrical.**

A. All wiring, conductors, and control tubing shall be concealed to the greatest extent possible.

1. Where wiring is exposed and accessible by inmates, it shall be housed in intermediate metal conduit or rigid metal conduit with threaded fittings.

2. Rigid nonmetallic conduit (PVC or CPVC) shall not be used above the ground floor slab except when encapsulated in concrete or in concrete masonry units. For transitions, rigid nonmetallic conduit may extend not more than six inches above floor.

3. Flexible metallic conduit not exceeding six feet in length may be installed above ceilings.

4. Electrical metallic tubing (EMT) may be installed above ceilings. EMT, if utilized, shall have compression fittings.

5. Flexible conduit, if required for a moving part of a device (e.g., pan-tilt-zoom camera), shall not exceed 12 inches exposed and shall be liquid tight or equivalent.

6. Set screw fittings and other types of conduits are not permitted.

B. Surge protection is recommended on power supplies for critical life safety, security, and telephone systems. Surge protection shall be considered on control and alarm circuits that leave the building.

### **6VAC15-81-1370. Lighting.**

A. Natural light is required in inmate housing units. Consideration shall be given to providing natural light in renovation projects that provide new inmate housing.

B. Intensity of artificial lighting shall be in accordance with requirements for artificial light in 6VAC15-40, Minimum Standards for Jails and Lockups.

C. Light fixtures shall be a minimum of commercial grade secured with tamper resistant screws.

D. Provisions are required for night lighting.

E. Lights and electrical outlets shall be provided for walk-in type plumbing chases.

### **6VAC15-81-1380. Equipment.**

Equipment and fixtures shall be a minimum of commercial grade.

## Part VII

### Lockup Design and Construction Requirements

### **6VAC15-81-1390. Lockups and cells.**

A. Lockups shall be composed of individual or group cells.

B. Cells shall be designed to contain a minimum of 45 square feet for single occupancy cells plus 15 square feet per inmate for each additional inmate for which the cell is designed.

### **6VAC15-81-1400. Separation.**

[ Facility The facility ] shall be designed for the necessary sight and sound separation of males, females, and, if planned, of juveniles and with consideration to PREA.

### **6VAC15-81-1410. Floor drains.**

Sufficient floor water drains shall be provided throughout the lockup to prevent water from standing on the floors.

### **6VAC15-81-1420. Monitoring.**

A. Lockups shall be designed to facilitate monitoring by direct visual observation with backup by CCTV.

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# Regulations

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B. Consideration shall be given to appropriate traffic patterns; groups of functions; facilitating ease of movement to, from, and within functions; clear sightlines to eliminate blind spots; efficiency and economy of staffing; PREA; and facilitating a smooth, logical, and orderly sequence of operation.

## **6VAC15-81-1430. Fixtures for inmates.**

Each cell shall be provided with a stainless steel combination toilet and lavatory with hot and cold running water with an integral drinking fountain.

## **6VAC15-81-1440. Cell furnishings.**

Each cell shall be equipped with a stationary steel or concrete wall bunk or bench.

## **6VAC15-81-1450. Secure space.**

Secure space shall be provided for inmate records, logs, and storage and inventory of inmate property.

## **6VAC15-81-1460. Telephones.**

Telephones shall be available for use by inmates in the admissions area.

## **6VAC15-81-1470. Visiting space.**

Space for confidential attorney visiting shall be provided.

## **6VAC15-81-1480. Construction requirements.**

All components of cells, sally ports, and the room or space containing the cells shall meet the requirements for maximum security construction in this chapter unless otherwise specified in this part.

VA.R. Doc. No. R16-4552; Filed January 5, 2018, 3:48 p.m.

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## **TITLE 11. GAMING**

### **CHARITABLE GAMING BOARD**

#### **Final Regulation**

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

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

**Effective Date: March 8, 2018.**

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

#### **Summary:**

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

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

#### Article 4

#### Electronic Pull-tab Devices

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

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

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

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

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

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

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

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

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

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

VA.R. Doc. No. R15-32; Filed January 9, 2018, 4:37 p.m.

**TITLE 12. HEALTH**

**STATE BOARD OF HEALTH**

**Proposed Regulation**

**Title of Regulation:** 12VAC5-490. Virginia Radiation Protection Regulations: Fee Schedule (amending 12VAC5-490-10, 12VAC5-490-20, 12VAC5-490-40).

**Statutory Authority:** §§ 32.1-229 and 32.1-229.1 of the Code of Virginia.

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

**Public Comment Deadline:** April 8, 2018.

**Agency Contact:** Steve Harrison, Director, Division of Radiological Health, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8151, FAX (804) 864-8155, or email [steve.harrison@vdh.virginia.gov](mailto:steve.harrison@vdh.virginia.gov).

**Basis:** Section 32.1-229 of the Code of Virginia authorizes the State Board of Health to establish fee schedules, which shall not exceed comparable U.S. Nuclear Regulatory Commission (NRC) fees, for the licensure and inspection of radioactive materials.

Section 32.1-229.1 of the Code of Virginia requires the State Board of Health to establish fee schedules for registration of machines and for inspections of x-ray machines by Virginia Department of Health (VDH) personnel; however, no fee shall be charged for inspections initiated by VDH.

Section 32.1-229.2 of the Code of Virginia requires the State Board of Health to set inspection fees to minimize competition with the private sector and include all reasonable costs.

Section 32.1-232.1 of the Code of Virginia establishes a special trust fund for radioactive materials facility licensure and inspection fees.

**Purpose:** The proposed regulatory action addresses fees for two program areas, X-Ray Program (XRP) and Radioactive Materials Program (RMP), and is necessary to maintain program solvency and to provide services and adequate regulatory controls necessary to protect public and worker health and safety and accommodate the elimination of general fund support for the programs and the subsequent spend down of surplus fee revenue since 2015. With one exception, fees for these programs have not increased since 2009 when x-ray fees were adjusted and the RMP was established along with commensurate fees necessary for program operations. At that time, fees were sufficient to cover program and ancillary business expenditures since the fees were supplemented by general funds that were allocated to the Office of Radiological Health (ORH). In fact, the fees generated a surplus. As a result, a 20% decrease in RMP fees went into effect in 2012 due to the overage, the anticipated continuation of general funds, and a petition for small business relief. On July 7, 2017, a change in nonmedical x-ray device registration and inspection fees was adopted. This regulatory action was initiated in early 2015, prior to the loss of general fund support, to help offset the cost of administrative activities involved in the registration, inspection, and certification of nonmedical x-ray equipment, which had not been assessed a registration fee prior to that time.

General funds that were used to support ORH were abolished effective July 1, 2016. The 2015 general fund amount, having been reduced from about \$466,000 to \$361,000 over several years, constituted 19.3% of ORH's then budgeted resources (revenues) of \$1,871,476 and 13.4% of ORH's budgeted expenditures of about \$2,700,000. Since that time, the surplus has been used to balance the budget but is projected to be depleted in 2018.

The proposed fee increases were derived based on Office of Financial Management (OFM) revenue and expenditure projections through the year 2021 that have been deemed necessary to maintain the program's solvency, as follows:

Program	2017 Revenue	2021 Expenditure Forecast
X-ray	\$713,000	\$1,064,729
Radioactive Materials	\$750,000	\$1,248,278

X-ray Program:

The XRP is responsible for the registration and inspection of x-ray producing devices in the Commonwealth, in which there are approximately 7,000 registrants with approximately 22,300 x-ray tubes. The XRP also does the U.S. Food and Drug Administration (FDA) Mammography Quality

# Regulations

Standards Act (MQSA) facility inspections; performs inspection reviews, correspondence, enforcement and other associated activities; employs staff that maintain specialized training and certifications necessary to conduct XRP activities; reviews the academic and occupational credentials of and certifies private inspectors authorized to conduct business in the Commonwealth and reviews their inspection reports for accuracy; and responds to incidents and emergencies requiring radiological technical expertise and dose characterization. Staff members are emergency response trained, maintain training to perform exposure assessment, and participate in radiological drills and exercises with federal, state, and local stakeholders and responders.

Current XRP staffing includes six compliance/safety officers and supervisory and office services personnel who perform registrations, certifications, and billing; process and track payments; and provide client contact services. This staff complement, according to the Conference of Radiation Control Program Directors (CRCPD), is performing the workload of a minimum of eight XRP full-time employees for an equivalent program (CRCPD, Criteria for and

Adequate Radiation Control Program, Appendix C, May 2014).

The proposed regulatory action will address two sets of fees levied by the XRP: x-ray machine registration fees and x-ray machine inspection fees. With respect to the x-ray machine registration fees, the existing regulation is proposed to be amended due to the increased costs of maintaining a registration program for x-ray producing devices since publication of the overall fee schedule effective March 4, 2009.

The registration fees need to be adjusted to reflect the elimination of general funds. The x-ray machine inspection fees also need to be modified to accommodate increased personnel, overhead, and travel costs to the agency since 2009, which are projected to continue to increase in the coming years. Virginia's current and proposed x-ray registration fees, in comparison to those charged by other nearby states, appears below.

X-ray Facility	Virginia Current Registration	Virginia Proposed Registration Fee	Virginia Current Inspection Fee	Virginia Proposed Inspection Fee	Virginia Frequency
Chiropractors	\$50	\$100	\$230	\$250	Annual
Dentists	\$50	\$100	\$90	\$100	3 year
Medical Offices	\$50	\$100	\$230	\$250	Annual
Hospitals	\$50	\$100	Private Inspectors Only	Private Inspectors Only	Annual
Veterinary Offices	\$50	\$100	\$160	\$175	3 year
Podiatric Offices	\$50	\$100	\$90	\$125	3 year
Therapy < 0.9 MeV	\$50	\$100	Private Inspectors Only	Private Inspectors Only	Annual
Therapy > 0.9 MeV	\$50	\$100	Private Inspectors Only	Private Inspectors Only	Annual
Educational	\$50	\$100	Instrument Dependent	Instrument Dependent	Annual
Government (Academic)	\$50	\$100	Instrument Dependent	Instrument Dependent	Annual
Baggage	\$20	\$40	100	100	5 year
Cabinet/Analytical	\$25	\$50	150	150	3 year
Industrial	\$50	\$100	200	200	Annual
Bone Density	\$50	\$100	\$90	90	3 year

## Regulations

X-ray Facility	Tennessee*	Tennessee Frequency	Maryland*	Maryland Frequency	North Carolina* (Initial + \$24 to \$50/tube)	North Carolina Frequency
Chiropractors	\$195	2 years	\$222	2 years (Private)	\$180	3 year
Dentists	\$85	4 years	\$80	3 years (State)	\$180	5 year
Medical Offices	\$286	Annual	\$222	2 years (Private)	\$180	3 year
Hospitals	\$286	Annual	\$222	2 years (Private)	\$390	3 year
Veterinary Offices	\$195	2 years	\$222	2 years (State)	\$130	4 year
Podiatric Offices	\$195	2 years	\$222	2 years (Private)	\$180	3 year
Therapy < 0.9 MeV	\$390	Annual	\$882	Annual (Private)	\$400	3 year
Therapy > 0.9 MeV	\$2,600	Annual	\$882	Annual (Private)	\$400	3 year
Educational	\$780	2 years	\$222	3 years (Private)	\$130	4 year
Government (Academic)	\$780	2 years	\$222	3 years (Private)	\$130	4 year
Baggage/Cabinet/ Industrial	\$780	2 years	\$222	3 Years (Private)	\$180	3 year
Bone Density	\$195	2 years	\$222	2 years (Private)	\$180	3 year

\*Inspection fees included in registration fee, where conducted by state inspectors.

### Radioactive Materials Program:

Virginia entered into an agreement with the NRC on March 31, 2009, to assume the responsibilities of regulating the use of radioactive materials in Virginia. 12VAC5-490 was promulgated at that time to supply the monetary means for supporting the RMP by charging application and annual licensing fees.

The RMP is tasked with performing detailed technical reviews of license applications submitted for possession, use, manufacture, and distribution of radioactive materials, as well as any other associated activities requiring licensing by regulations (e.g., decontamination services) prior to approval for possession or operation. Contacts with applicants during the review process are documented through review letters and memoranda. For major operations, facilities subject to increased controls or applicants with no previous history with the RMP, prelicensing visits to examine facilities and equipment may be in order. Procedures are in place to promote thoroughness, technical quality, and uniformity. The RMP requires license amendments for any significant change in authorized radioactive materials, uses, and operations, and an amendment review is equivalent to the license application review. A complete technical review and reauthorization of active licenses comparable to the original licensing process are also conducted at a frequency based on the type of facility, materials, or activities authorized. The program requires the registration of certain devices containing a large quantity of or otherwise hazardous sealed sources of radioactive material that are generally licensed under its regulations and also requires evidence of financial assurance or surety for large quantity licensees with substantial potential for contamination of facilities, equipment, and the environment or that

# Regulations

possess large quantities of radioactive material requiring disposal. Inspections are conducted to evaluate compliance with regulatory standards, and inspection reports are generated that follow a uniform format and allow for timely (no later than 30 days after inspection) communication of results to the licensee. These reports summarize the inspection scope, include measurement data with appropriate interpretation, clearly list and categorize as to the severity each item of noncompliance, set a reasonable date for correction of each item, and require a plan for corrective action that includes submission of evidence that corrections have been performed and are effective.

The RMP licenses and inspects approximately 400 specific licensees. The RMP also tracks over 2,900 general licensees that possess over 34,000 general licensed devices; however, general licensees are not subject to inspection. RMP staffing consists of one supervisor who conducts inspections, five program support inspectors, and two administrative program specialists. These personnel maintain the RMP's databases on licensure and inspections; prepare and distribute statistical and informational reports, including monthly reports on the number of inspections (due, past due, and conducted), license applications, amendments, license actions overdue, violations, denials, etc.; receive and process the daily mail, including license applications, amendments, and renewals, inspection letters, and licensing fees; mail out licensing bills, inspection letters, renewal applications, and general information to licensees; contact licensees by telephone regarding licensing fees and renewals; and maintain the licensing file system, including file numbers, licenses, inspection reports, billing notices, and other materials.

According to the CRCPD, RMP professional and technical personnel requirements should consist of eight to 12 inspectors plus management and administrative support (CRCPD, Criteria for and Adequate Radiation Control Program, Appendix C, May 2014).

This proposed regulatory action seeks to continue to assess RMP fees equitably across all license categories by using the fee structure adopted in 2009 upon Virginia's becoming an agreement state, while also incorporating the regulatory changes adopted on November 22, 2012, to accommodate small business relief. Using this approach, revenue generation is estimated to be about \$1,248,500, which will approximate OFM's projected expenditures of about \$1,248,300. It is also important to note that this proposal does not suggest establishing an hourly rate for initial license application and amendment reviews as does the NRC, which is currently \$263 per hour for such reviews. A comparison of the NRC's existing fees to VDH's proposed fees, as well as a sampling of other agreement state fees, appears below:

Cat	Specific License Type	NRC FY17 Fee*	VDH Proposed Fee	PA Fee**	TN Fee	KY Fee	NC Fee
1	Special Nuclear Material						
A.	Possession and use of SNM in sealed sources contained in devices used in measuring systems	\$8,000	\$1,700	\$3,150			
B.	SNM to be used as calibration and reference sources	\$3,000	\$900	\$8,700			
C.	SNM - all other, except license authorizing special nuclear material in unsealed form that would constitute a critical mass (Fee waived if facility holds additional license category.)	\$8,600	\$3,400	\$8,700	\$7,800		
2	Source Material						
A.	Source material processing and distribution	\$8,000	\$5,100	\$45,100			
B.	Source material in shielding (Fee waived if facility holds additional license category.)	\$3,300	\$300	\$1,125	\$425		
C.	Source material - all other, excluding depleted uranium used as shielding or counterweights	\$9,400	\$3,400	\$20,100			

## Regulations

3	Byproduct, NARM						
A.	Broad scope for processing or manufacturing of items for commercial distribution	\$30,500	\$17,000	\$12,450	\$7,800	\$5,200	\$2,250
B.	Processing or manufacturing and commercial distribution of radiopharmaceuticals, generators, reagent kits and sources or devices	\$12,900	\$9,000	\$17,850	\$7,800	\$5,200	
C.	Commercial distribution or redistribution of radiopharmaceuticals, generators, reagent kits and sources or devices	\$12,900	\$6,800	\$10,200	\$7,800	\$5,200	
D.	Processing or manufacturing of items for commercial distribution	\$11,600	\$3,400	\$12,450		\$3,600	\$2,250
E.	Industrial radiography operations performed only in a shielded radiography installation	\$27,000	\$5,100	\$21,150	\$7,800	\$4,000	\$2,600
F.	Industrial radiography performed only at the address indicated on the license, and at temporary job sites	\$27,000	\$6,000	\$21,150	\$7,800	\$4,000	\$3,500
G.	Possession and use of less than 370 TBq (10,000 curies) of radioactive material in sealed sources for irradiation of materials where the source is not removed from the shield (Fee waived if facility holds additional irradiator license category.)	\$10,800	\$3,400	\$6,300	\$1,950	\$1,750	\$4,500
H.	Possession and use of less than 370 TBq (10,000 curies) of radioactive material in sealed sources for irradiation of materials where the source is exposed for irradiation purposes. The category also includes underwater irradiators for irradiation	\$11,800	\$5,100	\$11,700	\$36,000	\$4,200	\$4,500
I.	Possession and use of at least 370 TBq (10,000 curies) and less than 3.7 PBq (100,000 curies) of radioactive material in sealed sources for irradiation of materials	\$95,700	\$5,100	NRC Fee + 10% Application or Renewal	\$36,000	\$4,200	\$8,500
J.	Possession and use of 3.7 PBq (100,000 curies) or more of radioactive material in sealed sources for irradiation of materials	\$95,700	\$8,500	\$46,800	\$36,000	\$4,200	\$8,500
K.	Distribute items containing radioactive materials to persons under a general license	\$4,600	\$1,700	\$3,750	\$36,000		
L.	Possess radioactive materials intended for distribution to persons exempt from licensing	\$11,600	\$1,700	\$16,050	\$2,730		

# Regulations

M.	Broad scope for research and development that does not authorize commercial distribution	\$16,300	\$10,200	\$22,600	The sum of all applicable categories	\$3,500	\$3,000
N.	Research and development that does not authorize commercial distribution	\$14,800	\$1,700	\$8,400	\$1,170	\$1,250	
O.	Installation, repair, maintenance or other service of devices or items containing radioactive material, excluding waste transportation or broker services	\$22,100	\$1,700	\$12,750		\$1,200	
P.	Portable gauges	\$9,300	\$1,300	\$4,050	\$2,730	\$1,300	\$425
Q.	Portable x-ray fluorescence analyzer, dewpointer or gas chromatograph	\$9,300	\$400	\$4,050	\$850		
R.	Leak testing services	\$9,300	\$900	\$4,050	\$850	\$1,200	\$400
S.	Instrument calibration services	\$9,300	\$1,700	\$4,050	\$850	\$1,200	\$400
T.	Fixed gauges	\$9,300	\$1,300	\$3,150	\$1,950	\$1,100	\$550
U.	All other byproduct, naturally-occurring or accelerator-produced material licenses, except as otherwise noted	\$9,300	\$2,600	\$4,050	Case-by-case basis		\$500
4	Waste Processing						
A.	Commercial waste treatment facilities, including incineration		\$170,000	Full Cost	\$450,000		
B.	All other commercial facilities involving waste compaction, repackaging, storage or transfer	\$20,800	\$12,800	\$18,000	\$14,625	\$10,000	
C.	Waste processing - all other, including decontamination service		\$8,500	Full Cost	Case-by-case basis	\$25,000	
5	Well Logging						
A.	Well logging using sealed sources or sub-surface tracer studies	\$16,000	\$5,100	\$6,600	\$5,200	\$2,500	
B.	Well logging using sealed sources and sub-surface tracer studies	\$16,000	\$5,100	Full Cost	\$5,200	\$2,500	
6	Nuclear Laundry						
A.	Commercial collection and laundry of items contaminated with radioactive material	\$38,500	\$17,000	\$43,200	\$14,625	\$7,500	
7	Medical/Veterinary						
A.	Human use of sealed sources contained in teletherapy or stereotactic radiosurgery devices, including mobile therapy	\$23,800	\$10,200	\$7,350	\$2,730	\$4,000	

## Regulations

B.	Broad scope for human use in medical diagnosis, treatment, research and development (excluding teletherapy or stereotactic radiosurgery devices)	\$33,800	\$20,400	\$43,500	The sum of all applicable categories	\$7,500	\$5,250
C.	Mobile nuclear medicine	\$14,700	\$3,400	\$7,350	\$7,800	\$2,500	\$1,600
D.	Medical Institutions providing imaging, diagnostic or radionuclide therapy	\$14,700	\$4,000	\$7,350	\$1,170	\$2,100	\$2,900
E.	HDR, Emerging Technologies	\$14,700	\$6,400	\$7,350	\$2,730	\$4,000	\$2,100
F.	Veterinary use of radioactive materials	\$9,300	\$1,700	NRC Fee + 10% Application or Renewal	\$2,730	\$2,100	
G.	In-Vitro	\$9,300	\$1,700	NRC Fee + 10% Application or Renewal		\$1,250	
8	Academic						
A.	Possession and use of byproduct, naturally-occurring or accelerator produced radioactive material for educational use or academic research and development that does not authorize commercial distribution, excluding broad scope or human use license	\$14,800	\$1,300	\$1,300	\$7,800	\$1,250	
9	Accelerator						
A.	Accelerator production of radioisotopes with commercial distribution	\$32,000	\$3,400	NRC Fee + 10% Application or Renewal			
B.	Accelerator isotope production - all other (Fee waived if facility holds medical broad scope license with no commercial distribution.)	\$32,000	\$3,400	NRC Fee + 10% Application or Renewal			
10	Reciprocity						
A.	Reciprocal recognition of an out-of-state specific license		50% of annual fee of applicable category	\$2,250			
	* The NRC also charges an initial application fee. Fees for permits, licenses, amendments, renewals, special projects, 10 CFR Part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections will be calculated using the professional staff-hour rate of \$263 per hour.			**Small Business Fee: \$3,450			

# Regulations

The fee schedule continues to be designed on the premise that all licensees will pay a fair share of the program costs. One fee is set per category of licensee based on time and effort. When the Commonwealth's program was developed, the NRC fee schedule was referenced and then adjusted for expected time and effort involved in RMP staff managing each license category. Unlike the NRC program, the RMP did not include a reduced rate for small business licensees as the size of the business (i.e., licensee) did not correlate with the time and effort involved. However, a Petition for Rulemaking was submitted to the Virginia Regulatory Town Hall on August 17, 2009, requesting the radioactive material licensing fees be lowered to accommodate this provision to the extent possible. That change took effect on November 22, 2012, and as a result, 19 of 54 licensees were assessed a higher licensing fee by VDH than they paid to the NRC while 35 were lower than the NRC fee. The same category and fee structure applied at that time was followed for this proposal. Using the 2017 NRC small business fees in comparison to the VDH proposed fees, 14 businesses would be charged a fee higher than the NRC small business fee, while 48 would be charged less, as shown below:

#	Name	Type	Cat	2017 NRC Small Business Fee	Proposed VA Fee	Difference VA Proposed to NRC
1	Blue Ridge Isotopes, LLC	Nuclear Pharmacy	3B	\$4,100	\$9,000	\$4,900
2	Radiology Services of Northern VA	Nuclear Pharmacy	3B	\$4,100	\$9,000	\$4,900
3	Martin Industrial Testing, Inc.	Industrial Radiography	3F	\$850	\$6,000	\$5,150
4	Hampton Roads Cardiology, PLLC	Medical	7D	\$850	\$4,000	\$3,150
5	Precision Nuclear Diagnostics	Mobile Medical	7C	\$850	\$3,400	\$2,550
6	Advex Corporation	Industrial Radiography	3F	\$4,100	\$6,000	\$1,900
7	J Core Drilling, Inc.	Industrial Radiography	3F	\$4,100	\$6,000	\$1,900
8	Pole Brothers Imaging Co	Industrial Radiography	3F	\$4,100	\$6,000	\$1,900
9	Scientific Technical, Inc.	Industrial Radiography	3F	\$4,100	\$6,000	\$1,900
10	Testing Technologies, Inc	Industrial Radiography	3F	\$4,100	\$6,000	\$1,900
11	Well Data Services, Inc.	Well Logger	5B	\$4,100	\$5,100	\$1,000
12	General Health Physics	Calibration	3S	\$850	\$1,700	\$850
13	Wise County Coals, Inc.	Portable Gauge	3P	\$850	\$1,300	\$450
14	Geo Design & Engineering, Inc.	Portable Gauge	3P	\$850	\$1,300	\$450
15	Ajay A. Acharya, M.D., P.C.	Medical	7D	\$4,100	\$4,000	\$(100)
16	Blue Ridge Cardiovascular Associates	Medical	7D	\$4,100	\$4,000	\$(100)
17	Cardiac & Vascular Care of Virginia, P.C.	Medical	7D	\$4,100	\$4,000	\$(100)

## Regulations

18	Cardiology Associated, PC	Medical	7D	\$4,100	\$4,000	\$(100)
19	Cardiology of Virginia, Inc.	Medical	7D	\$4,100	\$4,000	\$(100)
20	Cardiology Specialists of Virginia, PC	Medical	7D	\$4,100	\$4,000	\$(100)
21	Cardiovascular Associates of Charlottesville, PLC	Medical	7D	\$4,100	\$4,000	\$(100)
22	Heart Care Associates, P.C.	Medical	7D	\$4,100	\$4,000	\$(100)
23	Henrico Cardiology Associates	Medical	7D	\$4,100	\$4,000	\$(100)
24	Javed Cardiac Center, PLLC	Medical	7D	\$4,100	\$4,000	\$(100)
25	M. Rafiq Zaheer, M.D., F.A.C.C.	Medical	7D	\$4,100	\$4,000	\$(100)
26	Medical Associates of Northern VA	Medical	7D	\$4,100	\$4,000	\$(100)
27	Northern Virginia Endocrinologists	Medical	7D	\$4,100	\$4,000	\$(100)
28	Odyssey Imaging, LLC	Medical	7D	\$4,100	\$4,000	\$(100)
29	Prince William Nuclear Cardiology	Medical	7D	\$4,100	\$4,000	\$(100)
30	Richmond Cardiology Associates	Medical	7D	\$4,100	\$4,000	\$(100)
31	Roanoke Heart Institute, PLC	Medical	7D	\$4,100	\$4,000	\$(100)
32	Tidewater Heart Institute	Medical	7D	\$4,100	\$4,000	\$(100)
33	Best Medical International, Inc.	Mfg./Dist.	3D	\$4,100	\$3,400	\$(700)
34	Blue Ridge Equine Clinic, Inc	Veterinary	7F	\$4,100	\$1,700	\$(2,400)
35	Wm. G. Brewer, DVM	Veterinary	7F	\$4,100	\$1,700	\$(2,400)
36	Health Physics Consultation	Other - Consult	3U	\$4,100	\$2,600	\$(1,500)
37	Physics Associates	Other - Consult	3U	\$4,100	\$2,600	\$(1,500)
38	Dilon Technologies, LLC	R&D	3N	\$4,100	\$1,700	\$(2,400)
39	EPL Pathology, Inc.	Other - Consult	3U	\$4,100	\$2,600	\$(1,500)
40	Spurlock Equine Associates	Veterinary	7F	\$4,100	\$1,700	\$(2,400)
41	Veterinary Emergency Center, Inc.	Veterinary	7F	\$4,100	\$1,700	\$(2,400)
42	AlexCom & Associates, Inc.	Portable Gauge	3P	\$4,100	\$1,300	\$(2,800)
43	ATCS, P.L.C.	Portable Gauge	3P	\$4,100	\$1,300	\$(2,800)
44	Branscome, Inc	Portable Gauge	3P	\$4,100	\$1,300	\$(2,800)
45	Commonwealth Environmental Associates, Inc	Portable Gauge	3P	\$4,100	\$1,300	\$(2,800)

# Regulations

46	Consulting Engineers Corporation	Portable Gauge	3P	\$4,100	\$1,300	\$(2,800)
47	Dominion Engineering Associates, Inc.	Portable Gauge	3P	\$4,100	\$1,300	\$(2,800)
48	Dominion Inspection Co., Inc.	Portable Gauge	3P	\$4,100	\$1,300	\$(2,800)
49	ECS Mid-Atlantic, LLC (Winchester)	Portable Gauge	3P	\$4,100	\$1,300	\$(2,800)
50	EnCon Consulting Services, Inc.	Portable Gauge	3P	\$4,100	\$1,300	\$(2,800)
51	Engineering & Materials Technology, Inc.	Portable Gauge	3P	\$4,100	\$1,300	\$(2,800)
52	Engineering and Testing Consultants, Inc.	Portable Gauge	3P	\$4,100	\$1,300	\$(2,800)
53	GeoConcepts Engineering, Inc.	Portable Gauge	3P	\$4,100	\$1,300	\$(2,800)
54	Geotechnics, Inc.	Portable Gauge	3P	\$4,100	\$1,300	\$(2,800)
55	HDH Associates, PC	Portable Gauge	3P	\$4,100	\$1,300	\$(2,800)
56	Lee Hy Paving Corporation	Portable Gauge	3P	\$4,100	\$1,300	\$(2,800)
57	NXL Construction Services, Inc.	Portable Gauge	3P	\$4,100	\$1,300	\$(2,800)
58	Roofing Consulting Service, Inc.	Portable Gauge	3P	\$4,100	\$1,300	\$(2,800)
59	Seal Engineering, Inc.	Portable Gauge	3P	\$4,100	\$1,300	\$(2,800)
60	Terra Tech Engineering Service, P.C.	Portable Gauge	3P	\$4,100	\$1,300	\$(2,800)
61	Viola Engineering, PLC	Portable Gauge	3P	\$4,100	\$1,300	\$(2,800)
62	Zannino Engineering, Inc.	Portable Gauge	3P	\$4,100	\$1,300	\$(2,800)

## Other Actual and Anticipated Cost Increases:

It is important to note that VDH's Office of Financial Management's expenditure budget forecast assumes no reductions in staff or operating costs and the following future cost impact assumptions through 2021:

1. Health insurance: Likely 8.0% increase in fiscal year (FY) 2018 (based on statewide central appropriation planning in Appropriation Act).
2. Health insurance: Additional conservative individual FY 2019 - FY 2021 increases of 5.0%, 2.0%, and 2.0%.
3. Virginia Information Technologies Agency: Annual conservative 1.0% increase in each FY.
4. State compensation: Conservative 3.0% annual salary cost impact factored in FY 2018 and beyond (FY 2018 and future fiscal years speculative).

5. Office of Financial Management (OFM) forecasts XRP expenditures of about \$1,065,000 by the year 2021, while revenue is expected to remain constant at about \$713,000, unless fees are raised.

6. OFM forecasts RMP expenditures of about \$1,250,000 by the year 2021, while revenue is expected to remain constant at about \$750,000, unless fees are raised.

OFM also provided information on various cost increases since the RMP fee reduction of 2012 went into effect. Specifically:

- a. FY 2018: 3.0% legislated raise in staff compensation.
- b. FY 2014: 2.0% legislated raise in staff compensation.
- c. FY 2013 and FY 2014: Health insurance employer premium increases each year (individual plan increases vary; average increased in 3.0-8.0% range annually).

d. FY 2011 and FY 2012: Modest health insurance employer premium increase

There were additional net contributions required of agency non-general funds or cash balances that were used to support the Virginia Retirement System's pension liability.

**Substance:** 12VAC5-490-10 is proposed to be amended to increase the x-ray machine registration fee for operators or owners of diagnostic x-ray machines used in the healing arts and capable of producing radiation as well as operators or owners of therapeutic x-ray, particle accelerators, and teletherapy machines used in the healing arts that are capable of producing radiation, and for nonmedical x-ray devices.

12VAC5-490-20 is proposed to be amended to increase fees charged for surveys (inspections) requested by a registrant and performed by a VDH inspector.

12VAC5-490-40 is proposed to revise the annual fees for entities issued a radioactive materials license pursuant to 12VAC5-481, as necessary, to support the licensing and inspection program under the Commonwealth's authority as a NRC agreement state. Since the 2012 revision, fee collection by the RMP has averaged about \$750,000 while expenses have averaged about \$950,000. This action is expected to increase the RMP revenue generation to be in line with current and anticipated future expenditures.

The Atomic Energy Act of 1954, as amended, provides the statutory basis by which the NRC relinquishes portions of its regulatory authority to license and regulate radioactive material to a state that agrees to accept that responsibility. Through the agreement state program, 37 states, including Virginia, have signed formal agreements for inspection and enforcement authority with the NRC. The NRC retains an oversight role and periodically reviews agreement state programs for continued adequacy to protect public health and safety through their Integrated Materials Performance Evaluation Program (IMPEP). All IMPEP reviews use common performance indicators in the assessment. For most IMPEP reviews, no action other than issuance of the final report is needed. In cases where additional action is needed, the NRC may consider monitoring, heightened oversight, probation, suspension, or termination. Suspension and termination are considered when a program is deemed inadequate to protect public health and safety. In these situations, the state's authority is revoked and oversight authority reverts back to the NRC, and the state's revenue stream normally generated by program fees would be eliminated.

In November 2014, the NRC's IMPEP review team evaluated Virginia's RMP and found "the Program experienced a backlog in inspections due, in part, to having a shortage of qualified staff to complete inspections within the required timeframe." Since that time, the RMP has hired and trained two new inspectors and completed the overdue inspection

backlog, thus avoiding monitoring, probation, or forfeiture. The NRC warned, however, that a loss of even one inspector could create an environment for recurrence due to the absence of staffing depth. The NRC also noted that the administrative assistant responsible for maintaining the database had been filled three times since 2010 and was vacant again at the time of the review. ORH explained that efforts would be undertaken to request the conversion of that position to a full-time equivalent, which was granted in 2015 and subsequently filled.

The RMP, through its registration fees, currently provides for about 30% of ORH's overall revenue and supports administration, the RMP supervisor, RMP inspectors, and business staff salaries, as well as some office-wide equipment purchases and emergency response capabilities. A loss of the RMP and the revenue it generates, even temporarily, would challenge the viability of the office at large.

**Issues:** The primary advantage of this change to the public and the regulated community is that registering all x-ray machines allows ORH to maintain an accurate database of the devices, track inspections, and ensure that the machines are functioning properly so as to minimize the risk of equipment malfunction and accidental overexposures.

The primary advantage to the public is that the x-ray machine registration and inspection fees rely on owners or operators of the x-ray equipment. Similarly, radioactive materials licensing fees rely on the owners or operators of radioactive materials sources and devices. There are no disadvantages to the public in promulgating the proposed fee schedule.

The primary advantage to the agency and the Commonwealth is that approving the proposed fee structure allows the Commonwealth to recover more of the costs associated with carrying out the legislative mandate. There are no disadvantages to the agency and Commonwealth in promulgating the proposed fee schedule.

Other pertinent matters of interest to the regulated community include that x-ray machine registrants and radioactive materials licensees have an interest in keeping inspection fees as low as possible. Potential concerns may be expressed by private x-ray device inspectors whose fees are independent of VDH's inspection fees and are negotiated between individual private inspectors and the registrants. Section 32.1-229.2 of the Code of Virginia requires the agency to establish inspection fees to minimize competition with the private inspector and recover its costs. X-ray machine registrants may also express concerns that the proposed inspection fees are excessive. Similarly, VDH may anticipate objection from the radioactive materials licensees due to a proposed increase, even though the proposed fee schedule for radioactive materials will remain below the NRC's fees for equivalent (non-agreement state) services.

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# Regulations

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

Summary of the Proposed Amendments to Regulation. The Board of Health (Board) proposes to raise registration and inspection fees in the X-ray Program (XRP) as well as licensing fees in the Radioactive Materials Program (RMP).

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

Estimated Economic Impact. The Board proposes to raise the fees in XRP for device registrations and inspections and in RMP for licensing. The General Fund support for XRP and RMP were abolished effective July 1, 2016, which reduced funding for the programs by \$361,000 in total. Even with the General Fund support the programs were not generating enough fee revenue to cover their costs. In addition, new positions were created in the Office of Radiological Health for the RMP in 2015 to accommodate inspections and business functions because the U.S. Nuclear Regulatory Commission had expressed concerns about an inspection backlog in a preceding program assessment. Furthermore, health insurance premiums, information technology costs, employee compensation, equipment rental costs, etc. have increased and are anticipated to increase in the future. The Virginia Department of Health (VDH) projects a \$351,729 shortfall between revenues and expenditures in XRP and a \$498,278 shortfall in RMP by fiscal year 2021. The proposed fee increases are intended to make both programs self-sufficient.

There are two types of fees in the XRP. One for registration and one for inspection. The amount of the fees and frequency of inspections depend on the facility type. Medical facilities, hospitals, and chiropractors are subject to a one-year inspection cycle. Dental, podiatry, and veterinary facilities are subject to a three-year inspection cycle. Current periodic registration fees are \$20 for baggage x-ray facilities, \$25 for cabinet/analytical x-ray facilities, and \$50 for all the remaining types of facilities. The proposed registration fees are double the current registration fees (i.e., \$40, \$50, and \$100 respectively). Current inspection fees range from \$90 every three years to \$230 every year. The proposed fees range from \$100 every three years to \$250 every year. There are no fee increases in four categories of facility types. The increases in other categories range from 9% to 39% depending on the facility type.

VDH researched the amount of similar fees charged in Tennessee, Maryland, and North Carolina. Comparison with those states reveals that the proposed fees are either similar or in most cases below the fees charged in those three states.

There are 43 different types of licenses in RMP covering possession, use, processing, distribution, manufacturing, and repair of any devices or products that contain radioactive materials. The current license fees range from \$200 to

\$100,000 depending upon the specific application. However, all but one of the fees are below \$12,000. The proposed increases are between 50% and 60% for three fee categories, between 70% and 74% for 38 fee categories, and at 80% for two fee categories.

VDH also compared the proposed RMP fees to those charged by the federal Nuclear Regulatory Commission, Pennsylvania, Tennessee, Kentucky, and North Carolina. The proposed license fees are much lower than what the federal Nuclear Regulatory Commission charges and are also similar to the fees charged by the comparison states.

With the proposed fee increases, XRP and RMP will be able to maintain their operations providing a check on safety of radioactive equipment and materials. In addition, if RMP failed to hire additional staff to address the inspection backlog, the Nuclear Regulatory Commission would have revoked Virginia's authority to issue licenses and take over the licensing authority. The fees charged by the Nuclear Regulatory Commission are considerably higher than the proposed RMP fees.

Financing of 100% of XRP and RMP expenses through user fees should improve allocative efficiency of economic resources. In general, if the benefits accrue broadly to the public, then the program should be financed by taxes paid by the public. In contrast, if the benefits accrue to a limited number of private individuals or organizations, then the program should be financed by charges paid by the private beneficiaries. Charging the marginal cost of a service ensures that just the right amount of that service will be produced and consumed. For example, charging less than the full cost may encourage some entities to obtain an unneeded x-ray machines. Similarly, charging more than the actual cost may unnecessarily discourage some entities from obtaining a needed x-ray equipment.

The same principle also applies to the distribution of program costs among various types or categories of registrants and licensees. VDH notes that the proposed fees for different categories are generally set based on time and effort it takes to regulate that specific category.

The proposed regulation will likely also indirectly affect private x-ray inspectors and facilities that hire those inspectors. Currently, only about 10% of the inspections are conducted by XRP staff. An increase in XRP fee schedule will likely result in some additional registrants seeking services of private inspectors, which may lead to an increase in fees charged by them.

In summary, the main economic impact of the proposed regulation is to ensure that XRP and RMP have enough resources to support their operations and continue to protect the public from health and safety risks posed by radioactive equipment and materials.

Businesses and Entities Affected. In the XRP program, there are about 7,000 registrants with approximately 21,000 x-ray tubes. The types of registrants include but are not limited to medical, industrial, and academic facilities. Program staff inspect about 1,000 facilities and 2,100 machines per year. The remaining facilities are inspected through private inspectors.

In the RMP program, there are about 400 specific licensees. The licensees include large nuclear power generation and shipyard facilities and smaller medical and engineering facilities. The program staff conduct approximately 400 inspections and licensing actions annually. RMP also tracks over 2,900 general licensees which possess over 34,000 general licensed devices.

The proposed changes will also directly affect XRP and RMP by providing funding for their operations. Currently, there are a total of 20 full-time equivalents that serve those programs, either directly in supervisory or inspection positions, or in support functions (i.e., business, billing, and management).

Finally, there are 171 private inspectors and their customers may be indirectly affected as noted above.

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

Projected Impact on Employment. The proposed fee increases will maintain the current level of full-time positions at VDH for XRP and RMP.

Effects on the Use and Value of Private Property. The proposed fee increases are probably relatively small compared to asset values of the affected businesses. Thus, no significant impact on the use and value of private property is expected.

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

Small Businesses:

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

Costs and Other Effects. The majority of registrants in the XRP (dental facilities, chiropractic facilities, podiatry offices, medical facilities/offices, veterinary facilities) are likely to be small businesses while hospitals, of which there are about 100, generally are not. The 62 registrants in RMP are likely small businesses. The costs and other effects on small businesses are the same as discussed above. The current fees for categories in RMP where most of the entities are small businesses (e.g., medical offices, portable gauge users, and industrial radiographers) are lower to provide small business

relief. The proposed fees, while higher than the current fees, continue to provide relief to most of the small businesses.

Alternative Method that Minimizes Adverse Impact. There is no alternative source of funds that would finance XRP and RMP operations.

Adverse Impacts:

Businesses. Most of the affected hospitals in the XRP and several licensees in the RMP are not small providers. The costs and other effects on them are the same as discussed above.

Localities. Localities are exempt from x-ray registration fees. However, they must pay x-ray inspection fees and radioactive material license fees.

Other Entities.

The proposed amendments will not directly adversely affect other entities. However, the proposed regulation may indirectly adversely affect those registrants using private inspectors. The proposed XRP fee increases would likely enable private inspectors to increase the fees they charge, adversely affecting their customers.

Agency's Response to Economic Impact Analysis: The Virginia Department of Health concurs with the results of the economic impact analysis.

Summary:

*The proposed amendments increase fees in the fee schedule used by the X-Ray Program for device registrations and inspections and in the fee schedule used by the Radioactive Materials Program for charging annual licensing fees to maintain program solvency and provide adequate regulatory controls.*

**12VAC5-490-10. Registration fees.**

A. All operators or owners of diagnostic x-ray machines used in the healing arts and capable of producing radiation shall pay the following registration fee:

1. ~~\$50~~ \$100 for each machine and additional ~~tube(s)~~ tubes that have a required annual inspection, collected annually; and
2. ~~\$60~~ \$100 for each machine and additional ~~tube(s)~~ tubes that have a required inspection every three years, collected every three years.

B. All operators or owners of therapeutic x-ray, particle accelerators, and teletherapy machines used in the healing arts capable of producing radiation shall pay the following annual registration fee:

1. ~~\$50~~ \$100 for each machine with a maximum beam energy of less than 500 KVp;

# Regulations

2. ~~\$50~~ \$100 for each machine with a maximum beam energy of 500 KVP or greater.

C. All operators or owners of baggage, cabinet or analytical, or industrial x-ray machines capable of producing radiation shall pay the following annual registration fee:

1. ~~\$20~~ \$40 for each machine used for baggage inspection;
2. ~~\$25~~ \$50 for each machine identified as cabinet or analytical; and
3. ~~\$50~~ \$100 for each machine used for industrial radiography.

D. Where the operator or owner of the aforementioned machines is a state agency or local government, that agency is exempt from the payment of the registration fee.

## 12VAC5-490-20. Inspection fees and inspection frequencies for x-ray machines.

The following table lists the fees that shall be charged for surveys requested by the registrant and performed by a Department of Health inspector, as well as the required inspection frequencies for each type of x-ray machine:

Type	Cost Per Tube	Inspection Frequency
General Radiographic (includes: Chiropractic and Special Purpose X-ray Systems)	<del>\$230</del> <u>\$250</u>	Annually
Fluoroscopic, C-arm Fluoroscopic	<del>\$230</del> <u>\$250</u>	Annually
Combination (General Purpose-Fluoroscopic)	<del>\$460</del> <u>\$500</u>	Annually
Dental Intraoral and Panographic	<del>\$90</del> <u>\$100</u>	Every 3 years
Veterinary	<del>\$160</del> <u>\$175</u>	Every 3 years
Podiatric	<del>\$90</del> <u>\$125</u>	Every 3 years
Cephalometric	<del>\$120</del> <u>\$130</u>	Every 3 years
Bone Densitometry	<del>\$90</del> <u>\$100</u>	Every 3 years
Combination (Dental Panographic and Cephalometric)	<del>\$210</del> <u>\$230</u>	Every 3 years
Shielding Review for Dental Facilities	<del>\$250</del> <u>\$300</u>	Initial/Prior to use

Shielding Review for Radiographic, Chiropractic, Veterinary, Fluoroscopic, or Podiatric Facilities	<del>\$450</del> <u>\$500</u>	Initial/Prior to use
Baggage X-ray Unit	\$100	Every 5 years
Cabinet or Analytical X-ray Unit	\$150	Every 3 years
Industrial Radiography X-ray Unit	\$200	Annually

## 12VAC5-490-40. Application and licensing fees for radioactive materials licenses.

The application fee for a radioactive materials license and annual fees for persons issued a radioactive materials license pursuant to 12VAC5-481 are listed in the following table:

Category	Specific License Type	Application & Annual Fee
1	Special Nuclear Material (SNM)	
	A. Possession and use of SNM in sealed sources contained in devices used in measuring systems	<del>\$1,000</del> <u>\$1,700</u>
	B. SNM to be used as calibration and reference sources	<del>\$500</del> <u>\$900</u>
	C. SNM - all other, except license authorizing SNM in unsealed form that would constitute a critical mass (fee waived if facility holds additional license category)	<del>\$2,000</del> <u>\$3,400</u>
2	Source Material	
	A. Source material processing and distribution	<del>\$3,000</del> <u>\$5,100</u>
	B. Source material in shielding (fee waived if facility holds additional license category)	<del>\$200</del> <u>\$300</u>
	C. Source material - all other, excluding depleted uranium used as shielding or counterweights	<del>\$2,000</del> <u>\$3,400</u>

3		Byproduct, NARM	
	A.	Broad scope for processing or manufacturing of items for commercial distribution	<del>\$10,000</del> <u>\$17,000</u>
	B.	Processing or manufacturing and commercial distribution of radiopharmaceuticals, generators, reagent kits and sources or devices	<del>\$6,000</del> <u>\$9,000</u>
	C.	Commercial distribution or redistribution of radiopharmaceuticals, generators, reagent kits and sources or devices	<del>\$4,000</del> <u>\$6,800</u>
	D.	Processing or manufacturing of items for commercial distribution	<del>\$2,000</del> <u>\$3,400</u>
	E.	Industrial radiography operations performed only in a shielded radiography installation	<del>\$3,000</del> <u>\$5,100</u>
	F.	Industrial radiography performed only at the address indicated on the license, and at temporary job sites	<del>\$3,500</del> <u>\$6,000</u>
	G.	Possession and use of less than 370 TBq (10,000 curies) of radioactive material in sealed sources for irradiation of materials where the source is not removed from the shield (fee waived if facility holds additional irradiator license category)	<del>\$2,000</del> <u>\$3,400</u>
	H.	Possession and use of less than 370 TBq (10,000 curies) of radioactive material in sealed sources for irradiation of materials where the source is exposed for irradiation purposes. The category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation	<del>\$3,000</del> <u>\$5,100</u>

	I.	Possession and use of at least 370 TBq (10,000 curies) and less than 3.7 PBq (100,000 curies) of radioactive material in sealed sources for irradiation of materials}	<del>\$3,000</del> <u>\$5,100</u>
	J.	Possession and use of 3.7 PBq (100,000 curies) or more of radioactive material in sealed sources for irradiation of materials	<del>\$5,000</del> <u>\$8,500</u>
	K.	Distribute items containing radioactive materials to persons under a general license	<del>\$1,000</del> <u>\$1,700</u>
	L.	Possess radioactive materials intended for distribution to persons exempt from licensing	<del>\$1,000</del> <u>\$1,700</u>
	M.	Broad scope for research and development that does not authorize commercial distribution	<del>\$6,000</del> <u>\$10,200</u>
	N.	Research and development that does not authorize commercial distribution	<del>\$1,000</del> <u>\$1,700</u>
	O.	Installation, repair, maintenance or other service of devices or items containing radioactive material, excluding waste transportation or broker services	<del>\$1,000</del> <u>\$1,700</u>
	P.	Portable gauges	<del>\$750</del> <u>\$1,300</u>
	Q.	Portable <del>X-ray</del> <u>x-ray</u> fluorescence analyzer (XRF), dewpointer or gas chromatograph	<del>\$250</del> <u>\$400</u>
	R.	Leak testing services	<del>\$500</del> <u>\$900</u>
	S.	Instrument calibration services	<del>\$1,000</del> <u>\$1,700</u>
	T.	Fixed gauges	<del>\$750</del> <u>\$1,300</u>

# Regulations

	U.	All other radioactive material licenses, except as otherwise noted	<del>\$1,500</del> <u>\$2,600</u>
4		Waste Processing	
	A.	Commercial waste treatment facilities, including incineration	<del>\$100,000</del> <u>\$170,000</u>
	B.	All other commercial facilities involving waste compaction, repackaging, storage or transfer	<del>\$7,500</del> <u>\$12,800</u>
	C.	Waste processing - all other, including decontamination service	<del>\$5,000</del> <u>\$8,500</u>
5		Well Logging	
	A.	Well logging using sealed sources or subsurface tracer studies	<del>\$3,000</del> <u>\$5,100</u>
	B.	Well logging using sealed sources and subsurface tracer studies	<del>\$3,000</del> <u>\$5,100</u>
6		Nuclear Laundry	
	A.	Commercial collection and laundry of items contaminated with radioactive material	<del>\$10,000</del> <u>\$17,000</u>
7		<del>Medical/Veterinary</del> Medical or veterinary	
	A.	Human use of sealed sources contained in teletherapy or stereotactic radiosurgery devices, including mobile therapy	<del>\$6,000</del> <u>\$10,200</u>
	B.	Broad scope for human use in medical diagnosis, treatment, research and development (excluding teletherapy or stereotactic radiosurgery devices)	<del>\$12,000</del> <u>\$20,400</u>
	C.	Mobile nuclear medicine	<del>\$2,000</del> <u>\$3,400</u>
	D.	Medical institutions providing imaging, diagnostic or radionuclide therapy	<del>\$2,300</del> <u>\$4,000</u>
	E.	Medical institutions using a High Dose Remote	<del>\$3,750</del>

		Afterloader (HDR) or emerging technologies	<del>\$6,400</del>
	F.	Veterinary use of radioactive materials	<del>\$1,000</del> <u>\$1,700</u>
	G.	In-vitro	<del>\$1,000</del> <u>\$1,700</u>
8		Academic	
	A.	Educational use or academic research and development that does not authorize commercial distribution, excluding broad scope or human use licenses	<del>\$750</del> <u>\$1,300</u>
9		Accelerator	
	A.	Production of radioisotopes with commercial distribution	<del>\$2,000</del> <u>\$3,400</u>
	B.	Production - all other (fee waived if facility holds medical broad scope license with no commercial distribution)	<del>\$2,000</del> <u>\$3,400</u>
10		Reciprocity	
	A.	Reciprocity recognition of an out-of-state specific license	50% of annual fee of applicable category

VA.R. Doc. No. R17-5115; Filed January 5, 2018, 5:00 p.m.

## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Proposed Regulation

**Title of Regulation: 22VAC40-185. Standards for Licensed Child Day Centers (amending 22VAC40-185-10, 22VAC40-185-30, 22VAC40-185-40, 22VAC40-185-60, 22VAC40-185-70, 22VAC40-185-80, 22VAC40-185-130, 22VAC40-185-140, 22VAC40-185-190, 22VAC40-185-220, 22VAC40-185-240, 22VAC40-185-350, 22VAC40-185-420, 22VAC40-185-460, 22VAC40-185-500, 22VAC40-185-510, 22VAC40-185-530, 22VAC40-185-550, 22VAC40-185-560, 22VAC40-185-580; adding 22VAC40-185-245, 22VAC40-185-355).**

**Statutory Authority:** §§ 63.2-217 and 63.2-1734 of the Code of Virginia.

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

**Public Comment Deadline:** April 6, 2018.

**Agency Contact:** Tatanishia Armstrong, Licensing Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7152 ext: 7, FAX (804) 726-7132, or email tatanishia.armstrong@dss.virginia.gov.

**Basis:** Sections 63.2-100, 63.2-217, and 63.2-1734 of the Code of Virginia provide the legal authority for the State Board of Social Services to adopt regulations and requirements for licensed child day centers. The Code of Virginia mandates promulgation of regulations for the activities, services, and facilities to be employed by persons and agencies required to be licensed, which shall be designed to ensure that such activities, services and facilities are conducive to the welfare of the children under the custody or control of such persons or agencies. Section 63.2-1734 further mandates that:

"Such regulations shall be developed in consultation with representatives of the affected entities and shall include, but need not be limited to, matters relating to the sex, age, and number of children and other persons to be maintained, cared for, or placed out as the case may be, and to the buildings and premises to be used, and reasonable standards for the activities, services and facilities to be employed. Such regulations shall not require the adopting of a specific teaching approach or doctrine or require the membership, affiliation, or accreditation services of any single private accreditation or certification agency."

**Purpose:** In accordance with § 2.2-4007.01 of the Code of Virginia, the State Board of Social Services intends to consider amending current Standards for Licensed Child Day Centers, 22VAC40-185, to revise current regulations and incorporate new standards that reflect federal health and safety requirements.

The planned regulatory action seeks to update the regulation and align it with federal requirements described in the Child Care and Development Block Grant Act of 2014. Adding these federal health and safety requirements is essential to protect the health, safety, or welfare of citizens.

The goals of this proposed action are (i) to update regulations to comply with new federal requirements for child care providers, (ii) to update current licensing regulations to ensure consistency with requirements for Child Care and Development Fund recipients, and (iii) to present a clearly written regulation that reflects current federal guidelines and practices in child care. Amendment of the existing regulation was determined by the State Board of Social Services as the

most efficient and effective way to make the necessary changes to achieve clarity and consistency and to protect children.

**Substance:** Provisions included in the amended standards to be considered include revisions to address federal law changes that necessitate the development of new standards in current areas as well as areas not previously considered to address ever-changing national health and safety guidelines and practices. Substantive amendments to the regulations include the following areas:

1. Grace period for immunization requirements for homeless or foster care children.
2. Prevention of and response to emergencies due to food and allergic reactions.
3. Prevention of shaken baby syndrome and abusive head trauma.
4. Revised emergency preparedness plan requirements.
5. Orientation training for all child care staff with content including health and safety requirements.
6. Updated annual training requirements to include health or safety topics.
7. Group size requirements.
8. Requirements to report serious injuries of children in care to the department.
9. Revised cardiopulmonary resuscitation (CPR) and first aid certification requirements.
10. Supervision requirements for aides under the age of 18 years.
11. Medication administration requirements for staff.
12. Training requirements for volunteers.

**Issues:** The primary advantage of the proposed regulatory action is to ensure that parents have sufficient information to make informed decisions when choosing to place their child in licensed child day centers that incorporate new standards that reflect federal health and safety requirements. The new regulations ensure consistent requirements for Child Care and Development Fund recipients.

The proposed regulatory action requires all staff who work directly with children to have current certification in cardiopulmonary resuscitation (CPR) and first aid, which increases the health and safety of all children in care. The total number of orientation and annual training hours will increase for all staff to strengthen their professional development.

The advantage to the Commonwealth is that the proposed action increases protections of the health, safety, and welfare of children receiving care in licensed child day centers.

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# Regulations

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Additionally, the proposed changes promote consistency with other child care regulations. There are no disadvantages to the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The State Board of Social Services (Board) proposes to amend its regulation that governs licensure of child day centers to clarify existing requirements and to align the requirements of this regulation with the Board's proposed requirements for providers who receive Child Care and Development Block Grant (CCDBG) subsidies. In addition to making many clarifying changes to regulatory text, the Board proposes substantive changes to:

- 1) Remove the list of exemptions to licensure requirements from the regulation,
- 2) Require licensees to have written procedures for prevention of shaken baby syndrome and for safe sleeping practices,
- 3) Require licensees to document all known allergies, sensitivities and dietary restrictions of children in their care and require that parents provide instructions from a physician regarding their child's food allergies,
- 4) Allow children defined by the regulation as homeless who do not have documentation of immunization and/or physical examination to attend licensed facilities for 90 days before such documentation must be produced,
- 5) Allow any unimmunized children to attend a licensed child day center for 90 days (180 days in some cases) while they get their immunizations up-to-date so long as they have one dose of each required immunization before attendance,
- 6) Require 16 hours of orientation training for all new staff at licensed facilities,
- 7) Require completion of Virginia Department of Social Services (VDSS) provided orientation training (which is currently 10 hours of training),
- 8) Increase required annual training from 16 to 20 hours,
- 9) Require all direct care staff to complete first aid and cardiopulmonary resuscitation (CPR) and allow all hours of first aid and CPR training to count toward annual training requirements,
- 10) Institute new group size restrictions,
- 11) Require licensees to formulate and implement a plan to ensure that children receive care by consistent staff, and
- 12) Require all staff under 18 years old to be directly supervised and not left alone with children.

Result of Analysis. Benefits likely outweigh costs for some proposed regulatory changes. For at least one proposed change, there is insufficient information to ascertain if benefits likely outweigh costs. For several proposed changes, costs likely outweigh benefits.

Estimated Economic Impact. Many changes that the Board proposes for this regulation will not change any substantive requirement for regulated entities but, instead, are aimed at clarifying existing regulatory requirements. Current regulation, for instance, requires licensees to have procedures for response to natural or manmade disasters.<sup>1</sup> The proposed regulation expands language to clarify what must be in those procedures. The Board also proposes to add definitions to the regulation that are helpful in understanding regulatory requirements. No affected entities will incur costs on account of changes such as these. Interested parties will benefit from the changed structure of the regulation as it will make it both easier to find and read any particular standard. Benefits likely outweigh costs for all reorganizing and clarifying changes.

Current regulation contains the list of entities that are exempted by § 63.2-1715<sup>2</sup> of the Code of Virginia from licensure as child day centers. This list includes religious institutions that obtain an exemption pursuant to § 63.2-1716<sup>3</sup> as well as Sunday School and Bar and Bat Mitzvah classes, and child-minding services such as those offered at gyms and sports programs. The Board now proposes to remove these exemptions as they feel it is unnecessary and duplicative to have them in the regulation. The exemptions still exist in the Code of Virginia, so no exempted entity is likely to incur costs on account of this proposed regulatory change.<sup>4</sup> Individuals interested in finding these exemptions will likely incur some small additional time costs from having to search the Code of Virginia because the exemptions will no longer be in the licensure regulation. This proposed change will make the regulation about a page and a half shorter.

Current regulation requires licensees to have written procedures for injury prevention. The Board now proposes to specify that they also have specific written procedures for the prevention of shaken baby syndrome and safe sleeping practices for prevention of sudden infant death syndrome. To the extent that licensees do not already address these specific topics in existing injury prevention procedures, they will likely incur some time and copying costs for creating them. These costs are likely outweighed by the benefits that would accrue to center staff, who would have greater certainty about center procedures, and infants in care.

Current regulation requires licensees to document the allergies of children in care and the actions they are to take if those children are exposed to substances they are allergic to. The Board proposes to require that licensees obtain instructions from the physician of a child with allergies regarding that child's allergies and the steps to be taken in the event of an allergic reaction. This proposed change may

increase costs for parents if they have to pay for their child's physician's time, either for an extra office visit or if there is an office fee to provide paperwork, to provide information that the parents are currently allowed to provide to licensees. This proposed change may provide a benefit in increased safety only if current requirements have proven inadequate in some way that could be addressed by requiring a physician, rather than a child's parent, to provide information on the child's allergies.

Current regulation requires that documentation of up-to-date immunizations be provided before a child can attend a licensed facility (unless the child's parents claim a religious exemption or the child has had a past adverse reaction to vaccines that would preclude further vaccination) and requires that children have a physical examination either before center attendance or within 30 days of the first day of attendance. The Board now proposes to allow children defined by the regulation as homeless who do not have documentation of immunization and/or physical examination to attend licensed facilities for 90 days before such documentation must be produced. The Board also proposes to allow any unimmunized children to attend licensed facilities for 90 days while they get their immunizations up-to-date so long as they have one dose of each required immunization before attendance. This time period can be extended to 180 days if an affected child would require more than two doses of hepatitis B vaccine in order to be up-to-date.<sup>5</sup> These proposed changes may slightly increase the chances that populations of children in care are being exposed to diseases that vaccines are meant to protect against, but they also will benefit children who would otherwise be barred from immediate attendance, and their families. For instance, foster children<sup>6</sup> will be able to attend day care while local Departments of Social Services (LDSS) gather their records, or get them their required immunizations, so that their foster parents can continue working.

Current regulation requires that new staff hired by licensees receive orientation training specified in the regulation by the end of their first working day<sup>7</sup> but does not specify that training take any specific number of hours. Current regulation also requires licensee direct care staff to complete 16 hours of continuing education each year that can include a number of specified topics.

In order to make this regulation consistent with the Board's proposed requirements for licensees who voluntarily participate in the CCDBG subsidy program,<sup>8</sup> the Board now proposes to specify that:

"A. Staff shall complete a minimum of 16 hours of orientation training appropriate to the age of the children in care." and

"B. The Virginia Department of Social Services-sponsored orientation course shall be completed within 90 calendar days of employment."

These proposed changes would expand required orientation to 16 hours of training<sup>9</sup> and require that all new staff complete an orientation course (currently 10 hours in length) sponsored by VDSS within 90 days of employment.<sup>10</sup> These two requirements are written, however, so it is not clear whether the VDSS orientation course is part of the 16 hours of orientation or whether it is separate from that requirement. Board staff reports that it is the Board's intent that that the VDSS training would be part of the 16 hours. Under this intended interpretation, regulated entities would likely incur costs for ten additional hours of orientation training for each new employee. If the 16 hours of orientation training is read to be separate and exclusive of the required VDSS course, regulated entities would likely incur costs for 20 additional hours of orientation training for each new employee. DPB has suggested that the Board rewrite the proposed orientation training requirements to remove any possible ambiguity.

Board staff reports that the increased required orientation training will not require fees to be paid but will require staff time. Board staff further reports that the mean wage for child care workers in Virginia is \$10.79 per hour. Given that average pay rate, licensees will likely incur additional orientation training costs of approximately \$107.90 per new employee (if 10 additional hours of training are required) and costs of approximately \$215.80 per new employee (if 20 additional hours of training are required). Given the average turnover rate of child care workers,<sup>11</sup> licensees will likely incur these additional orientation training costs for approximately 30% of their workforce each year. Although Board staff does not have estimates of how many people are employed at licensed facilities, or how many people are newly employed by licensees each year, they do report that, as of June 30, 2017, 24,381 individuals have completed VDSS's orientation training and another 3,160 are in the process of completing that training.<sup>12</sup> Assuming a turnover rate of about 30% leads to approximately 8,000<sup>13</sup> new child care workers per year, licensees will likely cumulatively incur costs of either slightly less than \$900,000 or slightly more than \$1.7 million<sup>14</sup> for orientation training for new employees each year. Board staff reports that approximately 55% of licensees receive federal subsidies so approximately 45% of these increased orientation training costs will likely be incurred by licensees who did not voluntarily agree to meet new requirements in order to receive federal subsidy monies.

The Board also proposes to increase required annual training from 16 to 20 hours. This change will increase annual training for direct care employees by four hours each year. Licensees will incur additional wage costs of approximately \$43.16 per direct care employee annually for the additional four hours of required annual training and may also incur fees for outside training or trainers to come into their facility. Board staff does not know how many individuals are employed as direct care staff for licensed child day centers. Given the number of individuals who have completed VDSS's

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## Regulations

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orientation training, and the number of children reported to be in care, it is likely safe to assume that licensees will cumulatively incur costs that total hundreds of thousands of additional dollars each year, and may total over a million dollars per year, for additional required annual training. Board staff reports that additional orientation training and additional annual training is proposed to make the training for all licensees conform to proposed or currently required training for licensees who receive subsidies. Given that these proposed changes are not driven by identified deficiencies that might affect the health or safety of children in care, the costs of these changes likely far outweigh the convenience of having one standard for all licensees.

Current regulation requires that at least one staff member with CPR, first aid and rescue breathing<sup>15</sup> be on premises at all times during hours of operation and allows two hours per year of such training to be counted toward required annual training. The Board now proposes to require all direct care staff to be CPR and first aid certified and to allow all CPR and first aid training to count toward required annual training. Board staff reports that licensees may incur fee costs of \$90-\$100 for initial training of individuals not already trained<sup>16</sup> and may incur fee costs every two years for recertification. The Red Cross web site estimates that CPR and first aid training classes can be two to five hours long, depending on whether it is initial training or a refresher course. Licensees, or their staff, will likely incur costs for the time that these courses take. These time/salary costs for CPR training that exceed the two hours (that staff is already allowed to count toward annual training) may be offset by the Board's proposal to allow all CPR and first aid training to count toward annual training requirements.

At a minimum, licensees will incur costs equal to the fees incurred for additional staff to receive CPR and first aid training multiplied by the number of affected employees. These additional costs are likely to equal hundreds of thousands of dollars, and may stretch to several million dollars, initially and then will be a like amount every two years. These costs will also be increased because the turnover rate for child care workers would indicate that approximately 30% of trained staff will likely leave their employment each year and new staff will have to be trained in CPR and first aid. Board staff reports that this change is being proposed to make the training for all licensees conform to proposed or currently required training for licensees who receive subsidies. Given that these proposed changes are not driven by identified deficiencies that might affect the health or safety of children in care, the costs of these changes likely far outweigh the convenience of having one standard for all licensees.

Current regulation includes required staff to child ratios but is silent on how many children may be in the same room or space so long as staffing ratios are met. The Board now proposes to impose group size limits for all pre-school age

children. According to the proposed standard, babies and toddlers up to 16 months in age will be limited to groups of 12 or fewer in any one room or space. Toddlers 16 months up to 24 months old will be limited to groups of 15 or fewer in any one space. Two year olds will be limited to groups of 24 or fewer and three year olds will be limited to groups of 30 or fewer. These group limitations will not apply during rest periods, outdoor activities, transportation and field trips, meal and snack times or during special group activities. These limitations also will not apply during the first and last hour of operation for programs operating more than six hours per day.

Board staff reports that they do not have information on the number of licensees that currently group children in groups larger than would be allowed under the proposed regulation and, therefore, would be adversely impacted by these new group restrictions but does report that the requirement is written broadly with the intent to not adversely impact providers. Nonetheless some licensees, particularly licensees who habitually have different age groups in the same space because of their child care philosophy,<sup>17</sup> may be adversely affected by the proposed group restrictions. Board staff reports that these group restrictions are being implemented to conform rules for all licensees to proposed or currently required rules for licensees who receive subsidies and because research indicates that there are benefits to consistent care and small group size. There is insufficient information to ascertain whether any benefits that might accrue would outweigh the costs that would accrue for an unknown number of licensees.

Current regulation requires child care aides to be at least 16 years old and also requires that "(i)n each grouping of children at least one staff member who meets the qualifications of a program leader<sup>18</sup> or program director shall be regularly present. Such a program leader shall supervise no more than two aides." The Board now proposes to mandate that "aides under 18 years of age... shall not be left alone with children." Board staff reports that this change is being proposed to conform rules for all licensees with rules for licensees who receive subsidies. To the extent that current rules allow aides who are 16 and 17 years old to work without direct and continual supervision, this new rule may cause licensees to incur additional costs to ensure that these teenagers are not left alone with children in care. This proposed change will likely limit the usefulness of 16 and 17 year olds as child care workers and, therefore, will make it less likely that they will be hired by licensees. Given that it is unlikely that 16 and 17 year olds are any less safe or competent as childcare workers than 18 year olds with comparable training, the costs of this proposed requirement likely outweigh any benefit that might arise from requiring regulatory consistency between licensees who voluntarily agree to additional rules in order to qualify for subsidies and licensees who do not.

Lastly, the Board newly proposes to require that licensees formulate and implement a plan to ensure the children receive care from consistent staff. Licensees are able to ensure that the same staff members care for the same children daily while they are employed. While this consistency of care undoubtedly benefits children in care, who are then able to form stable bonds with their caregivers, staff turnover rates of about 30% for childcare workers would severely impede licensee's ability to meet this proposed new requirement. The costs that may be incurred by licensees will depend on whether the Board just expects them to ensure that staff is consistently assigned while they are employed or whether the Board has the expectation that licensees must take steps, like raising wages, to limit turnover.

In general, the changes proposed in this action that will increase costs for licensees will likely cause licensees to either raise their child care rates to cover increased costs or, for marginally profitable businesses, leave the licensed child care field altogether. If licensees choose to close their licensed child care businesses because their time and resources could be used more profitably elsewhere, the supply of licensed child care slots would shrink which would also tend to increase child care rates. Either of these effects will raise the costs of licensed day care for parents. This may either leave those parents with fewer resources to meet other needs for themselves and their children, or may cause them to seek out cheaper, unlicensed care givers. Requiring licensees to meet more costly licensure requirements also leaves them with fewer resources to spend in alternate ways<sup>19</sup> that might benefit their employees or children in their care.

**Businesses and Entities Affected.** These proposed regulatory changes will affect all licensed child day centers as well as all of their staff and all children enrolled in those centers as well as their families. Board staff reports that there are currently 2,589 such centers in the Commonwealth which have the rated capacity to serve 264,754 children. Board staff reports that all centers likely qualify as small businesses.

**Localities Particularly Affected.** No localities are likely to be particularly affected by these proposed regulatory changes.

**Projected Impact on Employment.** Increased training requirements in this proposed regulation may marginally increase employment for trainers. Increasing training requirements, and instituting maximum group sizes, increases the cost of continuing to provide child care services which may cause marginally profitable businesses in this field to close. To the extent that this happens, fewer individuals will likely be employed in licensed facilities. The new proposed prohibition on employees under 18 years old being left alone with children will likely lead to fewer 16 and 17 year olds being employed by licensees.

**Effects on the Use and Value of Private Property.** Increasing training costs and costs associated with limiting group size

will likely decrease the profitability, and thus the value, of affected businesses.

**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.** Small business licensees will incur costs for additional required training and may also incur costs associated with newly proposed group size restrictions and the proposed prohibition on 16 and 17-year-old employees being alone with children in care.

**Alternative Method that Minimizes Adverse Impact.** Costs for licensees would likely be minimized by only increasing training requirements, further restricting employment of teenagers and setting group restrictions for licensees who do not receive federal subsidies if current rules prove deficient to protect the health and safety of children in care.

**Adverse Impacts:**

**Businesses.** Small business licensees will incur costs for additional required training and may also incur costs associated with newly proposed group size restrictions and the proposed prohibition on 16 and 17-year-old employees being alone with children in care.

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

**Other Entities.** Teens 16 and 17 years old will likely be adversely affected by this proposed regulation that reduces the chances that they will be hired by licensees.

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<sup>1</sup>A manmade disaster is a disaster attributed in part or entirely to human intent, error, negligence, or involving a failure of a man-made system, resulting in significant injuries or deaths.

<sup>2</sup><http://law.lis.virginia.gov/vacode/title63.2/chapter17/section63.2-1715/>.

<sup>3</sup><http://law.lis.virginia.gov/vacode/title63.2/chapter17/section63.2-1716/>.

<sup>4</sup>If this regulatory change did actually remove these exemptions from use, it would likely affect tens of thousands of entities and be enormously expensive.

<sup>5</sup>The Department of Health and Human Services recommends that the hepatitis B vaccine be given in three or four doses over a six-month period. [https://www.vaccines.gov/diseases/hepatitis\\_b/index.html](https://www.vaccines.gov/diseases/hepatitis_b/index.html).

<sup>6</sup>Foster children are defined as homeless in the proposed regulation.

<sup>7</sup>Board staff estimates that orientation training that is facility specific would take approximately six hours to complete.

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# Regulations

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<sup>8</sup>Board staff reports that about 55% of licensed child day center providers participate in this program which provides child care subsidies for families through the Temporary Assistance for Needy Families (TANF) child care and at-risk child care programs.

<sup>9</sup>Orientation training in facilities will be required to be completed within seven days of the date of employment and prior to staff members working alone with children.

<sup>10</sup>Existing staff will have one year after the effective date of this regulation to complete VDSS's orientation training. Since this training can count toward annual training requirements, licensees will likely not accrue additional costs for existing employees to complete this training.

<sup>11</sup>Cassidy, D. J., Lower, J. K., Kintner-Duffy, V. L., Hegde, A. V., & Shim, J. (2011). The day-to-day reality of teacher turnover in preschool classrooms: An analysis of classroom context and teacher, director, and parent perspectives. *Journal of Research in Childhood Education*, 25(1), 1-23. doi:10.1080/02568543.2011.533118.

<sup>12</sup>This information was reported for DSS's Child Care Program regulation. <http://townhall.virginia.gov/viewstage.cfm?stageid=7736>.

<sup>13</sup>This number is based the number of individuals that have completed or are completing VDSS's orientation training \* 0.3. This number is roughly the same as the number arrived at by taking the rated capacity of 264,754 children (reported by DSS) divided by a likely conservative average child to staff ratio of 10:1 and then multiplying that dividend by 0.3 (264,754/10\*0.3).

<sup>14</sup>\$107.9\*8,000=\$863,200 and \$215.80\*8,000=\$1,726,400.

<sup>15</sup>Web research seems to indicate that rescue breathing training would be part of CPR training.

<sup>16</sup>Assuming that licensees are meeting but not exceeding current requirements, most direct care staff would need initial training.

<sup>17</sup>Montessori preschools, for instance, group children as young as two into age bands and may habitually exceed these limits.

<sup>18</sup>Program leaders must be 18 years old or older.

<sup>19</sup>Resources that, for instance, might be spent on raising the wages of their employees.

## Agency's Response to Economic Impact Analysis:

The Department of Social Services (VDSS) reviewed the revised economic impact analysis prepared by the Department of Planning and Budget and provides the following response for clarification:

Page 1237, regarding VDSS required training. The intent is for the VDSS required preservice training to count toward the 16-hour orientation requirement, leaving only six hours of orientation that staff must obtain based on the topics listed. The VDSS preservice orientation training is a free 10-hour orientation training, and most of the topics required to be covered in orientation are not new.

Page 1238, regarding intent of proposed regulatory action. Two references are made to costs of the changes being likely to far outweigh the convenience of having one standard for all licensees. This regulatory action is about increasing the quality of child care by focusing on the health, safety, and well-being of children in care. The impetus for the action was to provide additional protections for all children, regardless of whether they receive care from a provider approved for the

subsidy program or a provider that is not an approved subsidy provider. Raising the quality of care to meet federal health and safety standards improves quality for all children.

Page 1239, regarding consistent care for children. The requirement is for licensees to ensure that assigned staff has primary responsibility for the care of children. If the assigned staff changes, the licensee would not automatically be out of compliance and would update the assigned staff. This is not about staff retention but is about consistent staffing using existing staff. The intent of this requirement is not related to turnover rates or increasing wages.

## Summary:

*The proposed amendments align requirements of licensed programs with requirements for providers receiving federal Child Care and Development Funds. In addition to making many clarifying changes, the proposed amendments (i) remove the list of exemptions to licensure requirements from the regulation, (ii) require licensees to have written procedures for prevention of shaken baby syndrome and for safe sleeping practices, (iii) require licensees to document all known food allergies and sensitivities and dietary restrictions of children in their care and require that parents provide instructions from a physician regarding their child's food allergies, (iv) allow children defined by the regulation as homeless who do not have documentation of immunization or physical examination to attend licensed facilities for 90 days before such documentation must be produced, (v) allow any unimmunized child to attend a licensed child day center for 90 days (180 days in some cases) while immunizations are brought up to date so long as the child has had one dose of each required immunization before attendance, (vi) require 16 hours of orientation training for all new staff at licensed facilities, (vii) require completion of Virginia Department of Social Services-sponsored orientation training, (viii) increase required annual training from 16 to 20 hours, (ix) require all direct care staff to complete first aid and cardiopulmonary resuscitation (CPR) training and allow all hours of first aid and CPR training to count toward annual training requirements, (x) institute new group size restrictions, (xi) require licensees to formulate and implement a plan to ensure that children receive care by consistent staff, (xii) require all staff younger than 18 years of age to be directly supervised and not left alone with children, and (xiii) revise emergency preparedness plan requirements.*

Part I  
Introduction

**22VAC40-185-10. Definitions.**

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

"Adult" means any individual 18 years of age or older.

"Age and stage appropriate" means the curriculum, environment, equipment, and adult-child interactions are suitable for the ages of the children within a group and the individual needs of any child.

"Age groups":

1. "Infant" means children from birth to 16 months.
2. "Toddler" means children from 16 months up to two years.
3. "Preschool" means children from two years up to the age of eligibility to attend public school, five years by September 30.
4. "School age" means children eligible to attend public school, age five or older by September 30 of that same year. Four-year-old or five-year-old children included in a group of school age children may be considered school age during the summer months if the children will be entering kindergarten that year.

"Attendance" means the actual presence of an enrolled child.

"Balanced mixed-age grouping" means a program using a curriculum designed to meet the needs and interests of children in the group and is planned for children who enter the program at three through five years of age. The enrollment in the balance mixed-age grouping comprises a relatively even allocation of children in each of three ages (three to six years) and is designed for children and staff to remain together with turnover planned only for the replacement of exiting students with children of ages that maintain the class balance.

"Body fluids" means urine, feces, saliva, blood, nasal discharge, eye discharge, and injury or tissue discharge.

"Camp" means a child day camp that is a child day center for school age children that operates during the summer vacation months only. Four-year-old children who will be five by September 30 of the same year may be included in a camp for school age children.

"Center" means a child day center.

"Child" means any individual under 18 years of age.

"Child day center" means a child day program offered to (i) two or more children under the age of 13 in a facility that is

not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

**Exemptions (§ 63.2-1715 of the Code of Virginia):**

~~1. A child day center that has obtained an exemption pursuant to § 63.2-1716 of the Code of Virginia;~~

~~2. A program where, by written policy given to and signed by a parent or guardian, children are free to enter and leave the premises without permission or supervision regardless of (i) such program's location or the number of days per week of its operation; (ii) the provision of transportation services, including drop off and pick up times; or (iii) the scheduling of breaks for snacks, homework, or other activities. A program that would qualify for this exemption except that it assumes responsibility for the supervision, protection and well being of several children with disabilities who are mainstreamed shall not be subject to licensure;~~

~~3. A program of instructional experience in a single focus, such as, but not limited to, computer science, archaeology, sport clinics, or music, if children under the age of six do not attend at all and if no child is allowed to attend for more than 25 days in any three-month period commencing with enrollment. This exemption does not apply if children merely change their enrollment to a different focus area at a site offering a variety of activities and such children's attendance exceeds 25 days in a three-month period;~~

~~4. Programs of instructional or recreational activities wherein no child under age six attends for more than six hours weekly with no class or activity period to exceed 1-1/2 hours, and no child six years of age or above attends for more than six hours weekly when school is in session or 12 hours weekly when school is not in session. Competition, performances and exhibitions related to the instructional or recreational activity shall be excluded when determining the hours of program operation;~~

~~5. A program that operates no more than a total of 20 program days in the course of a calendar year provided that programs serving children under age six operate no more than two consecutive weeks without a break of at least a week;~~

~~6. Instructional programs offered by public and private schools that satisfy compulsory attendance laws or the Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.), and programs of school-sponsored extracurricular activities that are focused on single interests such as, but not limited to, music, sports, drama, civic service, or foreign language;~~

~~7. Education and care programs provided by public schools that are not exempt pursuant to subdivision 6 of this definition shall be regulated by the State Board of Education using regulations that incorporate, but may~~

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# Regulations

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exceed, the regulations for child day centers licensed by the commissioner;

~~8. Early intervention programs for children eligible under Part C of the Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.), wherein no child attends for more than a total of six hours per week;~~

~~9. Practice or competition in organized competitive sports leagues;~~

~~10. Programs of religious instruction, such as Sunday schools, vacation Bible schools, and Bar Mitzvah or Bat Mitzvah classes, and child minding services provided to allow parents or guardians who are on site to attend religious worship or instructional services;~~

~~11. Child minding services which are not available for more than three hours per day for any individual child offered on site in commercial or recreational establishments if the parent or guardian (i) is not an on-duty employee, except for part time employees working less than two hours per day; (ii) can be contacted and can resume responsibility for the child's supervision within 30 minutes; and (iii) is receiving or providing services or participating in activities offered by the establishment;~~

~~12. A certified preschool or nursery school program operated by a private school that is accredited by a statewide accrediting organization recognized by the State Board of Education or accredited by the National Association for the Education of Young Children's National Academy of Early Childhood Programs; the Association of Christian Schools International; the American Association of Christian Schools; the National Early Childhood Program Accreditation; the National Accreditation Council for Early Childhood Professional Personnel and Programs; the International Academy for Private Education; the American Montessori Society; the International Accreditation and Certification of Childhood Educators, Programs, and Trainers; or the National Accreditation Commission that complies with the provisions of § 63.2-1717 of the Code of Virginia;~~

~~13. A program of recreational activities offered by local governments, staffed by local government employees, and attended by school age children. Such programs shall be subject to safety and supervisory standards established by local governments; or~~

~~14. By policy, a child day center that is required to be programmatically licensed by another state agency for that service.~~

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-

hour period. ~~Note: This "Child day program" does not include programs such as drop-in playgrounds or clubs for children when there is no service arrangement with the child's parent.~~

"Children with special needs" means children with developmental disabilities, ~~mental retardation~~ intellectual disabilities, emotional disturbance, sensory or motor impairment, or significant chronic illness who require special health surveillance or specialized programs, interventions, technologies, or facilities.

"Cleaned" means treated in such a way to reduce the amount of filth through the use of water with soap or detergent or the use of an abrasive cleaner on inanimate surfaces.

"Commissioner" means the Commissioner of the Virginia Department of Social Services.

"Communicable disease" means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse, or mosquito) or environmental object (such as a table surface). Some communicable diseases are reportable to the local health authority.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services, acting as the authorized agent of the commissioner.

"Evening care" means care provided after 7 p.m. but not through the night.

"Good character and reputation" means knowledgeable and objective people agree that the individual (i) maintains business, professional, family, and community relationships which are characterized by honesty, fairness, and truthfulness and (ii) demonstrates a concern for the well-being of others to the extent that the individual is considered suitable to be entrusted with the care, guidance, and protection of children. Relatives by blood or marriage and people who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

"Group of children" means the children assigned to a staff member or team of staff members.

"Group size" means the number of children assigned to a staff member or team of staff members occupying an individual room or area.

"High school program completion or the equivalent" means an individual has earned a high school diploma ~~or General Education Development (G.E.D.) certificate~~, passed a high school equivalency examination approved by the Board of Education, or has completed a program of home instruction in accordance with § 22.1-254.1 of the Code of Virginia equivalent to high school completion.

"Homeless child" means a child who lacks a fixed, regular, and adequate nighttime residence and includes a child who is:

1. Living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar settings;
2. Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; sometimes referred to as doubled-up;
3. Living in a motel, hotel, trailer park, or camping ground due to lack of alternative adequate accommodations;
4. Living in a congregate, temporary, emergency or transitional shelter;
5. Awaiting or in foster care placement;
6. Abandoned in a hospital;
7. Living in a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or
8. A migratory child as defined in 20 USC § 6399 who qualifies as homeless because the child is living in circumstances described in subdivisions 1 through 6 of this definition.

"Independent contractor" means an entity that enters into an agreement to provide specialized services or staff for a specified period of time.

"Individual service, education or treatment plan" means a plan identifying the child's strengths, needs, general functioning and plan for providing services to the child. The service plan includes specific goals and objectives for services, accommodations and intervention strategies. The service, education or treatment plan clearly shows documentation and ~~reassessment/evaluation~~ reassessment or evaluation strategies.

"Intervention strategies" means a plan for staff action that outlines methods, techniques, cues, programs, or tasks that enable the child to successfully complete a specific goal.

"Licensee" means any individual, partnership, association, public agency, or corporation to whom the license is issued.

"Lockdown" means a situation where children are isolated from a security threat and access within and to the facility is restricted.

"Minor injury" means a wound or other specific damage to the body such as, ~~but not limited to,~~ abrasions, splinters, bites that do not break the skin, and bruises.

"Overnight care" means care provided after 7 p.m. and through the night.

"Parent" means the biological or adoptive parent or parents or legal guardian or guardians of a child enrolled in or in the process of being admitted to a center.

"Physician" means an individual licensed to practice medicine in any of the 50 states or the District of Columbia.

"Physician's designee" means a physician, licensed nurse practitioner, licensed physician assistant, licensed nurse (R.N. or L.P.N.), or health assistant acting under the supervision of a physician.

"Primitive camp" means a camp where places of abode, water supply system, or permanent toilet and cooking facilities are not usually provided.

"Programmatic experience" means time spent working directly with children in a group that is located away from the child's home. Work time shall be computed on the basis of full-time work experience during the period prescribed or equivalent work time over a longer period. Experience settings may include ~~but not be limited to~~ a child day program, family day home, child day center, boys and girls club, field placement, elementary school, or a faith-based organization.

"Resilient surfacing" means:

1. For indoor and outdoor use underneath and surrounding equipment, impact absorbing surfacing materials that comply with minimum safety standards when tested in accordance with the procedures described in the American Society for Testing and Materials' standard F1292-99 as shown in Figures 2 (Compressed Loose Fill Synthetic Materials Depth Chart) and 3 (Use Zones for Equipment) on pages 6-7 of the National Program for Playground Safety's "Selecting Playground Surface Materials: Selecting the Best Surface Material for Your Playground," February 2004.

2. Hard surfaces such as asphalt, concrete, dirt, grass or flooring covered by carpet or gym mats do not qualify as resilient surfacing.

"Sanitized" means treated in such a way to remove bacteria and viruses from inanimate surfaces through using a disinfectant solution (i.e., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat). The surface of item is sprayed or dipped into the disinfectant solution and allowed to air dry ~~after use of the disinfectant solution~~ on the surface for a minimum of two minutes or according to the disinfectant solution instructions.

"Serious injury" means a wound or other specific damage to the body such as, ~~but not limited to,~~ unconsciousness; broken bones; dislocation; deep cut requiring stitches; poisoning; concussion; or a foreign object lodged in eye, nose, ear, or other body orifice.

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# Regulations

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"Shaken baby syndrome" or "abusive head trauma" means a traumatic injury that is inflicted upon the brain of an infant or young child. The injury can occur during violent shaking, causing the child's head to whip back and forth, the brain to move about, and blood vessels in the skull to stretch and tear.

"Shelter-in-place" means the facility or building in which a child day center is located movement of occupants of the building to designated protected spaces within the building.

"Short-term program" means a child day center that operates less than 12 weeks a year.

"Special needs child day program" means a program exclusively serving children with special needs.

"Specialty camps" means those centers that have an educational or recreational focus on one subject such as dance, drama, music, or sports.

"Sponsor" means an individual, partnership, association, public agency, corporation or other legal entity in whom the ultimate authority and legal responsibility is vested for the administration and operation of a center subject to licensure.

"Staff" means administrative, activity, and service personnel including the licensee when the licensee is an individual who works in the center, and any persons counted in the staff-to-children ratios or any persons working with a child without sight and sound supervision of a staff member.

"Staff positions" are defined as follows:

1. "Aide" means the individual designated to be responsible for helping the program leader in supervising children and in implementing the activities and services for children. Aides may also be referred to as assistant teachers or child care assistants.
2. "Program leader" means the individual designated to be responsible for the direct supervision of children and for implementation of the activities and services for a group of children. Program leaders may also be referred to as child care supervisors or teachers.
3. "Program director" means the primary, on-site director or coordinator designated to be responsible for developing and implementing the activities and services offered to children, including the supervision, orientation, training, and scheduling of staff who work directly with children, whether or not personally performing these functions.
4. "Administrator" means a manager or coordinator designated to be in charge of the total operation and management of one or more centers. The administrator may be responsible for supervising the program director or, if appropriately qualified, may concurrently serve as the program director. The administrator may perform staff orientation or training or program development functions if the administrator meets the qualifications of 22VAC40-

185-190 and a written delegation of responsibility specifies the duties of the program director.

"Therapeutic child day program" means a specialized program, including ~~but not limited to~~ therapeutic recreation programs, exclusively serving children with special needs when an individual service, education or treatment plan is developed and implemented with the goal of improving the functional abilities of the children in care.

"Universal precautions" means an approach to infection control. According to the concept of universal precautions, all human blood and certain human body fluids are treated as if known to be infectious for human immunodeficiency virus (HIV), hepatitis B virus (HBV), and other bloodborne pathogens.

"Volunteer" means a person who works at the center and:

1. Is not paid;
2. Is not counted in the staff-to-children ratios; and
3. Is in sight and sound supervision of a staff member when working with a child.

Any unpaid person not meeting this definition shall be considered "staff" and shall meet staff requirements.

## **22VAC40-185-30. Purpose and applicability.**

A. The purpose of these standards is to protect children under the age of 13 years who are separated from their parents during a part of the day by:

1. Ensuring that the activities, services, and facilities of centers are conducive to the well-being of children; and
2. Reducing risks in the environment.

B. The standards in this chapter apply to child day centers as defined in 22VAC40-185-10 ~~servicing children under the age of 13~~ that are required to be licensed by the department.

## **22VAC40-185-40. Operational responsibilities.**

A. Applications for licensure shall conform with Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2 of the Code of Virginia and the regulation entitled General Procedures and Information for Licensure, 22VAC40-80.

B. Pursuant to §§ 63.2-1719, 63.2-1720.1, and 63.2-1721.1 of the Code of Virginia and the regulation entitled Background Checks for Child Welfare Agencies, 22VAC40-191, the applicant and any agent at the time of application who is or will be involved in the day-to-day operations of the center or who is or will be alone with, in control of, or supervising one or more of the children, shall be of good character and reputation and shall not be ~~guilty of an offense as defined in § 63.2-1719 of the Code of Virginia~~ convicted of a barrier crime as defined in § 19.2-392.02 of the Code of Virginia.

C. The sponsor shall afford the commissioner or his agents the right at all reasonable times to inspect facilities and to interview his agents, employees, and any child or other person within his custody or control, provided that no private interviews may be conducted with any child without prior notice to the parent of such child.

D. The license shall be posted in a place conspicuous to the public (§ 63.2-1701 of the Code of Virginia).

E. The operational responsibilities of the licensee shall include, ~~but not be limited to~~, ensuring that the center's activities, services, and facilities are maintained in compliance with these standards, the center's own policies and procedures that are required by these standards, and the terms of the current license issued by the department.

F. Every center shall ensure that any advertising is not misleading or deceptive as required by § 63.2-1713 of the Code of Virginia.

G. The center shall meet the proof of child identity and age requirements as stated in § 63.2-1809 of the Code of Virginia.

H. The sponsor shall maintain public liability insurance for bodily injury for each center site with a minimum limit of at least \$500,000 each occurrence and with a minimum limit of \$500,000 aggregate.

1. A public sponsor may have equivalent self-insurance that is in compliance with the Code of Virginia.

2. Evidence of insurance coverage shall be made available to the department's representative upon request.

I. The center shall develop written procedures for injury prevention.

J. Injury prevention procedures shall be updated at least annually based on documentation of injuries and a review of the activities and services.

K. The center shall develop written procedures for prevention of shaken baby syndrome or abusive head trauma, including coping with crying babies, safe sleeping practices, and sudden infant death syndrome awareness.

L. The center shall inform all staff who work with children of children's allergies, sensitivities, and dietary restrictions.

M. The center shall maintain, in a way that is accessible to all staff who work with children, a current written list of all children's allergies, sensitivities, and dietary restrictions. This list shall be dated and kept confidential in each room or area where children are present.

N. The center shall develop written playground safety procedures ~~which that~~ shall include:

1. Provision for active supervision by staff to include positioning of staff in strategic locations, scanning play activities, and circulating among children; and

2. Method of maintaining resilient surface.

~~L. O.~~ Hospital-operated centers may temporarily exceed their licensed capacity during a natural disaster or other catastrophe or emergency situation and shall develop a written plan for emergency operations, for submission to and approval by the Department of Social Services.

~~M. P.~~ When children 13 years or older are enrolled in the program and receive supervision in the licensed program, they shall be counted in the number of children receiving care and the center shall comply with the standards for these children.

**22VAC40-185-60. Children's records.**

A. Each center shall maintain and keep at the center a separate record for each child enrolled, which shall contain the following information:

1. Name, nickname (if any), sex, and birth date of the child;

2. Name, home address, and home phone number of each parent who has custody;

3. When applicable, work phone number and place of employment of each parent who has custody;

4. Name and phone number of child's physician;

5. Name, address, and phone number of two designated people to call in an emergency if a parent cannot be reached;

6. Names of persons authorized to pick up the child. Appropriate legal paperwork shall be on file when the custodial parent requests the center not to release the child to the other parent;

7. Allergies and intolerance to ~~food~~, medication, or any other substances, and actions to take in an emergency situation;

8. A written care plan for each child with a diagnosed food allergy, to include instructions from a physician regarding the food to which the child is allergic and the steps to be taken in the event of a suspected or confirmed allergic reaction.

9. Chronic physical problems and pertinent developmental information and any special accommodations needed;

9. Health information as required by 22VAC40-185-130 through 22VAC40-185-150;

~~Exception: When a center is located on the same premises where a child attends school and the child's record has a statement verifying the school's possession of the health record, the center is not required to maintain duplicates of the school's health record for that child provided the school's records are accessible during the center's hours of operation.~~

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# Regulations

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10. Written agreements between the parent and the center as required by 22VAC40-185-90;
11. Documentation of child updates and confirmation of up-to-date information in the child's record as required by 22VAC40-185-420 E 3;
12. Any blanket permission slips and opt out requests;
13. Previous child day care and schools attended by the child;
14. Name of any additional programs or schools that the child is concurrently attending and the grade or class level;
15. Documentation of viewing proof of the child's identity and age; ~~and~~
16. First and last dates of attendance;
17. Documentation of health information as required by 22VAC40-185-130, 22VAC40-185-140, and 22VAC40-185-150; and
18. Documentation of the enrollment of a homeless child enrolled under provision of 22VAC40-185-130 C or 22VAC40-185-140 A.

B. The requirements in subdivision A 17 of this section does not apply, and the center is not required to maintain duplicates of the school's health record if:

1. The center is located on the same premises where a child attends school;
2. The child's record has a statement verifying the school's possession of the health record; and
3. The school's records are accessible during the center's hours of operation.

C. The proof of identity, if reproduced or retained by the child day program or both, shall be destroyed upon the conclusion of the requisite period of retention. The procedures for the disposal, physical destruction or other disposition of the proof of identity containing social security numbers shall include all reasonable steps to destroy such documents by (i) shredding, (ii) erasing, or (iii) otherwise modifying the social security numbers in those records to make them unreadable or indecipherable by any means.

## **22VAC40-185-70. Staff records.**

A. The following staff records shall be kept for each staff person:

1. Name, address, verification of age requirement, job title, and date of employment or volunteering; and name, address, and telephone number of a person to be notified in an emergency which shall be kept at the center.
2. For staff hired after March 1, 1996, documentation that two or more references as to character and reputation as well as competency were checked before employment or

volunteering. If a reference check is taken over the phone, documentation shall include:

- a. Dates of contact;
- b. Names of persons contacted;
- c. The firms contacted;
- d. Results; and
- e. Signature of person making call.

3. Background checks as required by ~~the regulation entitled Background Checks for Licensed Child Day Centers (22VAC15-51)~~ Child Welfare Agencies (22VAC40-191).

4. ~~Written information~~ Documentation to demonstrate that the individual possesses the education, ~~orientation training, staff development,~~ certification, and experience required by the job position, and orientation and training as required in 22VAC40-185-240 and 22VAC40-185-245.

5. First aid, cardiopulmonary resuscitation and other certifications as required by the responsibilities held by the staff member.

6. Health information as required by 22VAC40-185-160 and 22VAC40-185-170.

7. Information, to be kept at the center, about any health problems ~~which~~ that may interfere with fulfilling the job responsibilities.

8. Date of separation from employment.

~~B. Exception:~~ Background check records for independent contractors must be kept in accordance with ~~22VAC15-51-70 of the background check regulation~~ Background Checks for Child Welfare Agencies (22VAC40-191).

## **22VAC40-185-80. Attendance records; reports.**

~~A. The center shall keep a written record of children in attendance each day. For each group of children, the center shall maintain a written record of daily attendance in each classroom that documents the arrival and departure of each child in care as it occurs.~~

B. Reports shall be filed and maintained as follows:

1. The center shall inform the commissioner's representative as soon as practicable but not to exceed one working business day of the circumstances surrounding the following incidents:

- a. Death of a child while under the center's supervision; ~~and~~
- b. Missing child when local authorities have been contacted for help; and

c. The suspension or termination of all child care services for more than 24 hours as a result of an emergency situation and any plans to resume child care.

2. The center shall inform the department's representative as soon as practicable, but not to exceed two business days, of any serious injury to a child while under the center's supervision.

3. Any suspected incident of child abuse shall be reported in accordance with § 63.2-1509 of the Code of Virginia.

**22VAC40-185-130. Immunizations for children.**

A. The center shall obtain documentation that each child has received the immunizations required by the State Board of Health before the child can attend the center.

~~Exemptions (subsection C of § 22.1-271.2 of the Code of Virginia and 12VAC5-110-110 of the Regulations for the Immunizations of School Children): Documentation of immunizations is not required for any child whose (i) parent submits an affidavit to the center, on the form entitled "Certification of Religious Exemption," stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices, or (ii) physician or a local health department states on a MCH 213B or MCH 213C, or other Department of Health approved form that one or more of the required immunizations may be detrimental to the child's health.~~

B. The center may allow a child to attend contingent upon a conditional enrollment for a period of 90 days if the child received at least one dose of each of the required vaccines and the child possesses a plan from a physician or local health department for completing his immunization requirements within the ensuing 90 calendar days. If the child requires more than two doses of hepatitis B vaccine, the conditional enrollment period, for hepatitis B vaccine only, shall be 180 calendar days.

C. If a child is homeless and does not have documentation of the required immunizations, the center may allow the child to attend during a grace period of no more than 90 days to allow the parent or guardian time to obtain documentation of required immunizations.

D. Documentation related to the child's conditional enrollment shall be maintained in the child's record.

E. The center shall obtain documentation of additional immunizations once every six months for children under the age of two years.

~~E. F.~~ The center shall obtain documentation of additional immunizations once between each child's fourth and sixth birthdays.

G. Pursuant to subsection C of § 22.1-271.2 of the Code of Virginia, documentation of immunizations is not required for any child whose:

1. Parent submits an affidavit to the center on the current form approved by the Virginia Department of Health stating that the administration of immunizing agents

conflicts with the parent's or child's religious tenets or practices; or

2. Physician or a local health department states on a Department of Health-approved form that one or more of the required immunizations may be detrimental to the child's health, indicating the specific nature and probable duration of the medical condition or circumstance that contraindicates immunization.

**22VAC40-185-140. Physical examinations for children.**

A. Each child shall have a physical examination by or under the direction of a physician:

1. Before the child's attendance; or
2. Within ~~one month~~ 30 days after the first day of attendance.

If a child is homeless and does not have documentation of a physical examination, the center may allow the child to attend during a grace period of no more than 90 days to allow the parent or guardian time to obtain documentation of the required physical examination.

B. If the child has had a physical examination prior to attendance, it shall be within the time period prescribed ~~below~~ in this subsection:

1. Within two months prior to attendance for children six months of age and younger;
2. Within three months prior to attendance for children aged seven months through 18 months;
3. Within six months prior to attendance for children aged 19 months through 24 months; and
4. Within 12 months prior to attendance for children two years of age through five years of age.

~~C. Exceptions:~~

~~1. Children transferring from a facility licensed by the Virginia Department of Social Services, certified by a local department of public welfare or social services, registered as a small family day home by the Virginia Department of Social Services or by a contract agency of the Virginia Department of Social Services, or approved by a licensed family day system:~~

~~a. If the initial report or a copy of the initial report of immunizations is available to the admitting facility, no additional examination is required.~~

~~b. If the initial report or a copy of the initial report is not available, a report of physical examination and immunization is required in accordance with 22VAC40-185-130 and this section.~~

~~2. C.~~ When a child transfers from a facility licensed by the Virginia Department of Social Services, approved by a

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# Regulations

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licensed family day system, voluntarily registered by the Virginia Department of Social Services, or approved by the Virginia Department of Education, a new physical examination is not required if a copy of the physical examination from the originating program is maintained in the child's record.

D. Pursuant to subsection D of § 22.1-270 of the Code of Virginia, physical examinations are not required for any child whose parent objects on religious grounds. The parent must submit a signed statement noting that the parent objects on religious grounds and certifying that to the best of the parent's knowledge the child is in good health and free from communicable or contagious disease.

E. A new physical examination is not required for a school age child if a copy of the physical examination required for his entry into a Virginia public kindergarten or elementary school is kept in the child's record.

## **22VAC40-185-190. Program director qualifications.**

A. Program directors shall be at least 21 years of age and shall meet one of the following:

1. A graduate degree in a child-related field such as, ~~but not limited to,~~ elementary education, nursing, or recreation from a college or university and six months of programmatic experience;
2. An endorsement or bachelor's degree in a child-related field such as, ~~but not limited to,~~ elementary education, nursing, or recreation from a college or university and one year of programmatic experience;
3. Forty-eight semester hours or 72 quarter hours of college credit from a college or university of which 12 semester hours or 18 quarter hours are in child-related subjects and one year of programmatic experience;
4. Two years of programmatic experience with one year in a staff supervisory capacity and at least one of the following education backgrounds:
  - a. A one-year early childhood certificate from a college or university that consists of at least 30 semester hours;
  - b. A child development credential that requires:
    - (1) High school program completion or the equivalent;
    - (2) 480 hours working with children in a group which could include a supervised practicum; ~~and~~
    - (3) Determination of competency in promoting children's development, providing a safe and healthy environment, managing the classroom environment ~~and/or~~ or childhood program, and promoting positive and productive relationships with ~~parents/guardians~~ parents or guardians; and

(4) At least 120 ~~clock~~ hours of child-related training taught by an individual or by an organization with expertise in early childhood teacher preparation provided that the training facilitator:

- (a) Documents the student's mastery and competence;
  - (b) Observes the student's application of competence in a classroom setting;
  - (c) Has a combination of at least six years of education (leading to a degree or credential in a child-related field) or programmatic experience; and
  - (d) Has at least 12 semester hours or 180 ~~clock~~ hours in a child-related field, a child development credential or equivalent, and two years of programmatic experience with one year in a staff supervisory capacity; or
- c. A certification of qualification from an internationally or nationally recognized Montessori organization; ~~or,~~

~~5. Three years of programmatic experience including one year in a staff supervisory capacity and fulfilled a high school program completion or the equivalent.~~

~~a. Such programmatic experience shall be obtained in a child day center that offers a staff training program that includes: written goals and objectives; assessment of the employee's participation in the training; and the subject areas of first aid, human growth and development, health and safety issues and behavioral management of children.~~

~~b. Such employees shall complete 120 hours of training during this three year period and provide documentation of completing the training.~~

~~e. Effective June 1, 2008, program directors shall meet a qualification as stated in subdivisions 1 through 4 of this subsection.~~

~~6. Exception (a): Program directors hired before June 1, 2005, who do not meet the qualifications may continue to be program directors as long as the program director: (i) obtains each year three semester hours or six quarter hours of college credit related to children until meeting a qualification option or (ii) is enrolled in and regularly works toward a child development credential as specified in subdivision 4 b of this subsection, which credential must be awarded by June 1, 2009.~~

~~Exception (b): Program directors hired or promoted on or after June 1, 2005, until June 1, 2006, who do not meet the qualifications may continue to be program directors as long as the program director: (i) obtains each year six semester hours or nine quarter hours of college credit related to children until meeting a qualification option or (ii) is enrolled in and regularly works toward a child development credential as specified in subdivision 4 b of this subsection, which credential must be awarded no later than June 1, 2007.~~

B. Program directors without management experience shall have one college course in a business-related field, 10 clock hours of management training, or one child care management course that satisfactorily covers the management functions of:

1. Planning;
2. Budgeting;
3. Staffing; and
4. Monitoring.

~~\*Note:~~ Management experience is defined as at least six months of on-the-job training in an administrative position that requires supervising, orienting, training, and scheduling staff.

C. For program directors of therapeutic child day programs and special needs child day programs, education and programmatic experience shall be in the group care of children with special needs.

D. Notwithstanding subsection A of this section, a person between 19 and 21 years of age may serve as a program director at a short-term program serving only school age children if the program director has daily supervisory contact by a person at least 21 years of age who meets one of the program director qualification options.

**22VAC40-185-220. Aides.**

A. Aides shall be at least 16 years of age.

B. Aides under 18 years of age may be included as staff in staff-to-children ratios but shall not be left alone with children.

**22VAC40-185-240. Staff ~~training and development orientation.~~**

A. ~~Staff shall receive the following training by the end of their first day of assuming job responsibilities~~ complete a minimum of 16 hours of orientation training appropriate to the age of the children in care.

B. The Virginia Department of Social Services-sponsored orientation course shall be completed within 90 calendar days of employment.

C. Orientation shall include all topics within this section.

D. Orientation training for staff shall be completed on the following facility specific topics prior to the staff member working alone with children and within seven days of the date of employment:

1. Job responsibilities and to whom they report;
2. The policies and procedures listed in subsection ~~B~~ E of this section and 22VAC40-185-420 A that relate to the staff member's responsibilities;

3. The center's playground safety procedures unless the staff member will have no responsibility for playground activities or equipment;

4. Recognizing child abuse and neglect and the legal requirements for reporting suspected child abuse as required by § 63.2-1509 of the Code of Virginia;

5. Confidential treatment of personal information about children in care and their families; ~~and~~

6. The standards in this chapter that relate to the staff member's responsibilities;

7. The center's policies and procedures on the administration of medication;

8. Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event such as violence at a child care facility and the emergency preparedness plan as required by 22VAC40-185-550 A through K;

9. Prevention of sudden infant death syndrome and use of safe sleep practices;

10. Prevention of shaken baby syndrome and abusive head trauma, including procedures to cope with crying babies or distraught children; and

11. Prevention of and response to emergencies due to food and other allergic reactions including:

- a. Recognizing the symptoms of an allergic reaction;
- b. Responding to allergic reactions;
- c. Preventing exposure to the specific food and other substances to which the child is allergic; and
- d. Preventing cross contamination.

~~B. By the end of the first day of supervising children~~ E. Prior to working alone with children and within seven days of the first day of employment, staff shall be provided in writing with the center's information listed in 22VAC40-185-420 A and the following:

1. Procedures for supervising a child who may arrive after scheduled classes or activities including field trips have begun;
2. Procedures to confirm absence of a child when the child is scheduled to arrive from another program or from an agency responsible for transporting the child to the center;
3. Procedures for identifying where attending children are at all times, including procedures to ensure that all children are accounted for before leaving a field trip site and upon return to the center;
4. Procedures for action in case of lost or missing children, ill or injured children, medical emergencies, and general emergencies;

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# Regulations

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5. Policy for any administration of medication; and

6. Procedures for response to natural and man made disasters Emergency evacuation, relocation, shelter-in-place, and lockdown procedures; and

7. Precautions in transporting children, if applicable.

~~C. Program directors and staff who work directly with children shall annually attend 10 hours of staff development activities that shall be related to child safety and development and the function of the center. Such training hours shall increase according to the following:~~

~~1. June 1, 2006—12 hours~~

~~2. June 1, 2007—14 hours~~

~~3. June 1, 2008—16 hours~~

~~4. Staff development activities to meet this subsection may include up to two hours of training in first aid or cardiopulmonary resuscitation. Staff development activities to meet this subsection may not include rescue breathing and first responder as required by 22VAC40-185-530 and training in medication administration and daily health observation of children as required by subsection D of this section.~~

~~5. Exception (a): Staff who drive a vehicle transporting children and do not work with a group of children at the center do not need to meet the annual training requirement.~~

~~Exception (b): Parents who participate in cooperative preschool centers shall complete four hours of orientation training per year.~~

~~Exception (c): Staff who are employed at a short term program shall obtain 10 hours of staff training per year.~~

~~D. 1. To safely perform medication administration practices listed in 22VAC40-185-510, whenever the center has agreed to administer prescribed medications, the administration shall be performed by a staff member or independent contractor who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and taught by a registered nurse, licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist; or administration shall be performed by a staff member or independent contractor who is licensed by the Commonwealth of Virginia to administer medications:~~

~~a. The approved training curriculum and materials shall be reviewed by the department at least every three years and revised as necessary.~~

~~b. Staff required to have the training shall be retrained at three year intervals.~~

~~2. The decision to administer medicines at a facility may be limited by center policy to:~~

~~a. Prescribed medications;~~

~~b. Over the counter or nonprescription medications; or~~

~~c. No medications except those required for emergencies or by law.~~

~~3. To safely perform medication administration practices listed in 22VAC40-185-510, whenever the center has agreed to administer over the counter medications other than topical skin gel, cream, or ointment, the administration must be performed by a staff member or independent contractor who has satisfactorily completed a training course developed or approved by the Department of Social Services in consultation with the Department of Health and the Board of Nursing and taught by an R.N.; L.P.N., physician, or pharmacist; or performed by a staff member or independent contractor who is licensed by the Commonwealth of Virginia to administer medications.~~

~~a. The course, which shall include competency guidelines, shall reflect currently accepted safe medication administration practices, including instruction and practice in topics such as, but not limited to, reading and following manufacturer's instructions; observing relevant laws, policies and regulations; and demonstrating knowledge of safe practices for medication storage and disposal, recording and reporting responsibilities, and side effects and emergency recognition and response.~~

~~b. The approved training curriculum and materials shall be reviewed by the department at least every three years and revised as necessary.~~

~~c. Staff required to have the training shall be retrained at three year intervals.~~

~~4. Any child for whom emergency medications (such as but not limited to albuterol, glucagon, and epipen) have been prescribed shall always be in the care of a staff member or independent contractor who meets the requirements in subdivision 1 of this subsection.~~

~~5. There shall always be at least one staff member on duty who has obtained within the last three years instruction in performing the daily health observation of children.~~

~~6. Daily health observation training shall include:~~

~~a. Components of daily health check for children;~~

~~b. Inclusion and exclusion of the child from the class when the child is exhibiting physical symptoms that indicate possible illness;~~

~~c. Descriptions of how diseases are spread and the procedures or methods for reducing the spread of disease;~~

~~d. Information concerning the Virginia Department of Health Notification of Reportable Diseases pursuant to 12VAC5-90-80 and 12VAC5-90-90, also available from~~

~~the local health department and the website of the Virginia Department of Health; and~~

~~e. Staff occupational health and safety practices in accordance with Occupational Safety and Health Administration's (OSHA) Bloodborne Pathogens regulation.~~

~~E. F.~~ Before assuming job responsibilities, staff who work with children in therapeutic child day programs and special needs child day programs shall receive training in:

1. Universal precautions procedures;
2. Activity adaptations;
3. Medication administration;
4. Disabilities precautions and health issues; and
5. Appropriate intervention strategies.

~~F. For therapeutic child day programs and special needs child day programs, staff who work directly with children shall annually attend 24 hours of staff development activities. At least eight hours of this training shall be on topics related to the care of children with special needs.~~

G. Staff who are employed prior to (insert the effective date of this chapter) shall complete the Virginia Department of Social Services-sponsored orientation training as required by this section within one year of (insert the effective date of this chapter). This training may count toward staff ongoing training requirements in 22VAC40-185-245.

H. Volunteers who work more than six hours per week shall receive training on the center's emergency procedures within the first week of volunteering and on annual basis.

I. Documentation of orientation training shall be kept by the center in a manner that allows for identification by individual staff member, is considered part of the staff member's record, and shall include:

1. Name of staff;
2. Training topics;
3. Training delivery method;
4. The entity or individual providing training;
5. The total number of training hours or credit hours of orientation training received; and
6. The date of training.

### **22VAC40-185-245. Ongoing training.**

A. Staff shall complete annually a minimum of 20 hours of training appropriate to the age of children in care.

B. Exceptions to subsection A of this section are as follows:

1. Staff who do not work with a group of children at the center shall only be required to complete annual training

on emergency preparedness and response, child abuse and neglect, and mandated reporter requirements.

2. Staff who are employed at a short-term program shall obtain a minimum of 10 hours of staff training per year.

C. In a cooperative preschool center that is organized, administered, and maintained by parents of children in care, parents who are not considered staff shall complete four hours of training each year.

D. For therapeutic child day programs and special needs child day programs, staff who work directly with children shall annually complete four additional hours of training. At least eight hours of annual training shall be on topics related to the care of children with special needs.

E. Annual training shall be relevant to staff's job responsibilities and the care of children, and include topics such as:

1. Child development including physical, cognitive, social, and emotional development;
2. Behavior management and positive guidance techniques;
3. Prevention and control of infectious diseases;
4. Prevention of sudden infant death syndrome and use of safe sleep practices;
5. Prevention of and response to emergencies due to food and other allergic reactions including:
  - a. Recognizing the symptoms of an allergic reaction;
  - b. Responding to allergic reactions;
  - c. Preventing exposure to the specific food and other substances to which the child is allergic; and
  - d. Preventing cross contamination;
6. The center's policies and procedures on the administration of medication;
7. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
8. Prevention of shaken baby syndrome and abusive head trauma including procedures to cope with crying babies or distraught children;
9. Signs and symptoms of child abuse and neglect and requirements for mandated reporters;
10. Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event such as violence at a child care facility and the center's specific emergency preparedness plan as required 22VAC40-185-550 A through K;

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# Regulations

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11. Handling and storage of hazardous materials and the appropriate disposal of diapers and other items contaminated by body fluids;

12. Precautions in transporting children if applicable; and

13. If applicable, the recommended care requirements related to the care and development of children with special needs.

F. Training on the center's emergency preparedness plan shall be completed annually and each time the plan is updated.

G. Medication administration and daily health observation:

1. To safely perform medication administration practices listed in 22VAC40-185-510, whenever the center has agreed to administer prescribed medications, the administration shall be performed by a staff member or independent contractor who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist pursuant to § 54.1-3408 of the Code of Virginia; or administration shall be performed by a staff member or independent contractor who is licensed by the Commonwealth of Virginia to administer medications.

a. The approved training curriculum and materials shall be reviewed by the department at least every three years and revised as necessary.

b. Staff required to have the training shall be retrained at three-year intervals.

2. The decision to administer medicines at a facility may be limited by center policy to:

a. Prescribed medications;

b. Over-the-counter or nonprescription medications; or

c. No medications except those required for emergencies or by law.

3. To safely perform medication administration practices listed in 22VAC40-185-510, whenever the center has agreed to administer over-the-counter medications other than topical skin gel, cream, or ointment, the administration must be performed by a staff member or independent contractor who has satisfactorily completed a training course developed or approved by the Department of Social Services in consultation with the Department of Health and the Board of Nursing and taught by an registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist; or performed by a staff member or independent contractor who is licensed by the Commonwealth of Virginia to administer medications.

a. The course, which shall include competency guidelines, shall reflect currently accepted safe medication administration practices, including instruction and practice in topics such as reading and following manufacturer's instructions; observing relevant laws, policies, and regulations; and demonstrating knowledge of safe practices for medication storage and disposal, recording and reporting responsibilities, and side effects and emergency recognition and response.

b. The approved training curriculum and materials shall be reviewed by the department at least every three years and revised as necessary.

c. Staff required to have the training shall be retrained at three-year intervals.

4. Any child for whom emergency medications (such as albuterol, glucagon, and epipen) have been prescribed shall always be in the care of a staff member or independent contractor who meets the requirements in subdivision 1 of this subsection.

5. There shall always be at least one staff member on duty who has obtained within the last three years instruction in performing the daily health observation of children.

6. Daily health observation training shall include:

a. Components of daily health check for children;

b. Inclusion and exclusion of the child from the class when the child is exhibiting physical symptoms that indicate possible illness;

c. Descriptions of how diseases are spread and the procedures or methods for reducing the spread of disease;

d. Information concerning the Virginia Department of Health Notification of Reportable Diseases pursuant to 12VAC5-90-80 and 12VAC5-90-90, also available from the local health department and the website of the Virginia Department of Health; and

e. Staff occupational health and safety practices in accordance with Occupational Safety and Health Administration's bloodborne pathogens regulation (29 CFR 1910.1030).

H. Documentation of training shall be kept by the center in a manner that allows for identification by individual staff member, is considered part of the staff member's record, and shall include:

1. Name of staff;

2. Training topic;

3. Evidence that training on each topic required in this section has been completed;

4. Training delivery method;

- 5. The entity or individual providing training;
- 6. The number of training hours or credit hours received; and
- 7. The date of training.

**22VAC40-185-350. Staff-to-children ratio and group size requirements.**

A. ~~Staff shall be counted in the required staff to children ratios only when they are directly supervising children. The maximum group size limitations specified in Table 1 shall be followed whenever children are in care.~~

TABLE 1. Maximum Group Size Requirements		
	<u>Age</u>	<u>Maximum Group Size</u>
<u>1.</u>	<u>Birth up to 16 months</u>	<u>12</u>
<u>2.</u>	<u>16 months up to 24 months</u>	<u>15</u>
<u>3.</u>	<u>2 year olds</u>	<u>24</u>
<u>4.</u>	<u>3 year olds up to school age eligible</u>	<u>30</u>

B. ~~A child volunteer 13 years of age or older not enrolled in the program shall not be counted as a child in the staff to-children ratio requirements. The staff-to-children ratios specified in Table 2 are required whenever children are in care.~~

TABLE 2. Ratio Requirements		
	<u>Age</u>	<u>Ratio (staff: children)</u>
<u>1.</u>	<u>Birth up to 16 months</u>	<u>1:4</u>
<u>2.</u>	<u>16 months up to 24 months</u>	<u>1:5</u>
<u>3.</u>	<u>2 year olds</u>	<u>1:8</u>
<u>4.</u>	<u>3 year olds up to school age eligible</u>	<u>1:10</u>
<u>5.</u>	<u>School age eligible up to 9 years</u>	<u>1:18</u>
<u>6.</u>	<u>9 years through 12 years</u>	<u>1:20</u>

C. When children are ~~regularly~~ in ongoing mixed age groups, the staff-to-children ratio and group size applicable to the youngest child in the group shall apply to the entire group.

D. ~~During the designated rest period and the designated sleep period of evening and overnight care programs, the ratio of staff to children may be double the number of children to each staff required by subdivisions E 2 through 4 and 7 of this section if:~~

- ~~1. A staff person is within sight and sound of the resting/sleeping children;~~
- ~~2. Staff counted in the overall rest period ratio are within the building and available to ensure safe evacuation in an emergency; and~~
- ~~3. An additional person is present at the center to help, if necessary.~~

~~E. The following ratios of staff to children are required wherever children are in care:~~

- ~~1. For children from birth to the age of 16 months: one staff member for every four children;~~
- ~~2. For children 16 months old to two years: one staff member for every five children;~~
- ~~3. For two year old children: one staff member for every eight children effective June 1, 2006;~~
- ~~4. For children from three years to the age of eligibility to attend public school, five years by September 30: one staff member for every 10 children effective June 1, 2006;~~
- ~~5. For children from age of eligibility to attend public school through eight years, one staff member for every 18 children; and~~
- ~~6. For children from nine years through 12 years, one staff member for every 20 children effective June 1, 2006.~~
- ~~7. Notwithstanding subdivisions 4 and 5 of this subsection and subsection C of this section, the ratio for balanced mixed age groupings of children shall be one staff member for every 14 children, provided:~~

- ~~a. If the program leader has an extended absence, there shall be sufficient substitute staff to meet a ratio of one staff member for every 12 children.~~
- ~~b. The center shall have readily accessible and in close classroom proximity auxiliary persons sufficient to maintain a 1:10 adult to child ratio for all three year olds who are included in balanced mixed age groups to be available in the event of emergencies.~~
- ~~e. The program leader has received training in classroom management of balanced mixed age groupings of at least eight hours.~~

~~F. D. Group size limitations shall not apply during:~~

- 1. Designated rest periods as described in this section;
- 2. Outdoor activity as described in 22VAC40-185-370, 22VAC40-185-380, and 22VAC40-185-390;
- 3. Transportation and field trips as described in 22VAC40-185-580;
- 4. Meals and snacks served as described in 22VAC40-185-560; or

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# Regulations

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5. Special group activities, or during the first and last hour of operation when the center operates more than six hours per day.

E. Group size requirements in subsection A of this section do not apply to children school age eligible through 12 years of age.

F. The center shall develop and implement a written policy and procedure that describes how the center will ensure that each group of children receives care by consistent staff or team of staff members.

G. Staff shall be counted in the required staff-to-children ratios only when they are directly supervising children.

H. A child volunteer 13 years of age or older not enrolled in the program shall not be counted as a child in the staff-to-children ratio requirements.

I. For children ages 16 months through preschool age, during the designated rest period, when children are resting or in an inactive state, the following rest period ratios are permitted if the requirements of subsections J through N of this section are met:

1. Children 16 through 24 months of age: one staff per 10 children.

2. Children two years of age: one staff per 16 children.

3. Children of preschool age: one staff per 20 children.

J. Staff required by rest period ratios shall be within sight and sound at all times in the same space as the resting or sleeping children.

K. In addition to the staff required by rest period ratios, an additional staff member shall always be available on-site to offer immediate assistance. The staff required by rest period ratios shall be able to summon the additional staff member without leaving the room or area of the sleeping or resting children.

L. Once at least half of the children in the resting room or area are awake and off their mats or cots, the staff-to-children ratio shall meet the ratios as required in subsection B of this section.

M. One staff member shall not supervise more than one room or area during rest time.

N. Centers providing evening and overnight care shall meet the requirements of subsections I through this subsection of this section during sleep periods.

O. The ratio for balanced-mixed-age groupings of children shall be one staff member for every 14 children provided:

1. The center has additional staff who are readily accessible in the event of an emergency to maintain a ratio of one staff member for every 10 children when three-year-olds are included in the balanced-mixed-age group; and

2. The lead teacher has received at least eight hours of training in classroom management of balanced-mixed-age groupings.

P. A maximum group size of 28 shall be followed whenever children in care are in balanced-mixed-age groupings.

Q. With a parent's written permission and a written assessment by the program director and program leader, a center may choose to assign a child to a different age group if such age group is more appropriate for the child's developmental level and the staff-to-children ratio and group size shall be for the established age group.

1. If such developmental placement is made for a child with a special need, a written assessment by a recognized agency or professional shall be required at least annually. These assignments are intended to be a permanent new group and staff members for the child.

2. A center may temporarily reassign a child from his regular group and staff members for reasons of administrative necessity but not casually or repeatedly disrupt a child's schedule and attachment to his staff members and group.

~~G. For therapeutic child day programs, in each grouping of children of preschool age or younger, the following ratios of staff to children are required according to the special needs of the children in care:~~

~~1. For children with severe and profound disabilities, multiple special needs, serious medical need, or serious emotional disturbance: one staff member to three children.~~

~~2. For children diagnosed as trainable mentally retarded (TMR), or with physical and sensory disabilities, or with autism: one staff member to four children.~~

~~3. For children diagnosed as educable mentally retarded (EMR) or developmentally delayed or diagnosed with attention deficit/hyperactivity disorder (AD/HD): one staff member to five children.~~

~~4. For children diagnosed with specific learning disabilities: one staff member to six children.~~

~~5. When children with varied special needs are regularly in ongoing groups, the staff to children ratio applicable to the child with the most significant special need in the group shall apply to the entire group.~~

~~6. Note: Whenever 22VAC40-185-350 E requires more staff than 22VAC40-185-350 G because of the children's ages, 22VAC40-185-350 E shall take precedence over 22VAC40-185-350 G.~~

~~H. For therapeutic child day programs, in each grouping of school age children, the following ratios of staff to children are required according to the special needs of the children in care:~~

1. ~~For children with severe and profound disabilities, autism, multiple special needs, serious medical need, or serious emotional disturbance: one staff member to four children.~~
2. ~~For children diagnosed as trainable mentally retarded (TMR), or with physical and sensory disabilities; attention deficit/hyperactivity disorder (AD/HD), or other health impairments: one staff member to five children.~~
3. ~~For children diagnosed as educable mentally retarded (EMR), or developmentally delayed: one staff member to six children.~~
4. ~~For children diagnosed with specific learning disabilities, or speech or language impairments: one staff member to eight children.~~
5. ~~When children with varied special needs are regularly in ongoing groups, the staff to children ratio applicable to the child with the most significant special need in the group shall apply to the entire group.~~

**22VAC40-185-355. Staff-to-children ratio requirements for therapeutic and special needs program staff.**

A. For therapeutic child day programs, in each grouping of children of preschool age or younger, the following ratios of staff to children are required according to the special needs of the children in care:

1. For children with severe and profound disabilities, multiple special needs, serious medical need, or serious emotional disturbance: one staff member to three children.
2. For children diagnosed as having an intellectual disability with significant sub-average intellectual functioning and deficits in adaptive behavior, or with physical and sensory disabilities, or with autism: one staff member to four children.
3. For children diagnosed as having an intellectual disability in the mild range of development, children with a developmental delay, or children diagnosed with attention deficit/hyperactivity disorder (AD/HD): one staff member to five children.
4. For children diagnosed with specific learning disabilities: one staff member to six children.
5. When children with varied special needs are included in a group, the staff-to-children ratio applicable to the child with the most significant special need in the group shall apply to the entire group.
6. Whenever 22VAC40-185-350 B requires more staff than 22VAC40-185-355 A because of the children's ages, 22VAC40-185-350 B shall take precedence over 22VAC40-185-355 A.

B. For therapeutic child day programs, in each grouping of school age children, the following ratios of staff to children

are required according to the special needs of the children in care:

1. For children with severe and profound disabilities, autism, multiple special needs, serious medical need, or serious emotional disturbance: one staff member to four children.
2. For children diagnosed as having an intellectual disability with significant sub-average intellectual functioning and deficits in adaptive behavior, or with physical and sensory disabilities, AD/HD, or other health impairments: one staff member to five children.
3. For children diagnosed as having an intellectual disability in the mild range of development, or developmentally delayed: one staff member to six children.
4. For children diagnosed with specific learning disabilities or speech or language impairments: one staff member to eight children.
5. When children with varied special needs are included in a group, the staff-to-children ratio applicable to the child with the most significant special need in the group shall apply to the entire group.

C. Group size requirements in 22VAC40-185-350 A do not apply to therapeutic child day programs.

**22VAC40-185-420. Parental involvement.**

A. Before the child's first day of attending, parents shall be provided in writing the following:

1. The center's philosophy and any religious affiliation;
2. Operating information, including the hours and days of operation and holidays or other times closed, and the phone number where a message can be given to staff;
3. The center's transportation policy;
4. The center's policies for the arrival and departure of children, including procedures for verifying that only persons authorized by the parent are allowed to pick up the child, picking up children after closing, when a child is not picked up for emergency situations including ~~but not limited to~~ inclement weather or natural or man-made disasters;
5. The center's policy regarding any medication or medical procedures that will be given;
6. The center's policy regarding application of:
  - a. Sunscreen;
  - b. Diaper ointment or cream; and
  - c. Insect repellent.
7. Description of established lines of authority for staff;

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# Regulations

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8. Policy for reporting suspected child abuse as required by § 63.2-1509 of the Code of Virginia;

9. The custodial parent's right to be admitted to the center as required by § 63.2-1813 of the Code of Virginia;

10. Policy for communicating an emergency situation with parents;

11. The appropriate general daily schedule for the age of the enrolling child;

12. Food policies;

13. Discipline policies including acceptable and unacceptable discipline measures; and

14. Termination policies.

B. Staff shall promptly inform parents when persistent behavioral problems are identified; such notification shall include any disciplinary steps taken in response.

C. A custodial parent shall be admitted to any child day program. Such right of admission shall apply only while the child is in the child day program (§ 63.2-1813 of the Code of Virginia).

D. The center shall provide opportunities for parental involvement in center activities.

E. Communication.

1. For each infant, the center shall post a daily record, which can be easily accessed by both the parent and the staff working with the child. The record shall contain the following information:

- a. The amount of time the infant slept;
- b. The amount of food consumed and the time;
- c. A description and time of bowel movements;
- d. Developmental milestones; and
- e. For infants, who are awake and cannot turn over by themselves, the amount of time spent on their stomachs.

2. If asked by parents, staff shall provide feedback about daily activities, physical well-being, and developmental milestones.

3. Parents shall be provided at least semiannually in writing information on their child's development, behavior, adjustment, and needs.

- a. Staff shall provide at least semiannual scheduled opportunities for parents to provide feedback on their children and the center's program.
- b. Staff shall request at least annually parent confirmation that the required information in the child's record is up to date.
- c. Such sharing of information shall be documented.

d. Short-term programs (as defined in 22VAC40-185-10) are exempt from this requirement.

4. Parents shall be informed of reasons for termination of services.

## **22VAC40-185-460. Swimming and wading activities; staff and supervision.**

A. The staff-to-children ratios required by 22VAC40-185-350 ~~E, G, and H~~ B and 22VAC40-185-355 ~~A and B~~ shall be maintained while children are participating in swimming or wading activities.

1. Notwithstanding the staff-to-children ratios already indicated, at no time shall there be fewer than two staff members supervising the activity.

2. The designated certified lifeguard shall not be counted in the staff-to-children ratios.

B. If a pool, lake, or other swimming area has a water depth of more than two feet, a certified lifeguard holding a current certificate shall be on duty supervising the children participating in swimming or wading activities at all times when one or more children are in the water.

C. The lifeguard certification shall be obtained from an organization such as, ~~but not limited to,~~ the American Red Cross, the YMCA, or the Boy Scouts.

## **22VAC40-185-500. Hand washing and toileting procedures.**

A. Hand washing.

1. Children's hands shall be washed with soap and running water or disposable wipes before and after eating meals or snacks.

2. Children's hands shall be washed with soap and running water after toileting and any contact with blood, feces, or urine.

3. Staff shall wash their hands with soap and running water ~~before and after helping a child use the toilet or a diaper change, after the staff member uses the toilet, after any contact with body fluids, and before feeding or helping children with feeding;~~

- a. Before and after helping a child use the toilet;
- b. Before and after a diaper change;
- c. After the staff member uses the toilet;
- d. After any contact with body fluids;
- e. Before feeding or helping children with feeding; and
- f. Before preparing or serving food or beverages.

4. ~~Exception:~~ If running water is not available, a germicidal cleansing agent administered per manufacturer's instruction may be used.

B. Diapering; soiled clothing.

1. The diapering area shall be accessible and within the building used by children.
2. There shall be sight and sound supervision for all children when a child is being diapered.
3. The diapering area shall be provided with the following:
  - a. A sink with running warm water not to exceed 120°F;
  - b. Soap, disposable towels, and single use gloves such as surgical or examination gloves;
  - c. A nonabsorbent surface for diapering or changing shall be used. For children younger than three years, this surface shall be a changing table or countertop designated for changing;
  - d. The appropriate disposal container as required by subdivision ~~5~~ 6 of this subsection; and
  - e. A leakproof covered receptacle for soiled linens.
4. When a child's clothing or diaper becomes wet or soiled, the child shall be cleaned and changed immediately.
5. Disposable diapers shall be used unless the child's skin reacts adversely to disposable diapers.
6. Disposable diapers shall be disposed in a leakproof or plastic-lined storage system that is either foot-operated or used in such a way that neither the staff member's hand nor the soiled diaper touches an exterior surface of the storage system during disposal.
7. When cloth diapers are used, a separate leakproof storage system as specified in this subdivision shall be used.
8. The diapering surface shall be used only for diapering or cleaning children, and it shall be cleaned with soap and at least room temperature water and sanitized after each use. Tables used for children's activities or meals shall not be used for changing diapers.

~~Exception:~~ 9. Individual disposable barriers may be used between each diaper change. If the changing surface becomes soiled, the surface shall be cleaned and sanitized before another child is diapered.

~~9.~~ 10. Staff shall ensure the immediate safety of a child during diapering.

C. Toilet training. For every 10 children in the process of being toilet trained, there shall be at least one toilet chair or one child-sized toilet, or at least one adult sized toilet with a platform or steps and adapter seat.

1. The location of these items shall allow for sight and sound supervision of children in the classroom if necessary for the required staff-to-children ratios to be maintained.

2. Toilet chairs shall be emptied promptly and cleaned and sanitized after each use.

**22VAC40-185-510. Medication.**

A. Prescription and nonprescription medication shall be given to a child:

1. According to the center's written medication policies; and
2. Only with written authorization from the parent.

B. Medication shall be administered by a staff member who is 18 years of age or older.

C. Nonprescription medication shall be administered by a staff member or independent contractor who meets the requirements in ~~22VAC40-185-240 D 1 or 3~~ 22VAC40-185-245 F 1 or F 3.

~~E.~~ D. The center's procedures for administering medication shall:

1. Include any general restrictions of the center.
2. For nonprescription medication, be consistent with the manufacturer's instructions for age, duration, and dosage.
3. Include duration of the parent's authorization for medication, provided that it shall expire or be renewed after 10 work days. Long-term prescription drug use and over-the-counter medication may be allowed with written authorization from the child's physician and parent.
4. Include methods to prevent use of outdated medication.

~~D.~~ E. The medication authorization shall be available to staff during the entire time it is effective.

~~E.~~ F. Medication shall be labeled with the child's name, the name of the medication, the dosage amount, and the time or times to be given.

~~F.~~ G. Nonprescription medication shall be in the original container with the direction label attached.

~~G.~~ H. The center may administer prescription medication that would normally be administered by a parent or guardian to a child provided:

1. The medication is administered by a staff member or an independent contractor who meets the requirements in ~~22VAC40-185-240 D 1~~ 22VAC40-185-245 F;
2. The center has obtained written authorization from a parent or guardian;
3. The center administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container; and
4. The center administers drugs only to the child identified on the prescription label in accordance with the prescriber's

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# Regulations

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instructions pertaining to dosage, frequency, and manner of administration.

~~H. I.~~ When needed, medication shall be refrigerated.

~~I. J.~~ When medication is stored in a refrigerator used for food, the medications shall be stored together in a container or in a clearly defined area away from food.

~~J. K.~~ Medication, except for those prescriptions designated otherwise by written physician's order, including refrigerated medication and staff's personal medication, shall be kept in a locked place using a safe locking method that prevents access by children.

~~K. L.~~ If a key is used, the key shall not be accessible to the children.

~~L. M.~~ Centers shall keep a record of medication given children, which shall include the following:

1. Child to whom medication was administered;
2. Amount and type of medication administered to the child;
3. The day and time the medication was administered to the child;
4. Staff member administering the medication;
5. Any adverse reactions; and
6. Any medication error.

~~M. N.~~ Staff shall inform parents immediately of any adverse reactions to medication administered and any medication error.

~~N. O.~~ When an authorization for medication expires, the parent shall be notified that the medication needs to be picked up within 14 days or the parent must renew the authorization. Medications that are not picked up by the parent within 14 days will be disposed of by the center by either dissolving the medication down the sink or flushing it down the toilet.

## **22VAC40-185-530. First aid training, cardiopulmonary resuscitation (CPR) and rescue breathing.**

~~A.~~ There shall be at least one staff member trained in first aid, cardiopulmonary resuscitation, and rescue breathing as appropriate to the age of the children in care who is on the premises during the center's hours of operation and also one person on field trips and wherever children are in care.

1. This person shall be available to children; and
2. This person shall have current certification by the American Red Cross, American Heart Association, National Safety Council, or other designated program approved by the Department of Social Services.

~~B. A.~~ All staff who work directly with children shall have, within 30 days of the date of employment:

1. Current certification in cardiopulmonary resuscitation (CPR) as appropriate to the age of the children in care from an organization such as the American Red Cross, American Heart Association, American Safety and Health Institute, or National Safety Council. The training shall include an in-person competency demonstration; and

2. Current certification in first aid from an organization such as the American Red Cross, American Heart Association, American Safety and Health Institute, or National Safety Council.

B. Staff who work directly with children and who are employed prior to (insert the effective date of this chapter) must complete CPR and first aid training as required by this section within 90 calendar days of (insert the effective date of this chapter). During the 90-day period, there must always be at least one staff with current CPR and first aid training present during operating hours of the center.

C. CPR and first aid training may count toward the annual training hours required in 22VAC40-185-245 A.

D. Primitive camps shall have a staff member on the premises during the hours of operation who has at least current certification in first responder training.

## **22VAC40-185-550. Procedures for emergencies.**

A. The center shall have ~~an~~ a written emergency preparedness plan that addresses staff responsibility and facility readiness with respect to emergency evacuation and relocation, shelter-in-place, and lockdown. The plan, which shall be developed in consultation with local or state authorities, ~~addresses~~ shall include the most likely to occur emergency scenario or scenarios, including ~~but not limited to~~ fire, severe storms, loss of utilities, natural disaster, chemical spills, intruder, and violence at or near the center, terrorism specific to the locality, and other situations, including facility damage that requires evacuation, lockdown, or shelter-in-place.

B. The emergency preparedness plan shall contain procedural components for:

1. Sounding of alarms (~~intruder, shelter in place such as for tornado, or chemical hazard~~), such as intruder, evacuation, lockdown, and shelter-in-place for tornado or chemical hazards;

2. Emergency communication to include:

- a. Establishment of center emergency officer and back-up officer to include 24-hour contact telephone number for each;
- b. Notification of local authorities (~~fire and rescue, law enforcement, emergency medical services, poison~~

~~control, health department, etc.), such as fire and rescue, law enforcement, emergency medical services, poison control, health department, and parents; and local media; and~~

c. Availability and primary use of communication tools;

3. Evacuation to include:

a. ~~Assembly points, head counts methods to account for all children at the assembly point and relocation site, primary and secondary means of egress, and complete evacuation of the buildings;~~

b. ~~Securing of essential documents (sign in record, parent contact information, etc.) and special healthcare supplies to be carried off site on immediate notice; and, including attendance records, parent contact information, emergency contact information, information on allergies, intolerance to food or medication, any special health care needs to include medications and care plans, emergency contact information for staff, and supplies are taken to the assembly point or relocation site;~~

c. ~~Method of communication after the evacuation with parents and emergency responders;~~

d. ~~Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during evacuation or relocation; and~~

e. ~~Procedures to reunite children with a parent or authorized person designated by the parent to pick up the child;~~

4. Shelter-in-place to include:

a. ~~Scenario applicability, such as tornado or chemical spill, inside assembly points, head counts methods to account for all children at the safe locations, and primary and secondary means of access and egress;~~

b. ~~Securing essential documents (sign in records, parent contact information, etc.) and special health supplies to be carried into the designated assembly points; and, including attendance records, parent contact information, emergency contact information, information on allergies, intolerance to food or medication, any special health care needs to include medications and care plans, emergency contact information for staff, and supplies are taken to the assembly point or relocation site;~~

c. ~~Method of communication after the shelter in place with parents and emergency responders;~~

d. ~~Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during shelter-in-place; and~~

e. ~~Procedures to reunite children with a parent or authorized person designated by the parent to pick up the child;~~

5. ~~Facility containment procedures, (e.g., closing of fire doors or other barriers) and shelter in place scenario (e.g., intruders, tornado, or chemical spills); Lockdown, to include:~~

a. ~~Facility containment procedures, such as closing of fire doors or other barriers, scenario applicability, assembly points, and methods to account for all children at the safe locations;~~

b. ~~Method of communication with parents and emergency responders;~~

c. ~~Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during lockdown; and~~

d. ~~Procedures to reunite children with a parent or authorized person designated by the parent to pick up the child;~~

6. Staff training requirement, drill frequency, and plan review and update; and

7. Other special procedures developed with local authorities.

C. ~~Emergency evacuation and shelter-in-place procedures/maps procedures and maps shall be posted in a location conspicuous to staff and children on each floor of each building.~~

D. ~~The center shall implement a monthly practice evacuation drill and a minimum of two shelter in place practice drills per year for the most likely to occur scenarios.~~

E. ~~Shelter in place procedures shall be practiced a minimum of twice per year.~~

F. ~~Lockdown procedures shall be practiced at least annually.~~

G. ~~Documentation shall be maintained of emergency evacuation, shelter-in-place, and lockdown drills that includes:~~

1. Identity of the person conducting the drill;

2. The date and time of the drill;

3. The method used for notification of the drill;

4. The number of staff participating;

5. The number of children participating;

6. Any special conditions simulated;

7. The time it took to complete the drill;

8. Problems encountered, if any; and

9. For emergency evacuation drills only, weather conditions.

~~E. H.~~ The center shall maintain a record of the dates of the practice drills for one year. For centers offering multiple

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# Regulations

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shifts, the simulated drills shall be divided evenly among the various shifts.

~~F. I.~~ A 911 or local dial number for police, fire and emergency medical services and the number of the regional poison control center shall be posted in a visible place at each telephone.

~~G. J.~~ Each camp location shall have an emergency preparedness plan and warning system.

~~H. K.~~ The center shall prepare a document containing local emergency contact information, potential shelters, hospitals, evacuation routes, etc., that pertain to each site frequently visited or of routes frequently driven by center staff for center business ( ~~such as field trips, pick up/drop~~ pick up or drop off of children to or from schools, etc.). This document must be kept in vehicles that centers use to transport children to and from the center.

~~I. L.~~ Parents shall be informed of the center's emergency preparedness plan.

~~J. M.~~ Based on local authorities and documented normal ambulance operation, if an ambulance service is not readily accessible within 10 to 15 minutes, other transportation shall be available for use in case of emergency.

~~K. N.~~ The center or other appropriate official shall notify the parent immediately if a child is lost, requires emergency medical treatment, or sustains a serious injury.

~~L. O.~~ The center shall notify the parent by the end of the day of any known minor injuries.

~~M. P.~~ The center shall maintain a written record of children's serious and minor injuries in which entries are made the day of occurrence. The record shall include the following:

1. Date and time of injury;
2. Name of injured child;
3. Type and circumstance of the injury;
4. Staff present and treatment;
5. Date and time when parents were notified;
6. Any future action to prevent recurrence of the injury;
7. Staff and parent signatures or two staff signatures; and
8. Documentation on how parent was notified.

Q. A parent shall be notified immediately of any confirmed or suspected allergic reaction and the ingestion of prohibited food even if a reaction did not occur.

## Part VIII Special Services

### **22VAC40-185-560. Nutrition and food services.**

A. Centers shall schedule appropriate times for snacks or meals, or both, based on the hours of operation and time of the day (e.g., a center open only for after school care shall schedule an afternoon snack; a center open from 7 a.m. to 1 p.m. shall schedule a morning snack and midday meal).

B. The center shall ensure that children arriving from a half-day, morning program who have not yet eaten lunch receive a lunch.

C. The center shall schedule snacks or meals so that there is a period of at least 1-1/2 hours but no more than three hours between each meal or snack unless there is a scheduled rest or sleep period for children between the meals and snacks.

D. Drinking water or other beverage not containing caffeine shall be offered at regular intervals to nonverbal children.

E. In environments of 80°F or above, attention shall be given to the fluid needs of children at regular intervals. Children in such environments shall be encouraged to drink fluids as outlined in subsection D of this section.

F. When centers choose to provide meals or snacks, the following shall apply:

1. Centers shall follow the most recent, age-appropriate nutritional requirements of a recognized authority such as the Child and Adult Care Food Program of the United States Department of Agriculture (USDA).
2. Children shall be allowed second helpings of food listed in the USDA's child and adult care meal patterns.
3. Centers offering both meals and snacks shall serve a variety of nutritious foods and shall serve at least three sources of vitamin A and at least three sources of vitamin C on various days each week.
4. Children three years of age or younger may not be offered foods that are considered to be potential choking hazards.
5. A menu listing foods to be served for meals and snacks during the current one-week period shall:
  - a. Be dated;
  - b. Be posted in a location conspicuous to parents or given to parents;
  - c. List any substituted food; and
  - d. Be kept on file for one week at the center.
6. Powdered milk shall not be used except for cooking.

G. When food is brought from home, the following shall apply:

1. The food container shall be sealed and clearly dated and labeled in a way that identifies the owner;
2. The center shall have extra food or shall have provisions to obtain food to serve to children so they can have an appropriate snack or meal if they forget to bring food from home, bring an inadequate meal or snack, or bring perishable food; and
3. Unused portions of opened food shall be discarded by the end of the day or returned to the parent.

H. If a catering service is used, it shall be approved by the local health department.

~~I. Food shall be prepared, stored, and transported in a clean and sanitary manner.~~

~~J. L.~~ Contaminated or spoiled food shall not be served to children.

~~K. J.~~ Tables and high chair trays shall be:

1. Sanitized before and after each use for feeding; and
2. Cleaned at least daily.

~~L. K.~~ Children shall be encouraged to feed themselves.

~~M. L.~~ Staff shall sit with children during meal times.

~~N. M.~~ No child shall be allowed to drink or eat while walking around.

N. Food shall be prepared, stored, and transported in a clean and sanitary manner.

O. When food is prepared to which a child in care is allergic, staff shall take steps to avoid cross contamination to prevent an allergic reaction.

P. A child with a diagnosed food allergy shall not be served any food identified in the written care plan required in 22VAC40-185-60 A 8.

**22VAC40-185-580. Transportation and field trips.**

A. If the center provides transportation, the center shall be responsible from the time the child boards the vehicle until returned to the parents or person designated by the parent.

B. Any vehicle used by the center for the transportation of children shall meet the following requirements:

1. The vehicle shall be manufactured for the purpose of transporting people seated in an enclosed area;
2. The vehicle's seats shall be attached to the floor;
3. The vehicle shall be insured with at least the minimum limits established by Virginia state statutes;

4. The vehicle shall meet the safety standards set by the Department of Motor Vehicles and shall be kept in satisfactory condition to assure the safety of children; and

5. If volunteers supply personal vehicles, the center is responsible for ensuring that the requirements of this subsection are met.

C. The center shall ensure that during transportation of children:

1. Virginia state statutes about safety belts and child restraints are followed as required by §§ 46.2-1095 through 46.2-1100, and stated maximum number of passengers in a given vehicle ~~shall not be~~ is not exceeded;

2. The children remain seated and each child's arms, legs, and head remain inside the vehicle;

3. Doors are closed properly and locked unless locks were not installed by the manufacturer of the vehicle;

4. At least one staff member or the driver always remains in the vehicle when children are present;

5. The following information is in transportation vehicles:

a. Emergency numbers as specified in 22VAC40-185-550 ~~F and H~~ I and K;

b. The center's name, address, and phone number; ~~and~~

c. A list of the names of the children being transported; and

d. Allergy care plan and information as specified in 22VAC40-185-60 A 7 and A 8; and

6. Staff who transport children shall be 18 years of age or older.

D. When entering and leaving vehicles, children shall enter and leave the vehicle from the curb side of the vehicle or in a protected parking area or driveway.

E. Children shall cross streets at corners or crosswalks or other designated safe crossing point if no corner or crosswalk is available.

F. The staff-to-children ratios of 22VAC40-185-350 ~~E, G, and H~~ B and 22VAC40-185-355 shall be followed on all field trips. The staff-to-children ratios need not be followed during transportation of school age children to and from the center. One staff member or adult is necessary in addition to the driver when 16 or more preschool or younger children are being transported in the vehicle.

G. The center shall make provisions for providing children on field trips with adequate food and water.

H. If perishable food is taken on field trips, the food shall be stored in insulated containers with ice packs to keep the food cold.

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# Regulations

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I. Before leaving on a field trip, a schedule of the trip's events and locations shall be posted and visible at the center site.

J. There shall be a communication plan between center staff and staff who are transporting children or on a field trip.

K. Staff shall verify that all children have been removed from the vehicle at the conclusion of any trip.

L. Parental permission for transportation and field trips shall be secured before the scheduled activity.

M. If a blanket permission is used instead of a separate written permission, the following shall apply:

1. Parents shall be notified of the field trip; and
2. Parents shall be given the opportunity to withdraw their children from the field trip.

VA.R. Doc. No. R16-4596; Filed January 8, 2018, 8:24 a.m.

## Proposed Regulation

**Titles of Regulations:** 22VAC40-661. Child Care Program (repealing 22VAC40-661-10 through 22VAC40-661-100).

**22VAC40-665. Child Care Program (adding 22VAC40-665-10 through 22VAC40-665-830).**

**Statutory Authority:** §§ 63.2-217, 63.2-319, and 63.2-611 of the Code of Virginia; 45 CFR 98.11.

### Public Hearing Information:

March 15, 2018 - 5 p.m. - Albemarle County Department of Social Services, 1600 Fifth Street, Charlottesville, VA 22902.

**Public Comment Deadline:** April 6, 2018.

**Agency Contact:** Mary Ward, Subsidy Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7638, FAX (804) 726-7655, or email mary.ward@dss.virginia.gov.

**Basics:** The State Board of Social Services has the authority to promulgate this regulatory action. The federal statutory authority for this program is the Child Care and Development Block Grant Act of 2014 (P.L. 113-186), as implemented in 45 CFR Parts 98 and 99. State authority is derived from §§ 63.2-217, 63.2-319, 63.2-510, 63.2-611, 63.2-616, and 63.2-1725 of the Code of Virginia.

**Purpose:** This regulatory action is necessary to ensure (i) the state maintains compliance with federal Child Care and Development Block Grant (CCDBG) requirements to receive funding for the Child Care Subsidy Program and (ii) improved program integrity and accountability. Without these changes, Virginia risks losing federal resources that support low-income and vulnerable children and families. The proposed changes are designed to improve the health and safety of children in child care programs receiving subsidy; to

promote child development; to provide continuity of child care services for families who are working, participating in education or training leading to employment, or receiving child protective services; to improve quality and increase the supply of quality child care throughout the state; and to make the Child Care Subsidy Program more family friendly.

**Substance:** This regulatory action will make significant changes to the program. It will include critical provisions to ensure the health and safety of children in child care settings, improve the quality of care, and make it easier for families to get and keep child care assistance. Changes to be considered include changes that:

- Allow families to be considered to meet all eligibility requirements for assistance and to receive assistance for not less than 12 months before the state redetermines eligibility, unless the family income exceeds the federal threshold of 85% of state median income (SMI), there is substantiated intentional program violations, or the recipient is no longer a resident of Virginia.
- Allow for a graduated phase-out of care.
- Allow for the expedited enrollment of children experiencing homelessness, pending the compilation of required documentation.
- Require a declaration from families receiving assistance that their assets do not exceed \$1 million in value.
- Begin payment for services (i.e., the Begin Date of Service Payment) effective with the date the applicant is determined eligible and selection of a vendor that meets all program participation requirements.
- Require that all subsidy providers receive onsite inspections.
- Create standards for onsite inspections of subsidy providers.
- Mandate specific department-approved health and safety training during preservice or orientation periods and ongoing for all subsidy providers.
- Require providers to report to the department instances of death and serious injury in the child care setting.
- Include the process for vendors to appeal decisions made by the department.
- Require appropriate child-to-provider ratios and group size limits based on the age of children in child care.
- Add and update multiple definitions in the regulation to coincide with other changes.

**Issues:** Changes to this regulation will strengthen the Child Care Subsidy Program's dual role as both an early childhood development program and a work support program for low-income families. Families and children will benefit from key

changes in this new regulation that include supporting and protecting the health and safety of children in care through more consistent standards for child care providers and through monitoring of those standards. The changes also focus on improving the quality of care statewide through inspections of unlicensed child care providers and by enabling families to more easily access stable and continuous care.

Providers of child care services will be better served by having a current regulation with detailed standards for providers participating in the Child Care Subsidy Program. Children will benefit from providers meeting the health and safety requirements.

The regulation assures families that the child care program will be administered with clear and consistent case management policies, including provisions that support continuity of care, support for families to become more self-sufficient, and support for vulnerable children and families.

To provide the increased services mandated by the CCDBG, this proposed regulation may result in a reduction in the number of families who receive assistance. Also, providers who do not meet the new inspection requirements may be ineligible to receive payments through the Child Care Subsidy Program. Providers may experience an increase in operating costs to cover staff time to complete the federally mandated training. However, the ongoing costs should be reduced once all current staff have completed the initial training.

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

Summary of the Proposed Amendments to Regulation. Pursuant to the 2014 reauthorization of the federal Child Care and Development Block Grant Act (CCDBG), the State Board of Social Services (Board) proposes to 1) establish a twelve-month presumptive eligibility period, 2) require on-site inspection of all providers receiving subsidies, 3) require health and safety training of provider staff, 4) require first aid and CPR certification, 5) establish provider-to-child ratios and group size limits, 6) establish a gradual phase-out of the program when income eligibility is lost, 7) expedite the entry of children experiencing homelessness into the program, 8) start the beginning date of service payment to correspond with the application approval date, 9) no longer allow out-of-state providers to participate in the program, 10) allow administrative disqualification of a recipient from the program, and 11) require a declaration from recipients that their assets are below a certain threshold.

Result of Analysis. Although the proposed regulation imposes additional costs on the Department of Social Services (DSS) and child care providers, the benefits likely exceed the costs as the regulation is necessary for Virginia to continue to receive approximately \$119 million in federal funds.

Estimated Economic Impact. CCDBG imposed a number of new requirements on states primarily to strengthen its dual role as both a major early childhood education program and a work support for low-income families. Child care assistance helps parents afford reliable child care, which can help them gain and maintain stable employment. In order to continue to receive federal funding under the Child Care and Development Fund (CCDF) subsidy program, Virginia will need to ensure that it has adopted all of these requirements. Virginia receives about \$119 million in federal CCDF funds per fiscal year and provides approximately \$48 million in state and local funds and approximately \$17 million in pre-K expenditures counted as state match and maintenance effort.<sup>1</sup>

#### Twelve-month continuous eligibility:

The CCDBG requires that eligible families retain enrollment in the program for 12 months. Thus, the Board proposes to adopt a presumption of eligibility for not less than 12 months before the state redetermines eligibility. This presumption is subject to certain conditions (e.g., the family income must stay below the federal threshold of 85% of state median income, there could be no substantiated intentional program violations, the recipient must stay a resident of Virginia, etc.). According to the Board staff, average length of stay in the program currently is 7 to 8 months. Providing payments for an additional 4 to 5 months beyond the current average length of stay will add to program outlays. However, CCDF is a block grant in that the total dollar amount available to Virginia is capped. Although the fund is currently reported to have enough resources to continue serving each month the current number of children being served, when there are no funds left in the program, newer applicants may be placed on a waiting list or if there is a list it could get longer.

A presumption of eligibility for 12 months will benefit the recipients already in the program as they would be allowed to stay in the program for a longer period. The Board plans to offset the additional outlays by managing the caseloads through attrition and by controlling the rate of entry into the program. Therefore, the additional outlays, if they exceed the current available resources in the fund, may create a waiting list or extend it. Existing recipients will receive benefits longer while new recipients may be delayed getting into the program. When some individuals cannot get into the program because some other recipients are allowed to stay longer, a negative economic effect may spill over to other related programs. For example, if a parent is on the waiting list and cannot afford child care, his or her transition to a paying job might be delayed causing him or her to continue to stay in the Temporary Assistance for Needy Families (TANF) program. DSS expects little spill over because families whose incomes exceed the TANF income limits may receive an additional 12 months of transitional child care assistance and only if resources are not available to serve them.

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## Regulations

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According to a study,<sup>2</sup> research suggests longer authorizations reduce the risk of losing benefits, supporting stable parental employment and continuity of care for the child. As a result, twelve-month continuous authorization will support children's development by providing continuity of care and by providing more stability for families who receive assistance. It will also provide more stable income for providers during a recipient's 12-month authorization period for children in their care.

It is expected that the change will also reduce the local department of social services administrative requirements of implementing the program. The proposed regulations will reduce the number of required case actions during a recipient's 12-month eligibility period; however, child care workers will be responsible for helping families understand child development issues that can impact their provider selection and they will be required to provide more information on the compliance record of the provider selected by the family.

### On-site inspections of unlicensed subsidy providers:

The CCDBG requires that all providers that participate in the program be inspected annually. Currently, unlicensed providers are not inspected. Under the proposed changes, unlicensed providers would have to submit to monitoring visits as required by federal law in order to continue receiving child care subsidies. The cost of this requirement includes the costs of 15 additional staff in the Division of Licensing Program hired to date to inspect unlicensed subsidy providers. Approximately \$2.8 million of funding was provided through HB1570 of the 2015 General Assembly for this cost.<sup>3</sup> The proposed on-site inspections may provide disincentives to some providers to stop participating in the program due to actual or perceived additional costs of the inspections or to demand higher rates. The health and safety standards and inspection requirements for child care providers participating in the subsidy program will likely however ensure greater protection of families and children served through the program.

### Health and safety training:

The CCDBG mandates specific department-approved health and safety training, during preservice or orientation periods and ongoing, for all subsidy providers. Currently, the training is provided at no cost to caregivers. The only cost is to cover wages, if required, while the training is being taken. As a result, child care providers may incur costs to pay staff for time required to take the federally mandated training. According to the Board staff, the requirement for 10 hours of orientation training may have a potential impact of \$107.90 per person, based on the cost of wages for employees.<sup>4</sup> Up to 20,000 individuals may be required to take this training. To the extent of the employee turnover in this industry, costs to providers would be higher than \$107.90 per position. In addition, the proposed regulation requires 16 hours of annual

training and staff development activities. The orientation training may be counted toward the 16-hour ongoing training requirement. Currently, unlicensed providers receive only four hours of annual training. Therefore, unlicensed providers will incur costs associated with the additional 12 hours of training. The added compliance costs of the proposed training requirements may also provide disincentives to some providers to stop participating in the program or demand higher rates. On the other hand, the required training will likely improve compliance with health and safety standards and help ensure greater protection of families and children served through the program.

In addition, development of and regular updates to the required annual health and safety training will likely require some staff time. DSS estimates that approximately \$25,000 per year may be required for this purpose but plans to absorb this cost within the existing resources.

### First aid and CPR training:

The proposed regulation requires all staff working directly with children to complete cardiopulmonary resuscitation (CPR) and first aid training. The CPR and first aid training may be counted toward the 16-hour ongoing training requirement. According to the board staff, if an individual is not currently first aid or CPR certified, an initial cost of \$90-\$100 may apply with an additional cost for recertification every two years. The costs vary depending on the organization that administers the certification. The Red Cross web site estimates that CPR and first aid training classes can be two to five hours long, depending on whether it is initial training or a refresher course. Consequently, licensees, or their staff, will likely incur costs for the time that these courses take. In fiscal year 2017, the program began making free first aid and CPR training available to staff in programs serving infants and toddlers and intends to continue offering assistance in this area in the future.

### Provider-to-child ratios, group size limits:

The CCDBG requires that states establish group size limits and appropriate provider-to-child ratios primarily to improve health and safety protections afforded by the quality of care. The Board staff does not believe the proposed ratios for different age groups or group size limits will be a limiting factor for most providers but recognize that they could be. Normally, the licensing capacity is considered a major limiting factor. To the extent the proposed ratios are limiting factors to specific providers, they may have to drop some of their clients or hire additional staff to comply with the proposed ratios.

As mentioned above, limiting the number of children per staff could improve health and safety of children. For example, in the case of a fire, young children could be evacuated more quickly if there are more adults responsible for fewer children. Having sufficient staff available to provide the

supervision and individualized care that children need is also a critical component of high-quality child care. When one caregiver is responsible for only a small number of children, the caregiver is better able to offer one-on-one attention to each child and have more interactions that encourage language and healthy social-emotional development. According to a study,<sup>5</sup> research shows that both child development and caregiving quality improves when child-provider ratios and group sizes (i.e., the number of children assigned to a caregiver or team of caregivers in a classroom, or well-defined space within a larger room) in child care settings are smaller.

#### Phase-out of services:

The CDDBG requires that families who, at redetermination, exceed initial income eligibility limits, be gradually phased-out of the program. The phase-out is not currently based on specific criteria as DSS is still working on developing these factors. There is insufficient data on which to base an estimate at this time. The federally mandated phase-out period will help families gradually assume a higher share of the cost of child care as their income increases. However, gradual phase-out may also lead to newcomers in the Fee Child Care Program being placed on a waiting list and delay their transition into a gainful employment.

#### Children experiencing homelessness:

The CDDBG requires expedited enrollment of children experiencing homelessness, pending the compilation of required documentation. While this change will help parents and children experiencing homelessness start receiving subsidy and care faster, it could potentially delay other recipients' access to the program if the total funds are insufficient to provide a subsidy to everyone who would qualify.

#### Beginning date of service payment:

The beginning date of service payment is amended to begin payment for services effective with the date the applicant is determined eligible and a vendor that meets all program participation requirements is selected. In the past, the payments began as of the date when the signed application was received. According to DSS, payments for retroactive time periods created some administrative difficulties. With the proposed change, the payments will start when eligibility is determined. This change will ensure that payments are not made prior to the provider's approval by the department as a vendor and streamline the administration of payments.

Program guidelines state that eligibility determination is to occur within 30 days from the date of the application. Thus, this change will likely reduce the amount of subsidy payments by up to a month for new recipients and provide some savings or help serve the individuals on the waiting list sooner.

This provision will also provide incentives to the applicants to submit all supporting documentation needed to determine eligibility as soon as possible.

#### Other:

The proposed regulation eliminates the approval process for out-of-state providers to participate in the program. With implementation of the new federal requirements for background checks and inspections of providers participating in the program, the agency will no longer be able to approve out-of-state providers for participation in the program. According to the Board staff, there were a handful of out-of-state providers that are no longer allowed to serve the program recipients.

The proposed regulation establishes a process for administrative disqualification from the program for child care recipients if there is clear and convincing evidence that fraud was committed, but the situation does not meet the Commonwealth Attorney's criteria for prosecution. Disqualification for an intentional program violation is included as a reason for disqualification from the program. The administrative disqualification process and resulting disqualification from program participation will enable the program to take action when an intentional program violation is committed, but may not meet the dollar level established by some Commonwealth Attorneys for prosecution.

The proposed regulation requires a declaration from families receiving assistance that their assets do not exceed \$1 million in value. This change would effect if any a very small number of recipients.

**Businesses and Entities Affected.** Child care providers, eligible families and children and local departments of social services are affected by the proposed regulation. In fiscal year 2016, 22,085 families and 36,640 children were served with subsidy dollars at some time during the fiscal year. There are approximately 3,000 child care providers who participate in the program. There are 120 local departments of social services.

**Localities Particularly Affected.** The proposed changes apply statewide.

**Projected Impact on Employment.** The proposed on-site inspection requirements led to the creation of 15 full time inspector positions. Health and safety training will create demand for state staff time to develop and update the training curriculum and demand for provider staff time to take the training. However, the proposed changes also add or may add to provider compliance costs (e.g., health and safety training, on-site inspections, provider-to-child ratios and group size limits, etc.) and may consequently discourage participation in the program leading to a decrease in demand for provider staff time.

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# Regulations

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Effects on the Use and Value of Private Property. To the extent additional compliance costs are imposed on child care providers their asset values would decrease.

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

Small Businesses:

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

Costs and Other Effects. Most if not all of approximately 3,000 affected child care providers are believed to be small businesses. The costs and other effects on them are the same as discussed above.

Alternative Method that Minimizes Adverse Impact. There is no known alternative method that minimizes the adverse impact on the state and child care providers while accomplishing the same goals.

Adverse Impacts:

Businesses. The proposed regulation does not affect non-small businesses.

Localities. The proposed regulation should not affect the localities.

Other Entities. The proposed regulation imposes costs on the state to conduct on-site inspections of unlicensed child care providers.

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<sup>1</sup>Source: Department of Social Services

<sup>2</sup><http://www.clasp.org/resources-and-publications/publication-1/ccdbg-guide-for-states-final.pdf>

<sup>3</sup><http://lis.virginia.gov/cgi-bin/legp604.exe?ses=151&typ=bil&val=hb1570>

<sup>4</sup>According to DSS, the potential fiscal impact is based on the Bureau of Labor Statistics, Department of Labor, which reported the annual mean wage for child care workers in Virginia as \$22,440 or \$10.79 per hour and \$107.90 for 10 hours.

<sup>5</sup><http://www.clasp.org/resources-and-publications/publication-1/ccdbg-guide-for-states-final.pdf>

Agency's Response to Economic Impact Analysis: The Department of Social Services reviewed the economic impact analysis posted July 31, 2017, and has no comments.

Summary:

*This proposed action repeals 22VAC40-661 and replaces it with new Child Care Program regulations at 22VAC40-665. The regulatory action is necessary to bring state Child Care Subsidy Program requirements into alignment with the federal Child Care and Development Block Grant Act of 2014. Proposed amendments include new provisions*

*for (i) 12 months of continuous authorization for services, (ii) a phase-out of services, (iii) a conditional eligibility period for children experiencing homelessness, (iv) a change to reporting requirements of recipients during an authorization period, (v) the transfer of eligibility from one locality to another, (vi) a limitation on amount of assets that can be owned by a recipient, (vii) a change to how the effective date of eligibility is determined, (viii) verification of identity of applicants, (ix) a restriction that limits employees of local departments of social services from participating as program vendors, (x) repayment of overpayments made, (xi) training of local department staff who administer the program, and (xii) health and safety and inspection of program vendors.*

## CHAPTER 665 CHILD CARE PROGRAM

### Part I General Provisions

#### 22VAC40-665-10. Definitions.

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

"Administrative disqualification hearing" or "ADH" means an impartial review by a state hearing officer of a recipient's actions involving an alleged intentional program violation for the purpose of determining if the individual did or did not commit an intentional program violation.

"Applicant" means a person who has applied for child care services and the disposition of the application has not yet been determined.

"Assets" means resources owned by a person or company regarded as having value and available to meet debts and commitments.

"Background checks" means the checks for barrier crimes and offenses required under Article 3 (§ 63.2-1719 et seq.) of Chapter 17 of Title 63.2 of the Code of Virginia, including the sworn statement or affirmation as is required by Article 3; the criminal history record check; and the Child Protective Services Central Registry check.

"Child care subsidy and services" or "Child Care Subsidy Program" means the department program that assists eligible low-income families with the cost of child care and those activities that assist eligible families in the arrangement for or purchase of child care for children for care that is less than a 24-hour day. It also includes activities that promote parental choice, consumer education to help parents make informed choices about child care, activities to enhance health and safety standards established by the state, and activities that increase and enhance child care and early childhood development resources in the community.

"Child experiencing homelessness" means a child who lacks a fixed, regular, and adequate nighttime residence and includes:

1. A child who is living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar settings;
2. A child who is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason (sometimes referred to as "doubled-up");
3. A child who is living in a motel, hotel, trailer park, or camping grounds due to lack of alternative adequate accommodations;
4. A child who is living in congregate, temporary, emergency, or transitional shelters;
5. A child who is abandoned in a hospital;
6. A child who is living in a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; and
7. A child who is a migratory child as defined in § 1309 of the Elementary and Secondary Education Act of 1965, P.L. No. 89-10 (20 USC § 6399) who qualifies as homeless because he is living in circumstances described in subdivisions 1 through 6 of this definition.

"Child protective services" means the identification, receipt, and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child with special needs or disability" means (i) a child with a disability as defined in § 602 of the Individuals with Disabilities Education Act (20 USC § 1401); (ii) a child who is eligible for early intervention services under Part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.); (iii) a child who is younger than 13 years of age and who is eligible for services under § 504 of the Rehabilitation Act of 1973 (29 USC § 794); and (iv) a child with a documented developmental disability, intellectual disability, emotional disturbance, sensory or motor impairment, or significant chronic illness who requires special health surveillance or specialized programs, interventions, technologies, or facilities.

"Conditional eligibility" means that eligibility has been approved for a period not to exceed 90 days to allow families with a child experiencing homelessness additional time to obtain required documentation needed to complete a final eligibility determination.

"Copayment" means the amount paid to the provider by the parent to contribute toward the cost of child care. Such amount shall be established by the department in accordance with the current Child Care and Development Fund Plan for Virginia, approved by the U.S. Department of Health and Human Services. Copayments do not include charges above the maximum reimbursable rate, or charges for registration, activities, or transportation.

"DCSE" means the Division of Child Support Enforcement, the division of the Department of Social Services responsible for locating absent parents; establishing paternity; and establishing, modifying, enforcing, collecting, and disbursing child support or child and spousal support.

"Department" means the Virginia Department of Social Services.

"Exit eligibility limit" means the maximum gross countable income amount that a family can receive to be considered income eligible at redetermination. Such amount shall be established by the department in the current Child Care and Development Plan for Virginia approved by the U.S. Department of Health and Human Services.

"Family" means any individual, adult, or adults or children related by blood, marriage, adoption, or an expression of kinship who function as a family unit.

"Federal poverty guidelines" means the income levels by family size, determined by the U.S. Department of Health and Human Services, used as guidelines in determining at what level families in the country are living in poverty.

"Fee" means a charge for a service and may include copayments, charges above the maximum reimbursable rate, or charges for registration, activities, or transportation.

"Fee Program" means a category in the child care subsidy program that assists low income, non-TANF families with child care services.

"Fiscal year" means the local department financial calendar that begins in June of each calendar year and runs through May of the following calendar year.

"Good cause" means a valid reason as determined by the local department why (i) a parent in a two-parent household cannot provide the needed child care or (ii) why a parent will not be required to register with the Division of Child Support Enforcement.

"Graduated phase out" means the period of time for child care subsidy and services to continue as determined by the local department at redetermination for recipients whose income exceeds the initial eligibility limit but is below the exit eligibility limit.

"Head Start" means the comprehensive federal child development programs that serve children from birth through

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# Regulations

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age five years, pregnant women, and their families (as established by the Head Start Act (42 USC § 9801)).

"Income eligible" means that eligibility for assistance under the Child Care Subsidy Program is based on income and family size.

"In-home" means child care provided in the home in which all of the children in care reside and in which the provider does not reside.

"Initial eligibility limit" means the maximum gross countable income amount that a family can receive to be considered income eligible. Such amount shall be established by the department in the current Child Care and Development Plan for Virginia approved by the U.S. Department of Health and Human Services.

"Intentional program violation" or "IPV" means any action by an individual for the purpose of establishing or maintaining the family's eligibility for assistance under the Child Care Subsidy Program or for increasing or preventing a reduction in the amount of the assistance by (i) intentionally giving a false or misleading statement or misrepresenting, concealing, or withholding facts or (ii) any act intended to mislead, to misrepresent, conceal, or withhold facts, or to propound a falsity.

"Level one provider" means a child care provider that is not licensed by the department or is not approved (i) by a licensed family day system, (ii) under a local ordinance in accordance with §§ 15.2-741 and 15.2-914 of the Code of Virginia, or (iii) by the federal government.

"Level two provider" means a child care provider that is licensed by the department or is approved (i) by a licensed family day system, (ii) under local ordinance in accordance with §§ 15.2-741 and 15.2-914 of the Code of Virginia, or (iii) by the federal government.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Maximum reimbursable rate" means the maximum rate paid for child care services through the subsidy program that is established by the department and set out in the current Child Care and Development Fund Plan for Virginia filed with the U.S. Department of Health and Human Services.

"Need for child care" means the parents meets the income eligibility and employment or education requirements set forth in this chapter and requires child care services for part of the day.

"Nonfraud overpayment" means an overpayment that is the result of a local department error or an inadvertent household or provider error.

"Parent" means the adult or emancipated minor, as defined in § 16.1-334 of the Code of Virginia, who acts as the primary caretaker or guardian of a child, including an

individual acting in loco parentis. A parent may be by blood, marriage, or adoption and also means a legal guardian, person cohabiting with the natural or adoptive parent of a minor child, or other person standing in loco parentis.

"Provider" or "child care provider" means a person, entity, or organization providing child care services.

"Register with the Division of Child Support Enforcement" means that an applicant or recipient of child care subsidy services provides the information required by the Division of Child Support Enforcement to locate an absent parent, establish paternity, or establish a support order, unless good cause for noncooperation is determined by the program.

"Resource and referral" means services that provide information to parents to assist them in choosing a child care provider and may include assessment of the family's child care needs, collection and maintenance of information about child care needs in the community, and efforts to improve the quality and increase the supply of child care.

"Service plan" means the written, mutually agreed upon activities and responsibilities between the local department and the parent in the provision of assistance for child care services under the Child Care Subsidy Program.

"Supplemental Nutrition Assistance Program" or "SNAP" means the program administered by the U.S. Department of Agriculture to reduce hunger and increase food security.

"Supplemental Nutrition Assistance Program Employment and Training" or "SNAPET" means the program that provides job search, job search training, education, training, and work experience to nonpublic assistance SNAP recipients.

"TANF assistance unit" means a household composed of an individual or individuals who meet all categorical requirements and conditions of eligibility for TANF.

"TANF capped child" means a child who the TANF worker has determined ineligible for inclusion in the TANF assistance unit because the child was born more than 10 full months after the mother's initial TANF payment was issued.

"Temporary assistance for needy families" or "TANF" means the program authorized in § 406 of the Social Security Act (42 USC § 606) and administered by the department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Transitional child care" means the program that provides child care subsidy assistance to eligible former TANF recipients after the TANF case closes.

"Vendor" means a legally operating child care provider who is approved by the department to participate in the Child Care Subsidy Program. Multiple facilities or sites operated by the same person, entity, or organization are considered separate vendors.

"Vendor agreement" means the agreement between the department and a child care vendor that must be entered into and signed before child care payments under the Child Care Subsidy Program can be authorized.

"Virginia Initiative for Employment not Welfare" or "VIEW" means the program of employment opportunities to assist individuals receiving Temporary Assistance for Needy Families in attaining the goal of self-sufficiency as implemented in the Commonwealth of Virginia.

## **22VAC40-665-20. Families and children to be served.**

A. For an applicant to be eligible for child care subsidy and services, the applicant must have a child who, at the time of eligibility determination or redetermination:

1. Is younger than 13 years of age or is younger than the age of 18 years and physically or mentally unable to care for himself, or under court supervision;
2. Is a citizen or legal resident of the United States;
3. Is immunized according to requirements of the State Board of Health; however, families of a child experiencing homelessness that cannot provide documentation of their child's immunizations may be conditionally approved for services for a period not to exceed 90 days;
4. Is not eligible to attend public school during the part of the day when public education is available unless there is a documented reason for the child to be out of school;
5. Resides with the applicant or recipient for services;
6. Resides in the locality where application or redetermination for services is made;
7. Resides with a family whose income does not exceed the income limits established by the department in the current Child Care and Development Fund Plan for Virginia approved by the U.S. Department of Health and Human Services;
8. Resides with a family whose family assets do not exceed \$1 million in value, as certified by the applicant; and
9. Resides with a family in which there is a need for child care services, arising from one of the following situations:
  - a. In a two-parent household, there must be a documented reason why one of the parents cannot provide the needed child care.
  - b. Parents who need child care to support the following approved activities:
    - (1) Employment;
    - (2) Education or training leading to employment;
    - (3) Child protective services; or
    - (4) Assigned VIEW or SNAPET activity.

B. At the option of the local department, a child born to a family 10 months or more after the initial date of approval for the Fee Program may receive child care services or be placed on the local department waiting list.

C. A child of an owner or operator of a family day home shall not be eligible to receive a child care subsidy if that child will be cared for in the home of the owner or operator.

## **22VAC40-665-30. Child care subsidy program categories.**

Assistance under the Child Care Subsidy Program is provided through the following program categories, to the extent that funding is available:

1. TANF. Child care subsidy and services are made available to recipients of TANF. TANF child care includes needed child care for:
  - a. A TANF-capped child;
  - b. A child who receives Supplemental Security Income (SSI) if the parent is on the TANF grant and if the child would have been in the public assistance unit were it not for the receipt of SSI; and
  - c. Children who are not in the TANF assistance unit but who are financially dependent upon the parent who is in the TANF assistance unit.
2. Income eligible programs.
  - a. Transitional child care. Child care subsidy and services are made available to eligible children of former TANF recipients for up to the 12 months immediately following TANF case closure to support parental employment if the family is found income eligible, and there is a need for child care.
  - b. Head Start wrap-around child care. Head Start wrap-around child care subsidy and services are made available to eligible Head Start enrolled children. The program is for extended day and extended year child care beyond times covered by federally funded Head Start programs.
  - c. SNAP child care. Child care subsidy and services are made available to children of parents in Virginia's SNAP Education and Training (SNAPET) program to allow participation in an approved activity.
  - d. Fee Program child care. Fee child care subsidy and services are made available to children in eligible low-income families who are not receiving TANF or SNAPET and who meet the eligibility criteria for child care.

## **22VAC40-665-40. Case management.**

A. Applicants for child care subsidy and services must be at least 18 years of age unless they are an emancipated minor or

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# Regulations

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a minor who was receiving services as head of household prior to April 2016.

B. Applicants are required to sign an application, to provide verification of identity, and to cooperate with an assessment by the local department of social services.

C. Applicants and recipients must register with DCSE unless the local department determines that good cause exists for their failure to do so. Failure to register will result in case closure at redetermination.

D. At initial eligibility determination, a family with a child experiencing homelessness that cannot provide the required documentation may be conditionally approved for services for a period not to exceed 90 days. The final eligibility determination shall be completed once the 90 days has expired or full documentation is provided. Any payments made prior to the final eligibility determination shall not be considered an error or improper payment. Families with a child experiencing homelessness shall receive priority placement on the waiting list, if applicable.

E. Consumer education, including education on the selection and monitoring of quality child care, and a consumer statement regarding their selected vendor must be provided to parents to assist them in gaining needed information about the availability of child care services and providers. Parents must also be provided information on how to obtain a developmental screening for their child.

F. The department shall establish scales for determining financial eligibility for the income eligible child care subsidy program categories in subdivision 2 of 22VAC40-665-30.

1. Recipients in the TANF child care program category shall be considered income eligible based on their receipt of TANF; the local department shall not be required to verify their income.

2. At initial eligibility determination, income eligibility shall be determined by measuring the family's countable income and size against the percentage of the federal poverty guidelines for their locality. The family's income cannot exceed 85% of the state median income.

3. At redetermination, if a recipient family's countable income exceeds the initial eligibility limit, they shall be considered income eligible until their countable income meets or exceeds the exit eligibility limit established by the department. The family's income cannot exceed 85% of the state median income.

G. Families receiving child care subsidy and services shall be required to pay a copayment unless their gross monthly income is at or below the federal poverty guidelines and they are recipients of TANF, participants in the SNAPET program, or families where all children participate in the Head Start program. The copayment amount will be based on a scale set out in the current Child Care and Development Fund Plan for

Virginia. Copayments may be increased at redetermination and during graduated phase out if the family's countable income exceeds the initial eligibility limit but is below the exit eligibility limit. Local departments shall be required to act on changes reported by the family that would reduce the family's copayment during the 12-month eligibility period.

H. Income to be counted in determining income eligibility includes all earned and unearned income received by the family except the following:

1. Supplemental Security Income;
2. TANF benefits, including TANF match payments;
3. Transitional payments of \$50 per month to former VIEW participants;
4. Diversionary assistance payments;
5. General relief;
6. SNAP benefits;
7. Value of U.S. Department of Agriculture donated food;
8. Benefits received under Title VII, Nutrition Program for the Elderly of the Older Americans Act of 1965;
9. Value of supplemental food assistance under the Child Nutrition Act of 1996 and lunches provided under National School Lunch Act;
10. Earnings of a child younger than the age of 18 years;
11. Earned income tax credit;
12. Lump sum child support payments;
13. Scholarships, loans, or grants for education except any portion specified for child care;
14. Basic allowance for housing for military personnel living on base;
15. Clothing maintenance allowance for military personnel;
16. Payments received by AmeriCorps volunteers;
17. Tax refunds;
18. Lump sum insurance payments;
19. Monetary gifts for one-time occasions or normal annual occasions;
20. Payments made by non-financially responsible third parties for household obligations, unless payment is made in lieu of wages;
21. Loans or money borrowed;
22. Money received from sale of property;
23. Earnings less than \$25 a month;

- 24. Capital gains;
- 25. Withdrawals of bank deposits;
- 26. GI Bill benefits;
- 27. Reimbursements, such as for mileage;
- 28. Foreign government restitution payments to Holocaust survivors;
- 29. Payments from the Agent Orange Settlement Fund or any other fund established for settlement of Agent Orange product liability litigation; and
- 30. Monetary benefits provided to the children of Vietnam Veterans as described in 38 USC § 1823(c).

The amount of wages subject to garnishment and the amount of child support paid to another household shall be deducted from the family's income.

I. The eligibility period for TANF (nonVIEW), transitional child care, Fee Program, and Head Start begins with the effective date of the approval of the child care subsidy and services application. The eligibility period for VIEW and SNAPET participants begins with the date of referral from the VIEW or SNAPET program.

J. Recipients will be eligible for child care subsidy and services for a minimum of 12-months before eligibility is redetermined unless:

- 1. Their countable income exceeds 85% of state median income. Temporary increases in income will not affect eligibility or family copayments, including monthly income fluctuations, which when taken in isolation, may incorrectly indicate that a recipient's income exceeds 85% of state median income.
- 2. There is a finding that the recipient committed an intentional program violation.
- 3. The recipient is no longer a resident of Virginia.
- 4. The recipient is a family of a child experiencing homelessness that was conditionally approved because they could not provide required documentation. If the documentation is provided to the local department within 90 days, the recipient may remain eligible for the remainder of the 12-month eligibility period. If documentation is not provided to the local department within 90 days, or the recipient is determined ineligible after full documentation is provided, the child care case will be closed.

K. Recipients will retain eligibility despite any change in residency within the state.

L. Recipients will retain eligibility despite any eligible child turning 13 years of age during the 12-month eligibility period.

M. The beginning date of service payment for TANF (nonVIEW), transitional child care, Fee Program, and Head Start participants may begin with the date the applicant is determined eligible and a vendor approved by the department is selected. The beginning date of service payment for VIEW or SNAPET participants may begin with the date of referral from the VIEW or SNAPET program if the applicant is determined eligible and a vendor approved by the department is selected.

1. Eligibility must be determined within 30 days of receipt of a signed application or referral from VIEW or SNAPET by the local department.

2. Payment cannot be made to any provider prior to the effective date of their approval by the department as a vendor.

N. Eligibility will be redetermined in the final month of the 12-month eligibility period described in subsection I of this section, at which time the recipient will be contacted in order to have all eligibility criteria be reevaluated. The local department's contact with the recipient should not unduly disrupt a parent's work schedule. Recipients shall not be required to appear in person for eligibility redetermination.

O. Child care case managers shall prepare a written service plan for each child care case with the applicant or recipient. The service plan shall state the activities and responsibilities of the local department and the parent in the provision of child care services. The VIEW Activity and Service Plan will serve as the service plan for parents active in VIEW. If the parents are SNAPET participants, the SNAPET Plan of Participation will serve as the service plan.

P. Recipients shall be required to:

1. Report to the local department the following changes within 10 calendar days of the change:

- a. Countable income that exceeds 85% of the state median income.
- b. Recipient is no longer a resident of Virginia or the county in which they are receiving services.

2. Pay all fees owed to the vendor not paid for under the Child Care Subsidy Program.

3. Reimburse the local department for any overpayment made as a result of fraud, intentional program violation, or an inadvertent household error.

4. Pay fees owed to the vendor or reimbursements owed to the local department; failure to do so may result in case closure at redetermination.

The local department shall inform recipients of child care subsidy and services of these responsibilities.

Q. Adequate documentation supporting the reasons for termination must be filed in the case record. Eligibility in the

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# Regulations

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Fee Program is limited to a total of 72 months per family. Receipt of assistance in any other program category does not count toward the 72-month limitation.

R. When sufficient funds are not available, local departments of social services must screen applicants for potential eligibility and place them on the department's waiting list unless the family declines placement.

S. Applicants and recipients will be afforded due process through timely written notices of any action determining or affecting their eligibility for services or copayment amount. Such written notice shall include the reason for the action and the notice of appeal rights and procedures, including the right to a fair hearing if the applicant or recipient is aggrieved by the local department's action or failure to act on an application. If a recipient requests an appeal prior to the effective date of any proposed action and if the continuation of services is requested by the parent, child care services will continue until a decision is rendered by a hearing officer. If the decision of the local department is upheld by the hearing officer, the recipient must repay the amount of services paid during the appeal process.

## **22VAC40-665-50. Parental choice.**

Families who receive child care subsidy and services shall have the right to choose a provider from among child care providers operating legally and that are approved by the department to participate in the Child Care Subsidy Program as a vendor. Local departments shall not establish any policies that limit parental choice of providers.

## **22VAC40-665-60. Access to children.**

A. Vendors shall allow parents unlimited access to their children when they are in care.

B. Vendors shall allow state and local department staff unlimited access to children in care.

## **22VAC40-665-70. Vendor requirements.**

A. Vendors who participate in the subsidy program must be at least 18 years of age.

B. Vendors shall permit and cooperate with inspections by staff from the department and local departments of social services.

C. Vendors shall comply with the regulations applicable to the vendor's type of child care, including all requirements to conduct background checks.

D. Vendors shall comply with the subsidy program vendor requirements as outlined in Parts II (22VAC40-665-120 et seq.) and III (22VAC40-665-470 et seq.) of this chapter applicable to the vendor's type of care.

E. All vendors who participate in the Child Care Subsidy Program shall enter into a vendor agreement with the department. The vendor's signature or electronic submission

confirms its agreement to comply with the applicable sections of this chapter and the terms of the agreement, including payment processes, electronic submission and tracking of attendance, absences, and vendor requirements. Vendors shall be subject to monitoring inspections to ensure compliance with this chapter and with the vendor agreement.

F. Employees of any division within the department or a local department of social services cannot participate in the subsidy program as a vendor.

G. Vendors shall provide notice to individuals required under this chapter to undergo background checks of the opportunity to challenge the results of the background checks in accordance with the procedures described in this subsection in the case of criminal checks, or by contacting the local department of social services that reported such individual to be named on the Child Protective Services Central Registry.

1. Federal Bureau of Investigation (FBI): If an individual is denied employment or the opportunity to provide volunteer or contractual services because of information appearing on the individual's FBI record and it comes to the individual's attention that he is not the person of the record, the individual may initiate a challenge of the information contained in the record. The facility is required by state and federal laws to provide the individual with a copy of the challenge procedures. The challenge procedures can be found at <https://www.fbi.gov/services/cjis/identity-history-summary-checks>.

2. Virginia State Police: In instances where it comes to an individual's attention that his name or other descriptive information is a matter of record in the Central Criminal Records Exchange, and he is not the person of the record, then the individual may initiate a challenge of the information contained in the record as provided at [http://www.vsp.state.va.us/CJIS\\_CCRES.htm](http://www.vsp.state.va.us/CJIS_CCRES.htm). The individual must report this information to a local sheriff, police, or State Police Headquarters and request to be fingerprinted for the purpose of challenging a criminal record. The individual to be fingerprinted must show personal identification. The official taking the fingerprints must document on letterhead paper that he has reviewed the individual's personal identification and obtained the fingerprints. This letter and the fingerprints are to be mailed to the following address: Manager Central Criminal Records Exchange Virginia Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472. Within five workdays, the individual who initiated the challenge will receive written confirmation of the fingerprint search results, whether he is or is not the person of the record, and record modifications taken, if applicable.

3. If an individual successfully challenges information on a background check in accordance with these procedures, the

vendor may submit a request for a new background investigation in order to obtain an accurate record.

H. Disputes between the vendor and the department regarding the payment for services rendered, enforcement or termination of the vendor agreement, or disqualification from participating in the Child Care Subsidy Program may be appealed by the vendor pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), as provided in this subsection. This shall be the sole remedy for such disputes.

1. Within 30 days of the date of a written notice of department action against a vendor, the vendor may request an appeal in writing with the department.

2. Upon receiving the vendor's notice of appeal, the department shall schedule an informal conference at which the vendor may provide such further information or present any additional facts for the department to reconsider its action. The department shall issue a written decision within 15 business days from the conclusion of the informal conference. The vendor may waive the holding of the informal conference and request the formal hearing described in subdivision 3 of this subsection in its initial request for an appeal to the department.

3. The vendor may appeal the decision from the informal conference by requesting an administrative hearing within 30 days of the date of the decision from the informal conference. The administrative hearing shall be held in accordance with § 2.2-4020 of the Code of Virginia and shall be presided over by a hearing officer designated by the Supreme Court of Virginia pursuant to subsection A of § 2.2-4024 of the Code of Virginia. Within 30 days of the administrative hearing, the hearing officer shall recommend a decision to the Commissioner of the Virginia Department of Social Services. The commissioner shall issue a final decision within 30 days of receipt of the hearing officer's recommended decision in accordance with subsection C of § 2.2-4021 of the Code of Virginia.

4. The vendor may seek court review of the commissioner's decision in accordance with Article 3 (§ 2.2-4018 et. seq.) of the Virginia Administrative Process Act.

**22VAC40-665-80. Determining payment amount.**

**A. Maximum reimbursable rates.**

1. The department will establish maximum reimbursable rates for child care subsidies for all localities in the state by type of care, level of regulatory oversight, age of child, and unit of service. Such rates shall be available in Appendix F of the Child Care Subsidy Program Guidance Manual on the department's website at [http://www.dss.virginia.gov/files/division/cc/assistance/parents\\_guardians/guidance\\_procedures/Child\\_Care\\_Subsidy\\_Guidance\\_Manual.pdf](http://www.dss.virginia.gov/files/division/cc/assistance/parents_guardians/guidance_procedures/Child_Care_Subsidy_Guidance_Manual.pdf).

2. For children with special needs or disability, payment over the maximum reimbursable rate is allowed when this is appropriate as determined and documented by the local department. The maximum reimbursable rate for children with special needs may not exceed twice the rate for care of children who do not have special needs.

3. Vendors will be paid for the amount of care approved up to the maximum reimbursable rate of the locality in which the vendor is located. The department will pay the rates and fees providers charge the general public, up to the maximum reimbursable rate. Level two vendors will be paid a higher maximum reimbursable rate established by the department.

4. Parents who choose a vendor that charges a rate higher than the maximum reimbursable rate set by the department shall be responsible for payment of the additional amount, if charged by the vendor, unless the local department elects to pay the additional amount out of local funds.

B. For in-home child care, the payment rate must be at least minimum wage, but not more than the maximum reimbursable rate for the number of children in care.

C. A single annual registration fee, if charged, will be paid to level two vendors only. The registration fee must not exceed \$100 nor be higher than the fee the vendor charges the general public. If the requirement for payment of another registration fee is beyond the control of the recipient or due to extenuating circumstances, an additional registration fee may be paid. The cost of transportation services provided by the vendor, if any, shall be included in the total cost of care. The total cost of care, excluding the single annual registration fee but including other fees and transportation, must not exceed the maximum reimbursable rate.

D. Level two providers may be paid up to 10 holidays on which no child care services are provided as identified in the vendor agreement. Certified preschools, religious exempt centers, and voluntary registered family day homes that are classified as level one providers may be paid for holidays on which no child care services are provided in accordance with the provisions of the vendor agreement. All other level one providers will not receive payment for any holiday unless services are provided on such day.

E. Level two providers may be paid for up to 24 days the child is absent per fiscal year.

**22VAC40-665-90. Complaints in the child care setting.**

All complaints regarding possible child abuse or neglect occurring in a child care setting must be referred to the child protective services unit at the local department serving the area where the vendor is located. All other complaints must be referred to the department's hotline, which will be provided to parents during intake at initial eligibility

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# Regulations

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determination and will be available on the department's website ([www.dss.virginia.gov](http://www.dss.virginia.gov)).

## **22VAC40-665-100. Recipient intentional program violation and disqualification.**

A. When it is suspected that there has been a deliberate misrepresentation of facts by a recipient in order to receive benefits, services, or payments, the local department shall investigate whether or not an intentional program violation was committed. If the local department finds clear and convincing evidence that an intentional program violation has occurred, the case will be referred for an administrative disqualification hearing. The local department may also refer the case to the attorney for the Commonwealth for criminal prosecution.

B. Recipients found to have committed an intentional program violation either through an administrative disqualification hearing or by a court of competent jurisdiction shall be ineligible to participate in the Child Care Subsidy Program for a period of three months upon the first finding, 12 months upon the second finding, and permanently upon the third finding.

C. In cases where a nonfraud overpayment occurred due to an inadvertent household error, the parent will not be disqualified from participating in the subsidy program as long as a repayment schedule is entered into with the local department and payments are made according to that schedule.

D. Administrative disqualification hearings shall be held in accordance with the following:

1. Prior to submitting the request for an ADH to the state hearing authority, the local department shall provide written notification to the individual suspected of an intentional program violation that the individual can waive his right to an ADH by signing a waiver request and returning it to the local department within 10 days from the date notification is sent to the individual in order to avoid submission of the request for an ADH.

2. If a signed waiver is received, no ADH is conducted and the disqualification period is imposed.

3. The local department shall request an ADH be scheduled by submitting a written request to the state hearing authority. The form must include the following information:

- a. Identifying information;
- b. Summary of the allegations;
- c. Summary of the evidence; and
- d. Copies of documents supporting the allegations.

The referral is to be signed and dated by the supervisor or local department director.

4. The hearing officer will schedule a date for the ADH and provide written notice to the individual suspected of committing an IPV at least 30 days in advance of the date the ADH has been scheduled. The notice shall contain at a minimum:

- a. The date, time, and place of the hearing;
- b. The charges against the individual;
- c. A summary of the evidence, and how and where the evidence can be examined;
- d. A statement that the decision will be based solely on information provided by the local department of social services if the individual fails to appear at the hearing;
- e. A statement that the individual or representative will, upon receipt of the notice, have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;
- f. A statement that a determination of intentional program violation will result in a disqualification period, and a statement of which penalty is applicable to the case scheduled for a hearing;
- g. A listing of the individual's rights, including the right to:

(1) Examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well as during the hearing;

(2) At his option, present his case himself or with the aid of an authorized representative;

(3) Bring witnesses;

(4) Establish all pertinent facts and circumstances;

(5) Advance any arguments without undue interference; and

(6) Question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses; and

h. If there is an individual or organization available that provides free legal representation, the notice shall advise the affected individual of the availability of the service.

5. The time and place of the ADH shall be arranged so that the hearing is accessible to the individual suspected of committing an IPV. The individual may request a postponement of the ADH if the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. The ADH shall not be postponed for more than a total of 30 days and the state hearing authority may limit the number of postponements.

6. The ADH can be held even if the individual fails to appear. The individual has 10 days after the date of the scheduled ADH to present reasons indicating a good cause failure to appear.

7. Even though the individual is not present, the hearing officer shall carefully consider the evidence and determine if an IPV was committed, based on clear and convincing evidence.

8. If the recipient is found to have committed an IPV, but a hearing officer later determines there was good cause for not appearing, the previous decision will no longer be valid and a new ADH shall be conducted. The hearing officer who conducted the original hearing may conduct the new hearing. The good cause decision shall be entered into the hearing record by the hearing officer.

9. The hearing officer shall:

a. Identify those present for the record;

b. Advise the individual that he may refuse to answer questions during the hearing and that anything said or signed by the individual concerning the charges may be used against him in a court of law;

c. Explain the purpose of the ADH, the procedure, and how and by whom a decision will be reached and communicated;

d. Consider all relevant issues and determine if an IPV was committed, based on clear and convincing evidence;

e. Request, receive, and make part of the record all evidence determined necessary to render a decision;

f. Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing; and

g. Advise the local department to obtain a medical assessment at the local department's expense if the hearing officer considers it necessary.

10. The individual alleged to have committed an IPV shall be given adequate opportunity to:

a. Examine all documents and records to be used at the ADH at a reasonable time prior to the ADH as well as during the ADH. The contents of the case file, including the application form and documents of verification used by the local department to establish the alleged IPV, shall be made available;

b. Present his case himself or with the aid of an authorized representative;

c. Bring witnesses;

d. Establish all pertinent facts and circumstances;

e. Question or refute any testimony or evidence, including the opportunity to confront and cross-examine witnesses; and

f. Advance arguments without any undue influence.

11. The hearing officer shall prepare a written report of the hearing, which shall include findings, conclusions, decisions, and appropriate recommendations. The decision shall specify the reasons for the decision, identify the supporting evidence, identify pertinent regulations, and respond to reasoned arguments made by the individual or representative.

12. If the individual is found to have committed an IPV, the written decision shall advise the individual that disqualification shall occur.

Upon receipt of the notice of a decision from the hearing officer finding that the individual committed an IPV, the local department shall inform the individual of the reason for the disqualification and the date the disqualification will take effect.

## **22VAC40-665-105. Vendor agreement termination and vendor disqualification.**

A. A vendor agreement may be terminated for the following:

1. The vendor's license to operate a child care facility is revoked, suspended, or denied.

2. The vendor's business location changes; ownership of the vendor's business is assigned, sold, or otherwise transferred; the vendor's business structure changes; the vendor's employer identification number changes; or the vendor's legal operating status becomes invalid for any reason.

3. A deliberate misrepresentation of facts to the department or a local department of social services by a vendor in order to receive payments it was not entitled to receive or acceptance by the vendor of payments that the vendor knows, or should reasonably have known, the vendor was not entitled to receive.

4. The vendor fails to notify the department of a change in circumstances that affects payments received by the vendor.

5. The vendor's violation of any term of the vendor agreement, of any requirement under this chapter, or of any state laws and regulations related to the vendor's license or its exemption from licensure, including the requirements for background checks of the vendor's employees, volunteers, and other individuals who come into contact with children.

B. When it is suspected that there has been a deliberate misrepresentation of facts by a vendor in order to receive payments it was not entitled to receive, the local department

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# Regulations

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shall investigate. If there is clear and convincing evidence that such an act has occurred, the case will be referred to the Division of Child Care and Early Childhood Development for termination of the vendor agreement and possible disqualification from participation in the Child Care Subsidy Program. The local department may also refer the case to the attorney for the Commonwealth for criminal prosecution.

C. Vendors will be permanently disqualified from participating in the Child Care Subsidy Program upon the first criminal conviction of fraud or upon a finding by the department or local department that the vendor deliberately misrepresented facts in order to receive payments it was not entitled to receive.

D. Vendors found to be repeatedly in violation of their vendor agreement or of the requirements of this chapter for reasons other than acts by the vendor described in subsection B of this section may be disqualified to participate in the Child Care Subsidy Program for a minimum period of one year.

E. Individuals affiliated with vendors as owners, partners, directors, officers, shareholders, members, and managers shall be subject to disqualification under this section.

## **22VAC40-665-110. Repayment.**

A. In addition to any criminal punishment, anyone who causes the local department to make an overpayment to a vendor shall be required to repay the amount of the overpayment.

B. Any overpayment must be refunded to the department by the locality. If an overpayment was made as a result of an error by the local department, the local department will not seek to recoup those funds from the parent or the vendor.

## **22VAC40-665-115. Required training for local department staff.**

Local department staff with responsibilities for implementing the Child Care Subsidy Program shall complete guidance training and other training as required by the department.

### Part II

### Subsidy Program Vendor Requirements for Family Day Homes

## **22VAC40-665-120. Definitions; subsidy program requirements for family day home vendors.**

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

"Accessible" means capable of being entered, reached, or used.

"Adult" means any individual 18 years of age or older.

"Age and stage appropriate" means the curriculum, environment, equipment, and adult-child interactions are suitable for the ages of the children within a group and the individual needs of any child.

"Assistant" means an individual who helps the provider in the care, protection, supervision, and guidance to children in the home.

"Attendance" means the actual presence of an enrolled child.

"Body fluids" means urine, feces, vomit, saliva, blood, nasal discharge, eye discharge, and injury or tissue discharge.

"Caregiver" means an individual who provides care, protection, supervision, and guidance to children in the home and includes the provider and assistant.

"Child" means any individual less than 18 years of age.

"Child experiencing homelessness" means a child who lacks a fixed, regular, and adequate nighttime residence and includes:

1. A child who is living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar settings;

2. A child who is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason (sometimes referred to as "doubled-up");

3. A child who is living in a motel, hotel, trailer park, or camping grounds due to lack of alternative adequate accommodations;

4. A child who is living in congregate, temporary, emergency, or transitional shelters;

5. A child who is abandoned in a hospital;

6. A child who is living in a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; and

7. A child who is a migratory child as defined in § 1309 of the Elementary and Secondary Education Act of 1965, P.L. No. 89-10 (20 USC § 6399) who qualifies as homeless because he is living in circumstances described in subdivisions 1 through 6 of this definition.

"Child with special needs or disability" means (i) a child with a disability as defined in § 602 of the Individuals with Disabilities Education Act (20 USC § 1401); (ii) a child who is eligible for early intervention services under Part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.); (iii) a child who is less than 13 years of age and who is eligible for services under § 504 of the Rehabilitation Act of 1973 (29 USC § 794); and (iv) a child with a documented developmental disability, intellectual disability, emotional disturbance, sensory or motor impairment, or significant

chronic illness who requires special health surveillance or specialized programs, interventions, technologies, or facilities.

"Cleaned" means treated in such a way as to remove dirt and debris by scrubbing and washing with soap and water or detergent solution and rinsing with water or the use of an abrasive cleaner on inanimate surfaces.

"Communicable disease" means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse or mosquito) or environmental object (such as a table surface). Some communicable diseases are reportable to the local health authority.

"Department" means the Virginia Department of Social Services.

"Department representative" means an employee or designee of the Virginia Department of Social Services, acting as the authorized agent of the Commissioner of the Virginia Department of Social Services.

"Evacuation" means movement of occupants out of the building to a safe area near the building.

"Evening care" means care provided after 7 p.m. but not through the night.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children less than 13 years of age, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation.

"Inaccessible" means not capable of being entered, reached, or used.

"Infant" means a child from birth to 16 months of age.

"Lockdown" means a situation where children are isolated from a security threat, and access within and to the home is restricted.

"Overnight care" means care provided after 7 p.m. and through the night.

"Over-the-counter or nonprescription medication" means medication that can be purchased without a written prescription. This includes herbal remedies and vitamin and mineral supplements.

"Parent" means a parent by blood, marriage, or adoption and also means a legal guardian or other person standing in loco parentis.

"Preschool" means a child from two years up to the age of eligibility to attend public school, age five years by September 30 of that same year.

"Provider" means a person, entity, or organization providing child care services.

"Residence" means the principal legal dwelling that is occupied for living purposes by the provider or a child in care and contains the facilities necessary for sleeping, eating, cooking, and family living.

"Sanitized" means treated in such a way as to remove bacteria and viruses from inanimate surfaces through first cleaning and secondly using a solution of one tablespoon of bleach mixed with one gallon of water and prepared fresh daily or using a sanitizing solution approved by the U.S. Environmental Protection Agency. The surface of the item is sprayed or dipped into the sanitizing solution and then allowed to air dry for a minimum of two minutes or according to the sanitizing solution instructions.

"School age" means eligible to attend public school, age five years or older by September 30 of that same year.

"Serious injury" means a wound or other specific damage to the body, such as unconsciousness; broken bones; dislocation; a deep cut requiring stitches; poisoning; concussion; or a foreign object lodged in eye, nose, ear, or other body orifice.

"Shaken baby syndrome" or "abusive head trauma" means a traumatic injury that has been inflicted upon the brain of an infant or young child. The injury can occur during violent shaking causing the child's head to whip back and forth, the brain to move about, and blood vessels in the skull to stretch and tear.

"Shelter-in-place" means movement of occupants of the building to designated protected spaces within the building.

"Toddler" means a child from 16 months of age up to 24 months of age.

"Vendor" means a legally operating child care provider who is approved by the department to participate in the Child Care Subsidy Program. Multiple facilities or sites operated by the same person, entity, or organization are considered separate vendors.

"Vendor agreement" means the agreement between the department and a vendor that must be entered into and signed before child care payments paid to the vendor under the Child Care Subsidy Program can be authorized.

"Volunteer" means a person who works at the family day home and:

1. Is not paid for services provided in the family day home;
2. Is not counted in the caregiver-to-children ratios; and
3. Is in sight and sound supervision of a caregiver when working with a child.

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# Regulations

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Any unpaid person not meeting this definition shall be considered a "caregiver" and shall meet caregiver requirements.

## **22VAC40-665-130. (Reserved.)**

## **22VAC40-665-140. Purpose and applicability.**

The standards in this part apply to family day homes that participate in the Child Care Subsidy Program as a vendor. The purpose of these standards is to protect children who are less than the age of 13 years, less than the age of 18 years and physically or mentally unable to care for themselves, or under court supervision, and who are separated from their parents during part of the day by:

1. Ensuring that the activities, services, and facilities of family day homes participating in the Child Care Subsidy Program are conducive to the well-being of children; and
2. Reducing risks to the health and safety of such children in the child care environment.

## **22VAC40-665-150. Operational responsibilities.**

A. The vendor shall ensure compliance with the standards in this part, the terms of the vendor agreement, and all relevant federal, state, or local laws and regulations.

B. The vendor shall ensure compliance with any of its own policies that have been disclosed to the parents of an enrolled child.

C. The vendor shall ensure that the applicant, household member, and any caregiver who is or will be involved in the day-to-day operations of the family day home or is or will be alone with, in control of, or supervising one or more of the children shall undergo a background check in accordance with § 63.2-1725 of the Code of Virginia and shall not have an offense as defined in § 63.2-1719 of the Code of Virginia.

D. The vendor shall ensure that the family day home does not exceed the capacity of children cared for as allowed by law or regulation.

E. When at least one child receives care for compensation, all children who are in care and supervision count in the capacity of children being cared for. When children 13 years or older are enrolled in the program and receive supervision in the program, they shall be counted in the number of children receiving care and the vendor shall comply with the standards in this part for these children.

F. The vendor shall inform all caregivers of children's allergies, sensitivities, and dietary restrictions.

G. The vendor shall maintain, in a way that is accessible to all caregivers, a current written list of all children's allergies, sensitivities, and dietary restrictions. This list shall be dated and kept confidential.

## **22VAC40-665-160. General recordkeeping; reports.**

A. Caregiver records and children's information shall be kept confidential.

B. The vendor shall maintain a written hard copy record of daily attendance that documents the arrival and departure of each child in care as it occurs.

C. Children's records shall be made available to a child's parent upon request, unless otherwise ordered by the court.

D. Records, reports, and information required by this part may be kept as hard copy or electronically, except attendance records must be maintained pursuant to subsection B of this section, and shall be maintained in the home and made accessible to department's representative for five years after termination of services or separation from employment unless specified otherwise.

## **22VAC40-665-170. Children's records.**

A. Vendors shall maintain, and keep at the family day home, written or electronic information for each enrolled child, which shall be made available to the department's representative upon request.

B. The child's information shall include the following:

1. Child's full name, nickname (if any), sex, address, and birthdate;
2. Proof of the child's identity;
3. Name, home address, and telephone number for each parent who has custody;
4. Name, address, and telephone number for each custodial parent's place of employment or school attendance, if applicable;
5. Name, address, and telephone number of at least one person designated by the parent to contact in case of an emergency if the parent cannot be reached;
6. If applicable, information on allergies, including food allergies, intolerances to food, medication, or other substances, and actions to be taken in an emergency situation; information on other physical problems; pertinent developmental information; and any special accommodations needed;
7. Names of persons other than the custodial parent who are authorized to pick up the child;
8. Immunization records for the child received on or before the child's first day of attendance, except that children experiencing homelessness may provide such records within 90 days of enrollment;
9. Written authorization for emergency medical care should an emergency occur and the parent cannot be located immediately unless the parent presents a written

objection for the provision of medical treatment on religious or other grounds;

10. Written authorization to administer prescription or nonprescription medications if the vendor agrees to administer medication;

11. Special care instructions, including recommendations for the care and activities of a child with special needs, exception to infant being fed on demand, etc.;

12. A written care plan for each child with a diagnosed food allergy, to include instructions from a physician regarding the food to which the child is allergic and the steps to be taken in the event of a suspected or confirmed allergic reaction;

13. Record of any accidents or injuries sustained by the child while in care;

14. Permission to transport child if the vendor provides transportation;

15. Permission for field trips;

16. Permission for swimming or wading activities to include a parent's statement of the child's swimming ability, if applicable;

17. A written statement that the vendor will notify the parent when the child becomes ill and that the parent will arrange to have the child picked up as soon as possible if so requested by the vendor;

18. Any written agreements between the parent and the vendor; and

19. Documentation of the enrollment of a child experiencing homelessness enrolled under provisions of 22VAC40-665-210 A 2.

## **22VAC40-665-180. Caregiver records.**

The following records shall be kept for each caregiver:

1. Name, address, verification of age, and date of employment or volunteering.

2. Documentation that background checks were completed, including:

a. The department's letter indicating eligibility to be hired provided by the department or the department's contractor indicating:

(1) Satisfactory results of the Virginia State Police name search for criminal history; and

(2) Satisfactory results of the Child Protective Services Central Registry check.

b. The individual's sworn statement or affirmation as to whether the individual has ever been:

(1) The subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; or

(2) Convicted of a crime or is the subject of any pending criminal charges with the Commonwealth or any equivalent offense outside the Commonwealth.

c. The vendor shall have such documentation for any individual who begins employment or service after the vendor agreement has been signed in the file within 30 days of the individual's beginning date of employment or service. However, the vendor shall not be deemed to be in violation of this section if documentation is maintained that the checks were submitted within the first seven days of employment or service and the results are not available due to an administrative delay beyond the vendor's control.

d. Documentation of subsequent background checks conducted every three years.

## 3. Tuberculosis screening results.

4. Certifications for first aid, cardiopulmonary resuscitation, and other certifications as required by the responsibilities held by the caregiver.

5. Documentation that training required by 22VAC40-665-230 has been completed that includes the name and topic of the training, the date completed, the total hours of the session, and the names of the organization that sponsored the training and of the trainer.

6. Date of separation from employment where applicable.

7. Documentation of the health requirements under 22VAC40-665-190.

## **22VAC40-665-190. Health requirements for caregivers.**

A. Each caregiver must be evaluated by a health professional and be issued a statement that the individual is determined to be free of communicable tuberculosis (TB). Such statement shall be submitted no later than 21 days after employment or volunteering and shall have been completed within 12 months prior to or 21 days after employment or volunteering.

B. Caregivers shall undergo TB screenings at least every two years from the date of the initial screening, or more frequently if recommended by a physician.

C. The vendor or the department's representative may require a report of examination by a licensed physician or mental health professional when there are indications that a caregiver's physical or mental health may endanger the health, safety, or well-being of children in care.

D. A caregiver who is determined by a licensed physician or mental health professional to show an indication of a physical or mental condition that may endanger the health, safety, or well-being of children in care or that would prevent the

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# Regulations

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performance of duties shall be removed immediately from contact with children and food served to children until the condition is cleared as evidenced by a signed statement from the physician or mental health professional.

## **22VAC40-665-200. Reports.**

A. The vendor shall inform the department's inspector as soon as practicable, but not to exceed one business day, of the following:

1. The death of a child while under the vendor's supervision;
2. A missing child when local authorities have been contacted for help; and
3. The suspension or termination of all child care services for more than 24 hours as a result of an emergency situation and any plans to resume child care.

B. The vendor shall inform the department's representative as soon as practicable, but no more than two business days, of any serious injury to a child while under the vendor's supervision.

C. Any suspected incident of child abuse or neglect shall be reported in accordance with § 63.2-1509 of the Code of Virginia.

## **22VAC40-665-210. Immunizations for children.**

A. Before a child may attend the family day home, the vendor shall obtain documentation that the child has been immunized according to the requirements of subsection A of § 32.1-46 of the Code of Virginia and applicable State Board of Health regulations.

1. The vendor may allow a child to attend contingent upon a conditional enrollment. Documentation related to the child's conditional enrollment shall be maintained in the child's record. A conditional enrollment means the enrollment of a child for a period of 90 days contingent upon the child having received at least one dose of each of the required vaccines and the child possessing a plan from a physician or local health department for completing his immunization requirements within the ensuing 90 calendar days. If the child requires more than two doses of the hepatitis B vaccine, the conditional enrollment period, for hepatitis B vaccine only, shall be 180 calendar days.
2. If a child is experiencing homelessness and does not have documentation of the required immunizations, the vendor may allow the child to attend during a grace period of no more than 90 days to allow the parent or guardian time to obtain documentation of required immunizations.

B. The vendor shall obtain documentation of additional immunizations once every six months for children less than the age of two years.

C. Pursuant to subsection C of § 22.1-271.2 of the Code of Virginia and 12VAC5-110-110, documentation of immunizations is not required for any child whose:

1. Parent submits an affidavit to the vendor on the current form approved by the Virginia Department of Health stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices; or
2. Physician or a local health department states on a Department of Health-approved form that one or more of the required immunizations may be detrimental to the child's health, indicating the specific nature and probable duration of the medical condition or circumstance that contraindicates immunization.

## **22VAC40-665-220. General qualifications.**

A. The vendor and any caregivers who are left alone with children shall be capable of communicating effectively both orally and in writing as applicable to the job responsibility and be capable of communicating with emergency personnel.

B. Caregivers must be at least 16 years of age; however no caregiver less than the age of 18 years may be alone with children or administer medication. Caregivers less than the age of 18 years shall be under sight and sound supervision of an adult caregiver.

## **22VAC40-665-230. Caregiver training and development.**

A. Prior to approval as a subsidy vendor, the perspective vendor shall complete Virginia Preservice Training for Child Care Staff sponsored by the Department of Social Services, which shall include the following topics and training modules:

1. Building and physical premises safety;
2. Emergency preparedness and response planning;
3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;
4. Administration of medication, consistent with standards of parental consent;
5. Prevention of shaken baby syndrome and abusive head trauma (AHT);
6. Prevention of and response to emergencies due to food and allergic reactions;
7. Recognizing child abuse and neglect and reporting responsibilities;
8. Preventing the spread of disease, including immunization requirements;
9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;

- 10. Transportation;
- 11. Foundations of child development;
- 12. Inclusion: Exploring the meaning and the mindset;
- 13. Oral health; and
- 14. Introduction to the Child Care Subsidy Program.

B. Within the first 90 days of employment or service all caregivers shall complete Virginia Preservice Training for Child Care Staff sponsored by the Department of Social Services, which shall include training on the following topics and training modules:

- 1. Building and physical premises safety;
- 2. Emergency preparedness and response planning;
- 3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;
- 4. Administration of medication, consistent with standards of parental consent;
- 5. Prevention of shaken baby syndrome and abusive head trauma (AHT);
- 6. Prevention of and response to emergencies due to food and allergic reactions;
- 7. Recognizing child abuse and neglect and reporting responsibilities;
- 8. Preventing the spread of disease, including immunization requirements;
- 9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;
- 10. Transportation;
- 11. Foundations of child development;
- 12. Inclusion: Exploring the meaning and the mindset;
- 13. Oral health; and
- 14. Introduction to the Child Care Subsidy Program.

C. All caregivers hired prior to (insert the effective date of this regulation) shall complete Virginia Preservice Training for Child Care Staff sponsored by the Department of Social Services, to include all of the topics described in subsection B of this section, within (insert date 90 days from the effective date of this regulation). This training may count for staff annual training requirements in subsection H of this section.

D. Orientation training for caregivers shall be completed on the following specific topics prior to the caregiver working alone with children and within seven days of the date of employment or the date of subsidy vendor approval:

- 1. Playground safety procedures;

- 2. Responsibilities for reporting suspected child abuse or neglect;
- 3. Confidentiality;
- 4. Supervision of children, including arrival and dismissal procedures;
- 5. Procedures for action in the case of lost or missing children, ill or injured children, medical and general emergencies;
- 6. Medication administration procedures, if applicable;
- 7. Emergency preparedness plan as required in 22VAC40-665-400 B;
- 8. Procedures for response to natural and man-made disasters;
- 9. Prevention of shaken baby syndrome or abusive head trauma including coping with crying babies and fussy or distraught children;
- 10. Prevention of sudden infant death syndrome and use of safe sleeping practices;
- 11. Caregivers who work with children who have food allergies shall receive training in preventing exposure to foods to which the child is allergic, preventing cross contamination and recognizing and responding to any allergic reactions; and
- 12. Transportation.

E. All caregivers shall have within 30 days of employment or 90 days from subsidy vendor approval:

- 1. Current certification in cardiopulmonary resuscitation (CPR) appropriate to the age of children in care. The training shall include an in-person competency demonstration; and
- 2. Current certification in first aid. However, a caregiver who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification.

During the 30-day or 90-day period, there must always be at least one caregiver with current cardiopulmonary and first aid training present during operating hours of the family day home.

F. Caregivers employed prior to (insert the effective date of this regulation) must complete CPR and first aid training as required by this section within (insert a date 90 days from the effective date of this regulation). During this 90-day period, there must always be at least one caregiver with current cardiopulmonary and first aid training present during operating hours of the family day home.

G. CPR and first aid training may count toward the annual training hours required in subsection H of this section if

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# Regulations

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documentation for training as required in subdivision 5 of 22VAC40-665-180 is maintained.

H. Caregivers who work directly with children shall, in addition to preservice and orientation training required in subsections A through D of this section, annually attend at least 16 hours of training, including the department's health and safety update course. This training shall be related to child safety, child development, health and safety in the family day home environment, and any required department sponsored training.

I. To safely perform medication administration practices, whenever a vendor agrees to administer prescribed medications, the (i) administration shall be performed by a caregiver who has satisfactorily completed a training program for this purpose developed by the Board of Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist or (ii) administration shall be performed by a caregiver who is licensed by the Commonwealth of Virginia to administer medications.

The vendor may determine by policy what medications, if any, will be administered at its family day home, including prescription medications or over-the-counter or nonprescription medications.

J. Caregivers required to have the training required in subsection I of this section shall be retrained at three-year intervals.

## **22VAC40-665-240. Building or home maintenance.**

A. Areas and equipment of the family day home, inside and outside, shall be maintained in a clean, safe, and operable condition. Unsafe conditions shall include splintered, cracked, or otherwise deteriorating wood; chipped or peeling paint; visible cracks, bending or warping, rusting, or breakage of any equipment; head entrapment hazards; protruding nails, bolts, or other components that entangle clothing or skin; the presence of poisonous plants; tripping hazards; and unstable heavy equipment, furniture, or other items that a child could pull down on himself.

B. Inside areas occupied by children shall be maintained no lower than 65°F and shall not exceed 80°F unless fans or other cooling systems are in use.

C. In areas used by children of preschool age or younger, the following shall apply:

1. Fans, when used shall be out of reach of children, and cords shall be secured so as not to create a hazard.

2. Electrical outlets shall have protective covers that are of a size that cannot be swallowed by children.

D. Sharp kitchen utensils and other sharp objects shall be inaccessible to children unless being used by the caregiver or with children under close supervision.

E. The home shall have an in-service, nonpay telephone.

F. No equipment, materials, or furnishings shall be used if recalled or identified by the U.S. Consumer Product Safety Commission as being hazardous.

G. Radiators, oil and wood burning stoves, floor furnaces, fireplaces, portable electric heaters, and similar heating devices located in areas accessible to children shall have barriers or screens and be located at least three feet from combustible materials.

H. Unvented fuel burning heaters, such as portable oil-burning (kerosene) heaters; portable, unvented liquid or gas fueled heaters; and unvented fireplaces, shall not be used when children are in care.

I. Wood burning stoves and fireplaces and associated chimneys, if used, shall be inspected annually by a knowledgeable inspector to verify that the devices are properly installed, maintained, and cleaned as needed. Documentation of the inspection and cleaning shall be maintained by the vendor.

J. All flammable and combustible materials, including matches, lighters, lighter fluid, kerosene, turpentine, oil and grease products, aerosol cans, and alcohol, shall be stored in an area inaccessible to children.

K. Stairs shall not be accessible to children less than two years of age and children older than two years of age who are not developmentally ready to climb or descend stairs without supervision.

L. Stairs with three or more risers that do not have protective barriers or guardrails on each side shall not be accessible to children less than the age of two years.

M. Decks, porches, lofts, or balconies that do not have protective barriers or guardrails shall not be accessible to children.

N. Windows and doors used for ventilation shall be securely screened.

O. Machinery in operation, such as lawnmowers and power tools shall be inaccessible to the children in care.

## **22VAC40-665-250. Hazardous substances and other harmful agents.**

A. Potentially poisonous substances, materials, and supplies such as, but not limited to, cleaning agents, disinfectants, deodorizers, plant care chemicals, pesticides, and petroleum distillates shall be stored away from food in areas inaccessible to children.

B. Cleaning and sanitizing materials shall not be located above food, food equipment, utensils or single-service articles and stored separately from food.

C. If hazardous substances are not kept in original containers, the substitute container shall clearly indicate their contents.

D. The vendor shall ensure that:

1. No person smokes or uses an electronic smoking device:
  - a. Indoors while children are in care.
  - b. In a vehicle when children are transported, or
  - c. Outdoors in an area occupied by children.
2. No caregiver is under the effects of medication that impairs functioning, alcohol, or illegal drugs.

### **22VAC40-665-260. Bathroom area and furnishings.**

A. Each bathroom area provided for children shall:

1. Be within a contained area, readily available, and within the home used by the children;
2. Have toilets that are flushable;
3. Have sinks located near the toilets and that are supplied with running warm water that does not exceed 120°F; and
4. Be equipped with soap, toilet paper, and disposable towels or an air dryer within reach of the children.

B. There shall be a toilet chair or an adult-sized toilet with a platform or steps and adapter seat available to a child being toilet trained.

C. School age children of the opposite sex shall not use the same bathroom at the same time.

### **22VAC40-665-270. Play areas.**

A. The vendor shall ensure that all areas of the premises accessible to children are free of obvious injury hazards.

B. A nonclimbable barrier at least four feet high, such as a fence or impenetrable hedge, shall surround outdoor play areas located within 30 feet of hazards including lakes, ponds, railroad tracks, and streets with speed limits in excess of 25 miles per hour or with heavy traffic.

C. Stationary outdoor playground equipment shall not be installed over concrete, asphalt, or any other hard surface.

D. Trampolines shall not be used during the hours children are in care.

### **22VAC40-665-280. Supervision and ratio requirements.**

A. A caregiver shall be physically present on site and provide direct care and supervision of each child at all times. Direct care and supervision of each child includes:

1. Awareness of and responsibility for each child in care, including being near enough to intervene if needed; and
2. Monitoring of each sleeping infant in one of the following ways:

a. By placing each infant for sleep in a location where the infant is within sight and hearing of a caregiver;

b. By in-person observation of each sleeping infant at least once every 15 minutes; or

c. By using a baby monitor.

B. Caregivers shall actively supervise each child during outdoor play to minimize the risk of injury to a child.

C. A caregiver may allow only school age children to play outdoors while the caregiver is indoors if the caregiver can hear the children playing outdoors.

D. No child less than five years of age or a child older than five years who lacks the motor skills and strength to avoid accidental drowning, scalding, or falling while bathing shall be left unattended while in the bathtub.

E. An additional caregiver will be needed to supervise the number of children at a given time when, using the following point system, 16 points is reached:

1. Children from birth through 15 months of age count as four points each;
2. Children from 16 months through 23 months of age count as three points each;
3. Children from two years through four years of age count as two points each;
4. Children from five years through nine years of age count as one point each; and
5. Children who are 10 years of age and older count as zero points.

F. A vendor's own children and resident children under eight years of age shall count in point calculations.

G. In accordance with § 63.2-100 of the Code of Virginia, no family day home shall care for more than four children less than the age of two years, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered.

### **22VAC40-665-290. Supervision near water.**

A. Access to the water in aboveground swimming pools shall be prevented by locking and securing the ladder in place or storing the ladder in a place inaccessible to children.

B. A nonclimbable barrier at least four feet high such as, but not limited to, a fence or impenetrable hedge shall surround outdoor play areas located within 30 feet of drowning hazards such as, but not limited to, inground swimming or wading pools, ponds, or fountains not enclosed by safety fences.

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# Regulations

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C. Portable wading pools without integral filter systems shall:

1. Be emptied after use by each group of children, rinsed, and filled with clean water, or more frequently as necessary; and

2. When not in use during the vendor's hours of operation, be emptied, sanitized, and stored in a position to keep them clean and dry.

D. Portable wading pools shall not be used by children who are not toilet trained.

E. Hot tubs, spas, and whirlpools shall:

1. Not be used by children in care, and

2. Covered with safety covers while children are in care.

F. The level of supervision by caregivers required and the point system as outlined in 22VAC40-665-280 shall be maintained while the children are participating in swimming or wading activities.

G. Caregivers shall have a system for accounting for all children in the water.

H. Outdoor swimming activities shall occur only during daylight hours.

I. When one or more children are in water that is more than two feet deep in a pool, lake, or other swimming area on or off the premises of the family day home:

1. A minimum of least two caregivers shall be present and able to supervise the children; and

2. An individual currently certified in basic water rescue, community water safety, water safety instruction, or lifeguarding shall be on duty supervising the children participating in swimming or wading activities at all times.

## **22VAC40-665-300. Daily activities.**

A. Infants and toddlers shall be provided with opportunities to:

1. Interact with caregivers and other children in the home in order to stimulate language development;

2. Play with a wide variety of safe, age-appropriate toys;

3. Receive individual attention from caregivers including holding, cuddling, talking, and reading; and

4. Reach, grasp, pull up, creep, crawl, and walk to develop motor skills.

B. Infants and toddlers shall spend no more than 30 continuous minutes during waking hours, with the exception of mealtimes, confined in a crib, play pen, high chair, or other confining piece of equipment. The intervening time period between such confinements shall be at least one hour.

C. Infants shall be placed on their backs when sleeping or napping unless otherwise ordered by a written statement signed by the child's physician.

D. An infant, toddler, or preschool child who falls asleep in a play space other than his own crib, cot, mat, or bed shall be moved promptly to his designated sleeping space if the safety or comfort of the infant, toddler, or preschool child is in question.

E. School age children shall be allowed to nap if needed, but not forced to do so.

F. Infants shall be protected from older children.

## **22VAC40-665-310. Behavioral guidance.**

A. Behavioral guidance shall be constructive in nature, age and stage appropriate, and intended to redirect children to appropriate behavior and resolve conflicts.

B. In order to promote the child's physical, intellectual, emotional, and social well-being and growth, caregivers shall model desired, appropriate behavior and interact with the child and one another to provide needed help, comfort, and support and:

1. Respect personal privacy;

2. Respect differences in cultural, ethnic, and family background;

3. Encourage decision-making abilities;

4. Promote ways of getting along;

5. Encourage independence and self-direction; and

6. Use consistency in applying expectations.

C. If time-out is used as a discipline technique:

1. It shall be used sparingly and shall not exceed one minute for each year of the child's age;

2. It shall not be used with infants or toddlers;

3. The child shall be in a safe, lighted, well-ventilated place and within sight and sound of a caregiver; and

4. The child shall not be left alone inside or outside the home while separated from the group.

## **22VAC40-665-320. Forbidden actions.**

The following actions or threats thereof are forbidden:

1. Physical punishment, including striking a child, roughly handling or shaking a child, restricting movement through binding or tying, forcing a child to assume an uncomfortable position, or using exercise as a punishment.

2. Enclosure in a small, confined space or any space that the child cannot freely exit himself; however this does not apply to the use of equipment such as cribs, play yards,

high chairs, and safety gates when used for their intended purpose with children preschool age or younger.

3. Punishment by another child;

4. Withholding or forcing of food, water, or rest;

5. Verbal remarks that are demeaning to the child;

6. Punishment for toileting accidents; and

7. Punishment by applying unpleasant or harmful substances.

## **22VAC40-665-330. Parental involvement and notifications.**

A. The caregiver shall notify the parent immediately if a child is lost, requires emergency medical treatment, sustains a serious injury, or dies.

B. The caregiver shall notify the parent by the end of the day of any known minor injuries.

C. The caregiver shall maintain a written record of children's serious and minor injuries in which entries are made the day of occurrence. The record shall include the following:

1. Date and time of injury;

2. Name of injured child;

3. Type and circumstance of the injury;

4. Caregiver present and treatment;

5. Date and time when parents were notified; and

6. Caregiver and parent signatures.

D. Parents shall be notified immediately of any confirmed or suspected allergic reactions and the ingestion of the prohibited food even if a reaction did not occur.

E. Parents shall be informed of the vendor's emergency preparedness plan.

F. Caregivers shall promptly inform parents when persistent behavioral problems are observed and identified.

G. Caregivers shall provide information weekly to parents about the child's health, development, behavior, adjustment, or needs.

H. Parents shall be informed of the reason for a child's termination from care.

I. A custodial parent shall be admitted to any child day program. Such right of admission shall apply only while the child is in the care of the vendor, pursuant to § 63.2-1813 of the Code of Virginia.

J. When children at the family day home have been exposed to a communicable disease listed in the Department of Health's current communicable disease chart, the parents shall be notified within 24 hours or the next business day of the

vendor's having been informed unless forbidden by law. Children's exposure to life threatening diseases shall be reported to parents immediately.

## **22VAC40-665-340. Furnishings, equipment, and materials.**

A. Furnishings, materials, and equipment used for child care shall be age and stage appropriate for the children.

B. Children shall be protected from materials that could be swallowed or present a choking hazard. Toys or objects less than 1-1/4 inches in diameter and less than two inches in length shall be kept out of reach of children less than three years of age.

C. If combs, toothbrushes, or other personal articles are used, they shall be individually assigned.

D. Disposable products shall be used once and discarded.

E. If play yards, portable cribs, or mesh-sided cribs are used for sleeping or napping, they shall meet the requirements of subsections H through L of this section.

F. Cribs shall be provided for children from birth through 12 months of age and for children 12 months of age or older who are not developmentally ready to sleep on a cot, rest mat, or bed during the designated rest periods and shall not be occupied by more than one child at a time.

G. Cots, rest mats, or beds shall be provided for children 12 months of age or older and shall not be occupied by more than one child at a time.

H. Full-size cribs shall:

1. Meet the current Consumer Product Safety Commission Standards (16 CFR Parts 1219, 1220 and 1500).

2. Have mattresses that fit snugly next to the crib so that no more than two fingers can be inserted between the mattress and the crib.

I. Pillows and filled comforters shall not be used by children less than two years of age while sleeping or resting, including quilts, sheepskins, or stuffed toys.

J. Cribs shall be placed where objects outside the crib such as electrical cords or cords from blinds, curtains, etc. are not within reach of infants or toddlers.

K. Use of bumper pads shall be prohibited.

L. There shall be at least 12 inches of space between occupied cribs, cots, beds, and rest mats.

M. Toys or objects hung over an infant in a crib and crib gyms that are strung across the crib may not be used for infants older than five months of age or infants who are able to push up on their hands and knees.

N. Crib sides shall always be up and the fastenings secured when a child is in the crib.

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# Regulations

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O. Use of double-deck cribs is prohibited.

## **22VAC40-665-350. Bedding and linens for use while sleeping or resting.**

A. Linens shall be assigned for individual use.

B. Pillows when used shall be assigned for individual use and covered with pillow cases.

C. Mattresses when used shall be covered with a waterproof material that can be cleaned and sanitized.

## **22VAC40-665-360. Preventing the spread of disease.**

A. A child shall not be allowed to attend the family day home for the day if he has:

1. A temperature over 101°F;
2. Recurrent vomiting or diarrhea; or
3. Symptoms of a communicable disease.

B. If all children in care are from a single family unit, the caregiver may choose not to exclude a child who is ill.

C. If a child needs to be excluded according to subsection A of this section, the following shall apply:

1. Arrangements shall be made for the child to leave the family day home as soon as possible after the signs or symptoms are observed; and
2. The child shall remain in a designated quiet area until leaving the family day home.

D. When any surface has been contaminated with body fluids, it shall be cleaned and sanitized.

## **22VAC40-665-370. Hand washing and toileting procedures.**

A. When hand washing, the following shall apply:

1. Children's hands shall be washed with soap and running water or disposable wipes before and after eating meals or snacks.
2. Children's hands shall be washed with soap and running water after toileting and any contact with blood, feces, or urine.
3. Caregivers shall wash their hands with soap and running water before and after helping a child use the toilet or changing a diaper, after the caregiver uses the toilet, after any contact with body fluids, before feeding or helping children with feeding, and before preparing or serving food or beverages.
4. If running water is not available, a germicidal cleansing agent administered per manufacturer's instruction may be used.

B. A child shall not be left unattended on a changing table during diapering.

C. When a child's clothing or diaper becomes wet or soiled, the child shall be cleaned and changed immediately upon discovery.

D. During each diaper change or after toileting accidents, the child's genital area shall be thoroughly cleaned with a moist disposable wipe or a moist, clean individually assigned cloth if the child is allergic to disposable wipes.

E. The diapering surface shall be:

1. Separate from the kitchen, food preparation areas, or surfaces used for children's activities;
2. Nonabsorbent and washable; and
3. Cleaned and sanitized after each use.

F. Soiled disposable diapers and wipes shall be disposed of in a leak-proof or plastic-lined storage system that is either foot operated or used in such a way that neither the caregiver's hand nor the soiled diaper or wipe touches the exterior surface of the storage system during disposal.

G. When cloth diapers are used, a separate leak-proof storage system as specified in subsection F of this section shall be used.

H. Children five years of age and older shall be permitted privacy when toileting.

I. Caregivers shall respond promptly to a child's request for toileting assistance.

J. Toilet chairs, when used, shall be emptied promptly, cleaned, and sanitized after each use.

## **22VAC40-665-380. General requirements for medication administration.**

A. Prescription and nonprescription medications shall be given to a child:

1. According to the home's written medication policies, and
2. Only with written authorization from the parent.

B. The vendor may administer prescription medication that would normally be administered by a parent or guardian to a child provided:

1. The medication is administered by a caregiver who meets the requirements of 22VAC40-665-230 I and J;
2. The caregiver administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container; and
3. The caregiver administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration.

C. The vendor may administer nonprescription medication provided the medication is:

1. Administered by a caregiver 18 years of age or older;
2. Labeled with the child's name;
3. In the original container with the manufacturer's direction label attached; and
4. Given only at the dose, duration, and method of administration specified on the manufacturer's label for the age or weight of the child needing the medication.

D. Nonprescription medication shall not be used beyond the expiration date of the product.

E. Medications for children in care shall be stored separately from medications for household members and caregivers.

F. When needed, medication shall be refrigerated.

G. When medication is stored in a refrigerator used for food, the medications shall be stored together in a container or in a clearly defined area away from food.

H. Medication, except for those prescriptions designated otherwise by written physician's order, including refrigerated medication and medications for caregivers and household members, shall be kept in a locked place using a safe locking method that prevents access by children. If a key is used, the key shall be inaccessible to the children.

I. The vendor shall keep a record of prescription and nonprescription medication given children, which shall include the following:

1. Name of the child to whom medication was administered;
2. Amount and type of medication administered to the child;
3. The day and time the medication was administered to the child;
4. Name of the caregiver administering the medication;
5. Any adverse reactions; and
6. Any medication error.

**22VAC40-665-390. First aid and emergency supplies.**

A. The following emergency supplies shall be in the family day home, accessible to outdoor play areas, on field trips, in vehicles used for transportation, and wherever children are in care:

1. A first aid kit that contains at a minimum:
 
  - a. Scissors;
  - b. Tweezers;
  - c. Gauze pads;

d. Adhesive tape;

e. Bandages, assorted types and sizes;

f. An antiseptic cleansing solution and pads;

g. Digital thermometer; and

h. Single-use gloves such as surgical or examination gloves.

2. An ice pack or cooling agent.

B. The following nonmedical emergency supplies shall be required:

1. One working, battery-operated flashlight; and
2. One working, battery-operated radio.

**22VAC40-665-400. Procedures for emergencies.**

A. The vendor shall have a written emergency preparedness plan that addresses caregiver responsibility and home readiness with respect to emergency evacuation, relocation, lockdown, and shelter-in-place procedures. The plan shall address the most likely to occur emergency scenarios, including fire, severe storms, flooding, tornadoes, loss of utilities, earthquakes, intruders, violence on or near the premises, chemical spills, and facility damage or other situations that may require evacuation, lockdown, or shelter-in-place.

B. The emergency preparedness plan shall contain procedural components for:

1. Sounding of alarms (evacuation, intruder, shelter-in-place such as for tornado or chemical hazard);
2. Emergency communication to include:
 
  - a. Notification of local authorities (fire and rescue, law enforcement, emergency medical services, poison control, health department, etc.), parents, and local media; and
  - b. Availability and primary use of communication equipment;
3. Evacuation and relocation procedures, including:
 
  - a. Assembly points, designated relocation site, head counts, primary and secondary means of egress, and complete evacuation of the buildings;
  - b. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during evacuation or relocation;
  - c. Securing of essential documents (attendance record, parent contact information, etc.) and special health care supplies to be carried off site on immediate notice;
  - d. Method of communication after the evacuation; and

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# Regulations

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e. Procedure to reunite children with a parent or authorized person designated by the parent to pick up the child.

#### 4. Shelter-in-place, including:

a. Scenario applicability, inside assembly points, head counts, and primary and secondary means of access and egress;

b. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during evacuation or relocation;

c. Securing essential documents (attendance record, parent contact information, etc.) and special health supplies to be carried into the designated assembly points;

d. Method of communication after the shelter-in-place; and

e. Procedure to reunite children with a parent or authorized person designated by the parent to pick up the child.

#### 5. Lockdown procedures, including:

a. Methods to alert caregivers and emergency responders;

b. Methods to secure the family day home and designated lockdown locations;

c. Methods to account for all children in the lockdown locations;

d. Methods of communication with parents and emergency responders;

e. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during lockdown; and

f. Procedure to reunite children with a parent or authorized person designated by the parent to pick up the child.

#### 6. Caregiver training requirements, drill frequency, and plan review and update; and

#### 7. Continuity of operations procedures to ensure that essential functions are maintained during an emergency.

C. A 911 or local dial number for police, fire, and emergency medical services and the number of the regional poison control center shall be posted in a visible and conspicuous place.

#### **22VAC40-665-410. Emergency response drills.**

A. The emergency response drills shall be practiced as follows:

1. Evacuation procedures shall be practiced at least monthly;

2. Shelter-in-place procedures shall be practiced twice a year; and

3. Lockdown procedures shall be practiced at least annually.

B. The vendor shall maintain a record of the dates of the practice drills for one year. For vendors offering multiple shifts, the simulated drills shall be divided evenly among the various shifts.

#### **22VAC40-665-420. Nutrition and food services.**

A. Vendors shall schedule appropriate times for snacks or meals, or both, depending on the hours of operation and time of the day.

B. Drinking water shall be accessible to all children.

C. When meals or snacks are provided by the vendor, the following shall apply:

1. Vendors offering both meals and snacks shall serve a variety of nutritious foods and in sufficient portions.

2. Children three years of age or younger shall not be offered foods that are considered to be potential choking hazards.

D. When food is brought from home, the following shall apply:

1. The food container shall be clearly labeled in a way that identifies the owner;

2. The vendor shall have extra food or provisions to obtain food to serve to children so they can have an appropriate snack or meal if they forget to bring food from home, bring an inadequate meal or snack, or bring perishable food; and

3. Unused portions of opened food shall be discarded by the end of the day or returned to the parent.

E. Tables and high chair trays shall be cleaned and sanitized daily and before and after each use for feeding.

F. Food shall be prepared, stored, served, and transported in a clean and sanitary manner.

G. When food is prepared to which a child is allergic, the caregiver shall take steps to avoid cross contamination in order to prevent an allergic reaction.

H. Caregivers shall not serve prohibited food to a child.

#### **22VAC40-665-430. Special feeding needs.**

A. High chairs, infant carrier seats, or feeding tables shall be used for children less than 12 months who are not held while being fed.

B. When a child is placed in an infant seat, high chair, or feeding table, the protective belt shall be fastened securely.

C. Bottle fed infants who cannot hold their own bottles shall be held when fed. Bottles shall not be propped or used while the child is in his designated sleeping location.

D. Infants shall be fed on demand or in accordance with parental instructions.

E. Prepared infant formula shall be refrigerated, dated, and labeled with the child's name if more than one infant is in care.

F. Heated formula and baby food shall be stirred or shaken and tested for temperature before serving to children.

G. Milk, formula, or breast milk shall not be heated or warmed directly in a microwave. Water for warming milk, formula, or breast milk may be heated in a microwave.

H. Prepared baby food not consumed during that feeding by an infant may be used by that same infant later in the same day, provided that the food is not served out of the baby food jar and is labeled with the child's name, dated, and stored in the refrigerator; otherwise, it shall be discarded or returned to the parent at the end of the day. Formula or breast milk shall not remain unrefrigerated for more than two hours and may not be reheated.

I. Caregivers shall feed semisolid food with a spoon unless written instructions from a physician or physician's designee state differently.

## **22VAC40-665-440. Transportation and field trips.**

A. If the vendor provides transportation, the vendor shall be responsible for the care of the child from the time the child boards the vehicle until returned to the parent or person designated by the parent.

B. Drivers must be 18 years of age or older and possess a valid driver's license to operate the vehicle being driven.

C. Any vehicle used by the vendor for the transportation of children shall meet the following requirements:

1. The vehicle shall be manufactured for the purpose of transporting people seated in an enclosed area;
2. The vehicle's seats shall be attached to the floor;
3. The vehicle shall be insured with at least the minimum limits established by Virginia state statutes as required by § 46.2-472 of the Code of Virginia;
4. The vehicle shall meet the safety standards set by the Department of Motor Vehicles and shall be kept in satisfactory condition to assure the safety of children; and
5. If volunteers supply personal vehicles, the vendor is responsible for ensuring that the requirements of this subsection are met.

D. The vendor shall ensure that during transportation of children:

1. Virginia state statutes about safety belts and child restraints are followed as required by §§ 46.2-1095 through 46.2-1100 of the Code of Virginia, and the stated maximum number of passengers in a given vehicle is not exceeded;

2. The children remain seated and each child's arms, legs, and head remain inside the vehicle;

3. Doors are closed properly and locked unless locks were not installed by the manufacturer of the vehicle;

4. At least one caregiver or the driver always remains in the vehicle when children are present;

5. The caregiver has a list of the names of the children being transported;

6. The caregiver has a copy of each child's emergency contact information; and

7. An allergy care plan and information as specified in 22VAC40-665-170 B 12 shall be carried.

E. When entering and leaving vehicles, children shall enter and leave the vehicle from the curb side of the vehicle or in a protected parking area or driveway.

F. Caregivers shall verify that all children have been removed from the vehicle at the conclusion of any trip.

## **22VAC40-665-450. Animals and pets.**

A. Animals shall not be allowed on any surfaces where food is prepared or served.

B. A pet or animal present at the home, indoors or outdoors, shall be in good health and show no evidence of carrying any disease.

C. Dogs or cats, where allowed, shall be vaccinated for rabies and shall be treated for fleas, ticks, or worms as needed.

D. The vendor shall maintain documentation of the current rabies vaccination for dogs and cats.

E. Caregiver shall closely supervise children when children are exposed to animals.

F. Children shall be instructed on safe procedures to follow when in close proximity to animals, for example, not to provoke or startle them or remove their food.

G. Monkeys, ferrets, reptiles, psittacine birds (birds of the parrot family), or wild or dangerous animals shall not be in areas accessible to children during the hours children are in care.

H. Animal litter boxes, toys, food dishes, and water dishes shall be inaccessible to children.

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# Regulations

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## **22VAC40-665-460. Evening and overnight care.**

A. Caregivers shall remain awake until all children are asleep and shall sleep on the same floor level as the children in care.

B. For evening care, beds with mattresses or cots with at least one inch of dense padding shall be used by children who sleep longer than two hours and are not required to sleep in cribs.

C. For overnight, beds with mattresses or cots with at least two inches of dense padding shall be used by children who are not required to sleep in cribs.

D. In addition to requirements in 22VAC40-665-350 about linens, bedding appropriate to the temperature and other conditions of the rest area shall be provided.

E. When children are six years of age or older, boys and girls shall have separate sleeping areas.

F. For vendors providing overnight care, an operational tub or shower with heated and cold water shall be provided.

G. When bath towels are used, they shall be assigned for individual use.

H. Quiet activities shall be available immediately before bedtime.

### Part III

#### Subsidy Program Vendor Requirements for Child Day Centers

## **22VAC40-665-470. Definitions; subsidy program requirements for child day center vendors.**

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

"Accessible" means capable of being entered, reached, or used.

"Adult" means any individual 18 years of age or older.

"Age and stage appropriate" means the curriculum, environment, equipment, and adult-child interactions are suitable for the ages of the children within a group and the individual needs of any child.

"Age groups":

1. "Infant" means a child from birth to 16 months.

2. "Toddler" means a child from 16 months up to two years.

3. "Preschool" means a child from two years up to the age of eligibility to attend public school, five years by September 30.

4. "School age" means a child eligible to attend public school, age five or older by September 30 of that same

year. Four-year-old or five-year-old children included in a group of school children may be considered school age during the summer months if the children will be entering kindergarten that year.

"Attendance" means the actual presence of an enrolled child.

"Body fluids" means urine, feces, vomit, saliva, blood, nasal discharge, eye discharge, and injury or tissue discharge.

"Center" means a child day center.

"Child" means any individual less than 18 years of age.

"Child day center" means a child day program offered to (i) two or more children less than 13 years of age in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

"Child experiencing homelessness" means a child who lacks a fixed, regular, and adequate nighttime residence and includes:

1. A child who is living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar settings;

2. A child who is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason (sometimes referred to as "doubled-up");

3. A child who is living in a motel, hotel, trailer park, or camping grounds due to lack of alternative adequate accommodations;

4. A child who is living in congregate, temporary, emergency, or transitional shelters;

5. A child who is abandoned in a hospital;

6. A child who is living in a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; and

7. A child who is a migratory child as defined in § 1309 of the Elementary and Secondary Education Act of 1965, P.L. No. 89-10 (20 USC § 6399) who qualifies as homeless because he is living in circumstances described in subdivisions 1 through 6 of this definition.

"Child with special needs or disability" means (i) a child with a disability as defined in § 602 of the Individuals with Disabilities Education Act (20 USC § 1401); (ii) a child who is eligible for early intervention services under Part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.); (iii) a child who is less than 13 years of age and who is eligible for services under § 504 of the Rehabilitation Act of 1973 (29 USC § 794); and (iv) a child with a documented developmental disability, intellectual disability, emotional disturbance, sensory or motor impairment, or significant chronic illness who requires special health surveillance or

specialized programs, interventions, technologies, or facilities.

"Cleaned" means treated in such a way as to remove dirt and debris by scrubbing and washing with soap and water or detergent solution and rinsing with water or the use of an abrasive cleaner on inanimate surfaces.

"Communicable disease" means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse or mosquito) or environmental object (such as a table surface). Some communicable diseases are reportable to the local health authority.

"Department" means the Virginia Department of Social Services.

"Department representative" means an employee or designee of the Virginia Department of Social Services, acting as the authorized agent of the Commissioner of the Virginia Department of Social Services.

"Evacuation" means movement of occupants out of the building to a safe area near the building.

"Evening care" means care provided after 7 p.m. but not through the night.

"Group size" means the number of children assigned to a staff member or team of staff members occupying an individual room or area.

"Inaccessible" means not capable of being entered, reached, or used.

"Lockdown" means a situation where children are isolated from a security threat and access within and to the center is restricted.

"Overnight care" means care provided after 7 p.m. and through the night.

"Over-the-counter or nonprescription medication" means medication that can be purchased without a written prescription. This includes herbal remedies and vitamins and mineral supplements.

"Parent" means a parent by blood, marriage, or adoption and also means a legal guardian or other person standing in loco parentis.

"Sanitized" means treated in such a way as to remove bacteria and viruses from inanimate surfaces through first cleaning and secondly using a solution of one tablespoon of bleach mixed with one gallon of water and prepared fresh daily or using a sanitizing solution approved by the U.S. Environmental Protection Agency. The surface of the item is sprayed or dipped into the sanitizing solution and then allowed to air dry for a minimum of two minutes or according to the sanitizing solution instructions.

"Serious injury" means a wound or other specific damage to the body, such as unconsciousness; broken bones; dislocation; a deep cut requiring stitches; poisoning; concussion; or a foreign object lodged in eye, nose, ear, or other body orifice.

"Shaken baby syndrome" or "abusive head trauma" means a traumatic injury that has been inflicted upon the brain of an infant or young child. The injury can occur during violent shaking causing the child's head to whip back and forth, the brain to move about, and blood vessels in the skull to stretch and tear.

"Shelter-in-place" means movement of occupants of the building to designated protected spaces within the building.

"Staff" means administrative, activity, and service personnel, including the vendor when the vendor is an individual who works in the center, any persons counted in the staff-to-children ratios, or any persons working with a child without sight and sound supervision of a staff member.

"Vendor" means a legally operating child care provider who is approved by the department to participate in the Child Care Subsidy Program. Multiple facilities or sites operated by the same person, entity, or organization are considered separate vendors.

"Vendor agreement" means the agreement between the department and a vendor that must be entered into and signed by all vendors before child care payments paid to the vendor under the Child Care Subsidy Program can be authorized.

"Volunteer" means a person who works at the center and:

1. Is not paid for services provided to the center;
2. Is not counted in the staff-to-children ratios; and
3. Is in sight and sound supervision of a staff member when working with a child.

Any unpaid person not meeting this definition shall be considered "staff" and shall meet staff requirements.

## **22VAC40-665-480. (Reserved.)**

## **22VAC40-665-490. Purpose and applicability.**

The standards in this part apply to child day centers that are applying to participate in the Child Care Subsidy Program. The purpose of these standards is to protect children who are less than the age of 13 years, less than the age of 18 years and physically or mentally unable to care for themselves, or are under court supervision and who are separated from their parents during part of the day by:

1. Ensuring that the activities, services, and facilities of centers participating in the Child Care Subsidy Program are conducive to the well-being of children; and
2. Reducing risks to the health and safety of such children in the child care environment.

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# Regulations

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## **22VAC40-665-500. Operational responsibilities.**

A. The vendor shall ensure compliance with the standards in this part, the terms of the vendor agreement, and all relevant federal, state, or local laws and regulations.

B. Pursuant to § 63.2-1725 of the Code of Virginia, the vendor shall ensure that the applicant and any staff who is or will be involved in the day-to-day operations of the center or is or will be alone with, in control of, or supervising one or more of the children shall not be guilty of an offense, as defined in § 63.2-1719 of the Code of Virginia.

C. The vendor shall ensure that the center does not exceed the capacity of children cared for as allowed by law or regulation.

D. When at least one child receives care for compensation, all children who are in care and supervision count in the capacity of children being cared for. When children 13 years or older are enrolled in the program and receive supervision in the program, they shall be counted in the number of children receiving care, and the vendor shall comply with the standards in this part for these children.

E. The vendor shall inform all staff who work with children of children's allergies, sensitivities, and dietary restrictions.

F. The vendor shall maintain, in a way that is accessible to all staff who work with children, a current written list of all children's allergies, sensitivities, and dietary restrictions. This list shall be dated and kept confidential in each room or area where children are present.

G. Religious exempt child day centers that are exempt from licensure in accordance with § 63.2-1716 of the Code of Virginia shall be in compliance with all requirements of § 63.2-1716.

## **22VAC40-665-510. General recordkeeping; reports.**

A. Staff records and children's information shall be treated confidentially.

B. For each group of children, the vendor shall maintain a written hard copy record of daily attendance that documents the arrival and departure of each child in care as it occurs.

C. Records, reports, and information required by this part may be kept as hard copy or electronically, except attendance records must be maintained pursuant to subsection B of this section, and shall be maintained and made accessible to department representatives for five years after termination of services or separation from employment unless specified otherwise.

## **22VAC40-665-520. Children's records.**

A. The vendor shall maintain and keep at the center a record for each enrolled child, which shall be made accessible to the department's representative upon request.

B. The child's record shall include the following:

1. Child's full name, nickname (if any), sex, address, and birthdate;

2. Name, home address, and telephone number for each parent who has custody;

3. Name, address, and telephone number for each custodial parent's place of employment or school attendance, if applicable;

4. Name, address, and telephone number of at least one person designated by the parent to contact in case of an emergency and the parent cannot be reached;

5. Information on allergies, including food allergies, intolerances to food, medication, or other substances, and actions to be taken in an emergency situation; information on other physical problems; pertinent developmental information; and any special accommodations needed, if applicable;

6. Names of persons other than the custodial parent who are authorized to pick up the child;

7. Immunization records for the child received on or before the child's first day of attendance, except that children experiencing homelessness may provide such records within 90 days of enrollment;

8. Written authorization for emergency medical care should an emergency occur and the parent cannot be located immediately unless the parent presents a written objection for the provision of medical treatment on religious or other grounds;

9. Written authorization to administer prescription or nonprescription medications if the vendor administers medication;

10. Special care instructions, including recommendations for the care and activities of a child with special needs, exception to infant being fed on demand, etc.;

11. A written allergy care plan for each child with a diagnosed food allergy, to include instructions from a physician regarding the food to which the child is allergic and steps to be taken in the event of a suspected or confirmed allergic reaction;

12. Proof of a child's identity and age as stated in § 63.2-1809 of the Code of Virginia;

13. Permission to transport child if the vendor provides transportation;

14. Permission for field trips;

15. Permission for swimming or wading activities to include a parent's statement of the child's swimming ability, if applicable;

16. A written statement that the vendor will notify the parent when the child becomes ill and that the parent will arrange to have the child picked up as soon as possible if so requested by the vendor;

17. Any written agreements between the parent and the vendor; and

18. Documentation of the enrollment of a child experiencing homelessness enrolled under provisions of 22VAC40-665-560 A 2.

### **22VAC40-665-530. Staff records.**

The following records shall be kept for each staff person:

1. Name, address, verification of age, and date of employment or volunteering.

2. Documentation that background checks were completed, including:

a. The department's letter indicating eligibility to be hired provided by the department or the department's contractor indicating:

(1) Satisfactory results of the Virginia State Police name search for criminal history; and

(2) Satisfactory results of the Child Protective Services Central Registry check.

b. The individual's sworn statement or affirmation as to whether the individual has ever been:

(1) The subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; or

(2) Convicted of a crime or is the subject of any pending criminal charges within the Commonwealth or any equivalent offense outside the Commonwealth.

c. The vendor shall have documentation for any individual who begins employment or service after the vendor agreement has been signed in the file within 30 days of the individual's beginning date of employment or service. However, the vendor shall not be deemed to be in violation of this section if documentation is maintained that the checks were submitted within the first seven days of employment or service and the results are not available due to an administrative delay beyond the vendor's control.

d. Documentation of subsequent background checks conducted every three years.

3. Tuberculosis screening results.

4. Certifications of first aid and cardiopulmonary resuscitation and other certifications as required by the responsibilities held by the staff member.

5. Documentation that training required in 22VAC-665-580 has been completed, including the date completed, the

total hours of the session, and the names of the trainer and of any sponsoring organization.

6. Date of separation from employment where applicable.

7. Documentation of the health requirements under 22VAC40-665-540.

### **22VAC40-665-540. Health requirements for staff.**

A. Staff shall be evaluated by a health professional and be issued a statement that the individual is determined to be free of communicable tuberculosis (TB). Such statement shall be submitted not later than 21 days after employment or volunteering and shall have been completed within 12 months prior to or 21 days after employment or volunteering.

B. Subsequent TB screenings are required at least every two years from the date of the initial screening, or more frequently if recommended by a physician.

C. The vendor or the department's representative may require a report of examination by a licensed physician or mental health professional if there are indications that a staff member's physical or mental health may endanger the health, safety, or well-being of children in care.

D. A staff who is determined by a licensed physician or mental health professional to show an indication of a physical or mental condition that may endanger the health, safety, or well-being of children in care or that would prevent the performance of duties shall be removed immediately from contact with children and food served to children until the condition is cleared as evidenced by a signed statement from the physician or mental health professional.

### **22VAC40-665-550. Reports.**

Reports shall be filed and maintained as follows:

1. The vendor shall inform the department's inspector as soon as practicable, but not more than one business day, of the following:

a. The death of a child while under the vendor's supervision;

b. A missing child when local authorities have been contacted for help; and

c. The suspension or termination of all child care services for more than 24 hours as a result of an emergency situation and any plans to resume child care.

2. The vendor shall inform the department's representative as soon as practicable, but not more than two business days, of any serious injury to a child while under the vendor's supervision.

3. Any suspected incident of child abuse or neglect shall be reported in accordance with § 63.2-1509 of the Code of Virginia.

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# Regulations

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## **22VAC40-665-560. Immunizations for children.**

A. The vendor shall obtain documentation that each child has received the immunizations required by the State Board of Health before the child can attend the center.

1. The vendor may allow a child to attend contingent upon a conditional enrollment. Documentation related to the child's conditional enrollment shall be maintained in the child's record.

"Conditional enrollment" means the enrollment of a child for a period of 90 days contingent upon the child having received at least one dose of each of the required vaccines and the child possessing a plan from a physician or local health department for completing his immunization requirements within the ensuing 90 calendar days. If the child requires more than two doses of the hepatitis B vaccine, the conditional enrollment period, for hepatitis B vaccine only, shall be 180 calendar days.

2. If a child is experiencing homelessness and does not have documentation of the required immunizations, the vendor may allow the child to attend during a grace period of no more than 90 days to allow the parent or guardian time to obtain documentation of the required immunizations.

B. The vendor shall obtain documentation of additional immunizations once every six months for children less than two years of age.

C. Pursuant to subsection C of § 22.1-271.2 of the Code of Virginia and 12VAC5-110-110, documentation of immunizations is not required for any child whose:

1. Parent submits an affidavit to the vendor, on the form entitled "Certification of Religious Exemption," stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices, or

2. A physician or a local health department states on a Department of Health-approved form that one or more of the required immunizations may be detrimental to the child's health, indicating the specific nature and probable duration of the medical condition or circumstance that contraindicates immunization.

## **22VAC40-665-570. General qualifications.**

A. The vendor must be at least 18 years of age.

B. The vendor, and any staff who are left alone with children, shall be capable of communicating effectively both orally and in writing as applicable to the job responsibility and be capable of communicating with emergency personnel.

C. Staff must be at least 16 years of age; however no staff person less than 18 years of age may be alone with children or administer medication.

1. Staff members less than 18 years of age shall be under direct sight and sound supervision of an adult staff member.

2. Adult staff members shall supervise no more than two volunteers or staff members less than 18 years of age at any given time.

## **22VAC40-665-580. Staff training and development.**

A. Prior to approval as a subsidy vendor, the vendor or designee shall complete the Virginia Preservice Training for Child Care Staff, which shall include training on the following topics and training modules:

1. Building and physical premises safety;

2. Emergency preparedness and response planning;

3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;

4. Administration of medication, consistent with standards of parental consent;

5. Prevention of shaken baby syndrome and abusive head trauma (AHT);

6. Prevention of and response to emergencies due to food and allergic reactions;

7. Recognizing child abuse and neglect and reporting responsibilities;

8. Preventing the spread of disease, including immunization requirements;

9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;

10. Transportation;

11. Foundations of child development;

12. Inclusion: Exploring the meaning and the mindset;

13. Oral health; and

14. Introduction to the Child Care Subsidy Program.

B. Within the first 90 days of employment or subsidy vendor approval all staff who work directly with children shall complete Virginia Preservice Training for Child Care Staff, which shall include training on the following topics and training modules:

1. Building and physical premises safety;

2. Emergency preparedness and response planning;

3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;

4. Administration of medication, consistent with standards of parental consent;

5. Prevention of shaken baby syndrome and abusive head trauma (AHT);

6. Prevention of and response to emergencies due to food and allergic reactions;

7. Recognizing child abuse and neglect and reporting responsibilities;

8. Preventing the spread of disease, including immunization requirements;

9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;

10. Transportation;

11. Foundations of child development;

12. Inclusion: Exploring the meaning and mindset;

13. Oral health; and

14. Introduction to the Child Care Subsidy Program.

C. All staff who work directly with children and who are employed prior to (insert the effective date of this regulation) shall complete Virginia Preservice Training for Child Care Staff sponsored by the Department of Social Services, to include all of the topics applicable to new staff, within (insert a date 90 days from the effective date of this regulation). This training may count for staff annual training requirements in subsection H of this section.

D. Orientation training for staff shall be completed on the following facility specific topics prior to the staff member working alone with children and within seven days of the date of employment or the date of subsidy vendor approval:

1. Playground safety procedures;

2. Responsibilities for reporting suspected child abuse or neglect;

3. Confidentiality;

4. Supervision of children, including arrival and dismissal procedures;

5. Procedures for action in the case of lost or missing children, ill or injured children, and medical and general emergencies;

6. Medication administration procedures, if applicable;

7. Emergency preparedness plan as required in 22VAC40-665-770 B;

8. Prevention of shaken baby syndrome and abusive head trauma including coping with crying babies and fussy or distraught children;

9. Prevention of sudden infant death syndrome and use of safe sleeping practices;

10. Staff who work with children that have food allergies shall receive training in preventing exposure to foods to which the child is allergic, preventing cross contamination, and recognizing and responding to any allergic reactions; and

11. Transportation.

E. All staff who work directly with children shall have within 30 days of the date of employment or 90 days from subsidy vendor approval:

1. Current certification in cardiopulmonary resuscitation (CPR) appropriate to the age of children in care. The training shall include an in-person competency demonstration; and

2. Current certification in first aid. However, staff who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification.

During the 30-day or 90-day period, there must always be at least one staff with current CPR and first aid training present during operating hours of the center.

F. All staff who work directly with children and who are employed by an approved vendor prior to (insert the effective date of this regulation) must complete CPR and first aid training as required by this section within (insert a date 90 days from the effective date of this regulation). During this 90 days, there must always be at least one staff with current CPR and first aid training present during operating hours of the center.

G. CPR and First Aid training may count toward the annual training hours required in subsection H of this section if documentation for training as required in subdivision 5 of 22VAC40-665-530 is maintained.

H. Staff who work directly with children shall, in addition to preservice and orientation training required in subsections A through D of this section, annually attend at least 16 hours of training and staff development activities, including the department's health and safety update course. Training shall be related to child safety, child development, the function of the center, and any required department sponsored training.

I. To safely perform medication administration practices, whenever a vendor agrees to administer prescribed medications, the (i) administration shall be performed by a staff member who has satisfactorily completed a training program for this purpose developed by the Board of Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist; or (ii) administration shall be performed by a staff member who is licensed by the Commonwealth of Virginia to administer medications.

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# Regulations

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The administration of medicines by a vendor may be limited by policy to:

1. Prescription medications;
2. Over-the-counter or nonprescription medications; or
3. No medications.

J. Staff required to have the training specified in subsection I of this section shall be retrained at three-year intervals.

K. There shall be at least one staff on duty who has obtained within the last three years instruction in performing a daily health observation of children. Daily health observation training shall include:

1. Components of daily health check for children;
2. Inclusion and exclusion of a child when the child is exhibiting symptoms that indicate possible illness;
3. Description of how diseases are spread and procedures and methods for reducing the spread of disease;
4. Information concerning the Virginia Department of Health Notification of Reportable Diseases pursuant to 12VAC5-90-80 and 12VAC5-90-90, also available from the local health department and the website of the Virginia Department of Health; and
5. Staff occupational health and safety practices in accordance with Occupational Safety and Health Administration's bloodborne pathogens regulation (29 CFR 1910.1030).

## **22VAC40-665-590. Certifications by other agencies; requirements prior to initial approval.**

Before approval of a vendor agreement and before use of newly constructed, renovated, remodeled, or altered buildings or sections or buildings, written documentation of the following shall be provided by the vendor to the department representative:

1. Certification by the authority having jurisdiction that each building meets building and fire codes or that a plan of correction has been approved; and
2. Certification from the local health department, or approval of a plan of correction, for meeting requirements for:
  - a. Water supply;
  - b. Sewage disposal system; and
  - c. Food service, if applicable.
3. Any building that is currently zoned or certified for school occupancy and houses a public or private school during the school year shall be considered to have met the requirements of subdivision 1 of this section when housing

a center serving only children two and a half years of age or older.

## **22VAC40-665-600. Certification by other agencies; requirements subsequent to initial approval.**

A. The vendor shall provide the department representative an annual fire inspection report from the appropriate fire official having jurisdiction. If a center is located in a building currently housing a public or private school, the school's annual fire inspection report shall be accepted.

B. The vendor shall provide the department representative an annual certification from the Health Department, or approvals of a plan of correction, for meeting requirements for:

1. Water supply;
2. Sewage disposal system; and
3. Food service, if applicable.

## **22VAC40-665-610. Building or facility maintenance.**

A. Areas and equipment of the center, inside and outside, shall be maintained in a clean, safe, and operable condition. Unsafe conditions shall include splintered, cracked or otherwise deteriorating wood; chipped or peeling paint; visible cracks, bending or warping, rusting, or breakage of any equipment; head entrapment hazards; protruding nails, bolts, or other components that entangle clothing or skin; and unstable heavy equipment, furniture, or other items that a child could pull down on himself.

B. Inside areas occupied by children shall be maintained no lower than 68°F and shall not exceed 80°F unless fans or other cooling systems are in use.

C. In areas used by children of preschool age or younger, the following shall apply:

1. Fans, when used shall be out of reach of children and cords shall be secured so as not to create a hazard.
2. Electrical outlets shall have protective covers that are of a size that cannot be swallowed by children.

D. Building equipment shall include an in-service, nonpay telephone.

## **22VAC40-665-620. Hazardous substances and other harmful agents.**

A. Hazardous substances such as cleaning materials, insecticides, and pesticides shall be kept in a locked place using a safe locking method that prevents access by children. If a key is used, the key shall not be accessible to children. Cleaning supplies to clean and sanitize the diapering area or toilet chairs do not need to be kept locked during diapering or toilet training time as long as they are inaccessible to children.

B. Pesticides or insecticides shall not be stored in areas used by children or in areas used for food preparation or storage.

C. Cleaning and sanitizing materials shall not be located above food, food equipment, utensils, or single-use articles and shall be stored separate from food.

D. If hazardous substances are not kept in original containers, the substitute container shall clearly indicate its contents.

E. Smoking and the use of electronic smoking devices shall be prohibited in the interior of a center, in vehicles when children are being transported, and if permitted outside, shall be prohibited in the presence of children.

**22VAC40-665-630. Restroom area and furnishings.**

A. The facility shall have at least two toilets and two sinks.

B. The facility shall have at least one toilet and one sink for every 30 children.

C. Each restroom area provided for children shall:

1. Be within a contained area, readily available, and within the building used by the children;
2. Have toilets that are flushable;
3. Have sinks located near the toilets and that are supplied with running warm water that does not exceed 120°F;
4. Be equipped with soap, toilet paper, and disposable towels or an air dryer within reach of the children; and
5. A restroom for school age children that contains more than one toilet shall have at least one toilet enclosed.

**22VAC40-665-640. Play areas.**

The vendor shall ensure that all areas of the premises accessible to children are free of obvious injury hazards, including providing and maintaining sand or other cushioning material under playground equipment. The requirements of this section shall not prohibit child day center programs providing care to school age children at a location that is currently approved by the Department of Education or recognized as a private school by the State Board of Education for school occupancy and that houses a public or private school during the school years from permitting school age children to use outdoor play equipment and areas approved for use by students of the school during school hours.

**22VAC40-665-650. Supervision, ratio, and group size requirements.**

A. The vendor, except those exempt from licensure operated by or under the auspices of a religious institution, shall ensure that the following ratio requirements are maintained:

1. For children from birth to the age of 16 months: one staff member for every four children;

2. For children 16 months to two years: one staff member for every five children;

3. For two-year-old children: one staff member for every eight children;

4. For children from three years to the age of eligibility to attend public school, five years by September 30: one staff member for every 10 children;

5. For children from age of eligibility to attend public school through eight years: one staff member for every 18 children; and

6. For children from nine years through 12 years: one staff member for every 20 children.

B. Except during meals or snacks, the designated rest period, outdoor play, transportation and field trips, special group activities, or during the first and last hour of operation when the vendor operates more than six hours per day, the vendor, except those exempt from licensure operated by or under the auspices of a religious institution, shall ensure that the following group size requirements are maintained at all times:

1. For children from birth to the age of 16 months: the maximum group size is 12 children;
2. For children 16 months to two years: the maximum group size is 15 children;
3. For two-year-old children: the maximum group size is 24 children; and
4. For children from three years to the age of eligibility to attend public school, five years by September 30: the maximum group size is 30 children.

Group size requirements in this section do not apply to children school age eligible through 12 years of age.

C. Facilities operated by, or under the auspices of, a religious institution and exempt from licensure shall employ supervisory personnel as set forth in § 63.2-1716 of the Code of Virginia and shall ensure the following ratio requirements are maintained:

1. For children from birth to two years: one staff member for every four children;
2. For children from two years to six years: one staff member for every 10 children; and
3. For children from six years up to 12 years: one staff member for every 25 children.

D. With the exception of when meals or snacks are served, the designated rest period, outdoor play, transportation and field trips, special group activities, or during the first and last hour of operation when the vendor operates more than six hours per day, facilities operated by, or under the auspices, of a religious institution and are exempt from licensure shall

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# Regulations

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ensure the following group size requirements are maintained at all times:

1. For children from birth to two years: the maximum group size is 12 children;
2. For children from two years to six years: the maximum group size is 30 children; and
3. For children who are six years up to 12 years of age: group size requirements in this section do not apply.

Vendors operated by, or under the auspices, of a religious institution must have a staff member present for each age group of children as defined in § 63.2-1716 of the Code of Virginia. Example: one staff must be present for any of the children age birth to 24 months, an additional staff member must be present if any of the children are ages two to six years, and a third staff member must be present if any children are ages six to 12 years.

E. The vendor shall develop and implement a written policy and procedure that describes how the vendor will ensure that each group of children receives care by consistent staff or team of staff members.

F. Staff shall be counted in the required staff-to-children ratios only when they are directly supervising children.

G. When children are in ongoing mixed age groups, the staff-to-children ratio and group size applicable to the youngest child in the group shall apply to the entire group.

H. Children less than 10 years of age shall always be within actual sight and sound supervision of staff, except that staff need only be able to hear a child who is using the restroom provided that:

1. There is a system to ensure that individuals who are not staff members or persons allowed to pick up a child in care do not enter the restroom area while in use by children; and
2. Staff checks on a child who has not returned from the restroom after five minutes. Depending on the location and layout of the restroom, staff may need to provide intermittent sight supervision of the children in the restroom area during this five-minute period to assure the safety of children and to provide assistance to children as needed.

I. Children 10 years of age and older shall be within actual sight and sound supervision of staff except when the following requirements are met:

1. Staff can hear or see the children (video equipment, intercom systems, or other technological devices shall not substitute for staff being able to directly see or hear children);
2. Staff are nearby so that they can provide immediate intervention if needed;

3. There is a system to ensure that staff know where the children are and what they are doing;

4. There is a system to ensure that individuals who are not staff members or persons allowed to pick up children in care do not enter the areas where children are not under sight supervision; and

5. Staff provides sight and sound supervision of the children at variable and unpredictable intervals not to exceed 15 minutes.

J. When the outdoor activity area is not adjacent to the center, there shall be at least two staff members in the outdoor activity area whenever one or more children are present.

K. Staff shall not allow a child to leave the center unsupervised.

L. For vendors operated by, or under the auspices of, a religious institution and exempt from licensure, during designated rest periods and the designated sleep period of evening and overnight care programs, the ratio of staff to children over 24 months of age may be double the number of children to each staff required by subsection C of this section if:

1. The staff person is within sight and sound of sleeping children;
2. Staff counted in the overall rest period ratio are on the same floor as the sleeping or resting children and available in case of emergency; and
3. An additional person is present to help.

M. For vendors not operated by, or under the auspices of, a religious institution, during designated rest periods and the designated sleep period of evening and overnight care programs, the ratio of staff to children over 16 months of age may be double the number of children to each staff required by subsection A of this section if:

1. The staff person is within sight and sound of sleeping children;
2. Staff counted in the overall rest period ratio are on the same floor as the sleeping or resting children and available in case of emergency; and
3. An additional person is present to help.

## **22VAC40-665-660. Supervision near water.**

A. Indoor swimming pools on the center premises shall be kept locked when the pool is not in use. Outdoor swimming pools located on the center premises shall be enclosed by safety fences and gates that are in compliance with the applicable edition of the Virginia Uniform Statewide Building Code (13VAC5-63) and shall be kept locked when the pool is not in use.

B. The staff-to-children ratios required by 22VAC40-665-650 shall be maintained while children are participating in swimming or wading activities.

1. Notwithstanding the staff-to-children ratios already indicated, at no time shall there be fewer than two staff members supervising the activity.

2. The designated certified lifeguard shall not be counted in the staff-to-children ratios.

C. If a pool, lake, or other swimming area has a water depth of more than two feet, a certified lifeguard holding a current certificate shall be on duty supervising the children participating in swimming or wading activities at all times when one or more children are in the water.

D. The vendor shall have emergency procedures and written safety rules for swimming or wading or follow the posted rules of public pools that are:

1. Posted in the swimming area when the pool is located on the premises of the center; and

2. Explained to children participating in swimming or wading activities.

E. Staff shall have a system for accounting for all children in the water.

### **22VAC40-665-670. Daily activities.**

A. The variety of daily activities for all age groups shall be age and stage appropriate and provide opportunities for teacher-directed, self-directed, and self-chosen tasks and activities, a balance of active and quiet activities, indoor and outdoor activities, individual and group activities, and curiosity and exploration.

B. For a child who cannot move without help, staff shall offer to change the place and position of the child at least every 30 minutes or more frequently depending on the child's individual needs. For an awake infant not playing on the floor or ground a change in play space shall be provided by staff at least every 30 minutes or more often as determined by the individual infant's needs.

C. There shall be a flexible daily schedule for infants based on their individual needs.

D. Infants shall be allowed to sleep when needed.

1. When an infant is placed in his crib, he shall be placed on his back (supine).

2. When an infant is able to easily turn over from the back (supine) to the belly (prone) position and is placed in his crib, he shall still be put on his back but allowed to adopt whatever position he prefers. This applies unless otherwise directed by the infant's physician or health care provider in writing.

3. Resting or sleeping infants shall be individually checked every 15 to 20 minutes.

E. Infants shall be provided comfort when needed.

F. Staff shall provide frequent opportunities for infants to creep, crawl, toddle, and walk.

G. Infants who cannot turn themselves over and are awake shall be placed on their stomachs for at least 30 minutes each day to facilitate upper body strength and to address misshapen head concerns.

H. Infants shall be protected from older children.

### **22VAC40-665-680. Behavioral guidance.**

A. Behavioral guidance shall be constructive in nature and age and stage appropriate and shall be intended to redirect children to appropriate behavior and resolve conflicts.

B. In order to promote the child's physical, intellectual, emotional, and social well-being and growth, staff shall model desired, appropriate behavior and interact with the child and one another to provide needed help, comfort, support and:

1. Respect personal privacy;

2. Respect differences in cultural, ethnic, and family background;

3. Encourage decision-making abilities;

4. Promote ways of getting along;

5. Encourage independence and self-direction; and

6. Use consistency in applying expectations.

C. If time-out is used as a discipline technique:

1. It shall be used sparingly and shall not exceed one minute for each year of the child's age;

2. It shall not be used with infants or toddlers;

3. The child shall be in a safe, lighted, well-ventilated place and within sight and sound of staff; and

4. The child shall not be left alone inside or outside the center while separated from the group.

### **22VAC40-665-690. Forbidden actions.**

The following actions or threats thereof are forbidden:

1. Physical punishment, including striking a child, roughly handling or shaking a child, restricting movement through binding or tying, forcing a child to assume an uncomfortable position, or using exercise as a punishment;

2. Enclosure in a small, confined space or any space that the child cannot freely exit himself; however this does not apply to the use of equipment such as cribs, play yards,

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# Regulations

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high chairs, and safety gates when used for their intended purpose with children preschool age or younger;

3. Punishment by another child;

4. Withholding or forcing of food, water, or rest;

5. Verbal remarks that are demeaning to the child;

6. Punishment for toileting accidents; and

7. Punishment by applying unpleasant or harmful substances.

## **22VAC40-665-700. Parental involvement and notifications.**

A. The vendor shall notify the parent immediately if a child is lost, requires emergency medical treatment or sustains a serious injury, or dies.

B. The vendor shall notify the parent by the end of the day of any known minor injuries.

C. The vendor shall maintain a written record of children's serious and minor injuries in which entries are made the day of occurrence. The record shall include the following:

1. Date and time of injury;

2. Name of injured child;

3. Type and circumstance of the injury;

4. Staff present and treatment;

5. Date and time when parents were notified; and

6. Staff and parent signatures or two staff signatures.

D. Parents shall be notified immediately of any confirmed or suspected allergic reactions and the ingestion or contact with prohibited food even if a reaction did not occur.

E. Staff shall promptly inform parents when persistent behavioral problems are observed and identified.

F. Parents shall be provided at least semiannually in writing information on their child's behavior, development, adjustment, and needs. This requirement does not apply to programs that operate 12 weeks or less a year.

G. Parents shall be informed of the reason for a child's termination from care.

H. A custodial parent shall be admitted to any child day program. Such right of admission shall apply only while the child is in the child day program, in accordance with § 63.2-1813 of the Code of Virginia.

I. When children at the center have been exposed to a communicable disease listed in the Department of Health's current communicable disease chart, the parents shall be notified within 24 hours or the next business day of the vendor having been informed unless forbidden by law.

Children's exposure to life threatening diseases shall be reported to parents immediately.

J. Parents shall be informed of the vendor's emergency preparedness plan.

## **22VAC40-665-710. Furnishings, equipment, and materials.**

A. Furnishings, materials, and equipment shall be age and stage appropriate for the children.

B. Children shall be protected from materials that could be swallowed or present a choking hazard. Toys or objects less than 1-1/4 inches in diameter and less than two inches in length shall be kept out of reach of children less than three years of age.

C. If combs, toothbrushes, or other personal articles are used, they shall be individually assigned.

D. Disposable products shall be used once and discarded.

E. Play yards and portable cribs where used shall meet the Juvenile Products Manufacturers Association (JPMA) and the American Society for Testing and Materials (ASTM) requirements and shall not be used after recalled.

F. Cribs, cots, rest mats, or beds shall be provided for children during the designated rest periods and shall not be occupied by more than one child at a time.

1. Cribs shall be provided for children from birth through 12 months of age and for children older than 12 months of age who are not developmentally ready to sleep on a cot, rest mat, or bed during the designated rest periods.

2. Cots, rest mats, or beds shall be provided for children older than 12 months of age.

G. There shall be at least 12 inches of space between occupied cribs, cots, beds, and rest mats.

H. Full-size cribs shall:

1. Meet the current Consumer Product Safety Commission Standards (16 CFR Parts 1219, 1220, and 1500).

2. Have mattresses that fit snugly next to the crib so that no more than two fingers can be inserted between the mattress and the crib.

I. Pillows and filled comforters shall not be used by children less than 12 months of age while sleeping or resting including quilts, sheepskins, or stuffed toys.

J. Cribs shall be placed where objects outside the crib such as electrical cords or cords from blinds, curtains, etc. are not within reach of infants or toddlers.

K. Use of bumper pads shall be prohibited.

L. Toys or objects hung over an infant in a crib and crib gyms that are strung across the crib may not be used for

infants older than five months of age or infants who are able to push up on their hands and knees.

M. Crib sides shall always be up, and the fastenings secured when a child is in the crib.

N. Double decker cribs shall not be used.

## **22VAC40-665-720. Bedding and linens for use while sleeping or resting.**

A. Linens shall be assigned for individual use.

B. Pillows when used shall be assigned for individual use and covered with pillow cases.

C. Mattresses when used shall be covered with a waterproof material which can be cleaned and sanitized.

## **22VAC40-665-730. Preventing the spread of disease.**

A. A child shall not be allowed to attend the center for the day if he has:

1. A temperature over 101°F;
2. Recurrent vomiting or diarrhea; or
3. Symptoms of a communicable disease.

B. If a child needs to be excluded according to subsection A of this section, the following shall apply:

1. Arrangements shall be made for the child to leave the center as soon as possible after the signs or symptoms are observed; and
2. The child shall remain in a designated quiet area until leaving the center.

C. When any surface has been contaminated with body fluids, it shall be cleaned and sanitized.

## **22VAC40-665-740. Hand washing and toileting procedures.**

A. When hand washing, the following shall apply.

1. Children's hands shall be washed with soap and running water or disposable wipes before and after eating meals or snacks.
2. Children's hands shall be washed with soap and running water after toileting and any contact with blood, feces, or urine.
3. Staff shall wash their hands with soap and running water before and after helping a child use the toilet or changing a diaper, after the staff member uses the toilet, after any contact with body fluids, and before feeding or helping children with feeding, and before preparing or serving food or beverages.
4. If running water is not available, a germicidal cleansing agent administered per manufacturer's instruction may be used.

B. Diapering requirements are as follows:

1. The diapering area shall be accessible and within the building used by children.

2. There shall be sight and sound supervision for all children when a child is being diapered.

3. The diapering area shall have:

a. Access to a sink with running warm water not to exceed 120°F;

b. Soap, disposable towels, and single-use gloves such as surgical or examination gloves;

c. A nonabsorbent surface for diapering or changing shall be used. For children younger than three years, this surface shall be a changing table or countertop designated for changing;

d. The appropriate disposal container as required by subdivision 6 of this subsection; and

e. A leak-proof covered receptacle for soiled linens.

4. When a child's clothing or diaper becomes wet or soiled, the child shall be cleaned and changed immediately upon discovery.

5. Disposable diapers shall be used unless the child's skin reacts adversely to disposable diapers.

6. Disposable diapers shall be disposed in a leak-proof or plastic-lined storage system that is either foot-operated or used in such a way that neither the staff member's hand nor the soiled diaper touches an exterior surface of the storage system during disposal.

7. When cloth diapers are used, a separate leak-proof storage system as specified in subdivision 6 of this subsection shall be used.

8. The diapering surface shall be used only for diapering or cleaning children, and it shall be cleaned with soap and at least room temperature water and sanitized after each use. Tables used for children's activities or meals shall not be used for changing diapers. Individual disposable barriers may be used between each diaper change. If the changing surface becomes soiled, the surface shall be cleaned and sanitized before another child is diapered.

9. Staff shall ensure the immediate safety of a child during diapering.

C. For every 10 children in the process of being toilet trained, there shall be at least one toilet chair or one child-sized toilet, or at least one adult sized toilet with a platform or steps and adapter seat.

1. The location of these items shall allow for sight and sound supervision of children in the classroom if necessary for the required staff-to-children ratios to be maintained.

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# Regulations

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2. Toilet chairs shall be emptied promptly and cleaned and sanitized after each use.

## **22VAC40-665-750. General requirements for medication administration.**

A. The vendor may administer prescription medication to a child with written permission of the parent, provided:

1. The medication is administered by a staff who meets the requirements of 22VAC40-665-580 I and J;

2. The staff administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container; and

3. The staff administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration.

B. The vendor may administer over-the-counter or nonprescription medication to a child with written permission from the parent, provided the medication is:

1. Administered by a staff 18 years of age or older;

2. Labeled with the child's name;

3. In the original container with the manufacturer's direction label attached; and

4. Given only at the dose, duration, and method of administration specified on the manufacturer's label for the age or weight of the child needing the medication.

C. When needed, medication shall be refrigerated.

D. Medication, except for those prescriptions designated otherwise by written physician's order, including refrigerated medication and staff's personal medication, shall be kept in a locked place using a safe locking method that prevents access by children.

E. The vendor shall keep a record of prescription and nonprescription medication given to children, which shall include the following:

1. Name of the child to whom medication was administered;

2. Amount and name of medication administered to the child;

3. The day and time the medication was administered to the child;

4. Name of staff administering the medication;

5. Any adverse reaction; and

6. Any medication error.

## **22VAC40-665-760. First aid and emergency supplies.**

A. The following emergency supplies shall be on each floor of each building used by children, accessible to outdoor play areas, on field trips, in vehicles used for transportation, and wherever children are in care:

1. A first aid kit that contains at a minimum:

a. Scissors;

b. Tweezers;

c. Gauze pads;

d. Adhesive tape;

e. Bandages, assorted types and sizes;

f. An antiseptic cleansing solution and pads;

g. Digital thermometer; and

h. Single-use gloves such as surgical or examination gloves.

2. An ice pack or cooling agent.

B. Each first aid kit shall be easily accessible to staff but not to children.

C. The following nonmedical emergency supplies shall be required:

1. One working, battery-operated flashlight; and

2. One working, battery-operated radio.

## **22VAC40-665-770. Procedures for emergencies.**

A. The vendor shall have a written emergency preparedness plan that addresses staff responsibility and facility readiness with respect to emergency evacuation, relocation, lockdown and shelter-in-place procedures. The plan shall address the most likely to occur emergency scenarios, including severe storms, loss of utilities, natural disaster, chemical spills, intruder, and violence on or near the facility, and facility damage or other situations that may require evacuation, lockdown, or shelter-in-place.

B. The emergency preparedness plan shall contain procedural components for:

1. Evacuation procedures, including:

a. Scenario applicability;

b. Methods to alert staff and emergency responders;

c. Designated primary and secondary routes out of the building;

d. Designated assembly points away from the building;

e. Designated relocation site;

- f. Methods to ensure all children are evacuated from the building, and if necessary, moved to a relocation site;
  - g. Methods to account for all children at the assembly point and relocation site;
  - h. Method of communication with parents after the evacuation or relocation;
  - i. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during evacuation or relocation;
  - j. Method to ensure essential documents, including emergency contact information, attendance records, medications, and supplies are taken to the assembly point and relocation site; and
  - k. Procedures to address reuniting children with a parent or an authorized person designated by the parent to pick up the child.
2. Shelter-in-place procedures, including:
- a. Scenario applicability, inside assembly points, primary and secondary means of access and egress;
  - b. Method to account for all children at the safe locations;
  - c. Method to ensure essential documents (attendance records, emergency contact information, etc.) and special health supplies are carried into the designated assembly points;
  - d. Method of communication after the shelter-in-place;
  - e. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during shelter-in-place; and
  - f. Procedures to address reuniting children with a parent or an authorized person designated by the parent to pick up the child.
3. Lockdown procedures, to include facility containment, including:
- a. Methods to alert staff and emergency responders;
  - b. Methods to secure the facility and designated lockdown locations;
  - c. Methods to account for all children in the lockdown locations;
  - d. Methods of communication with parents and emergency responders;
  - e. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during lockdown; and
  - f. Procedures to address reuniting children with a parent or an authorized person designated by the parent to pick up the child.
4. Staff training requirements, drill frequency, and plan review and update.
5. Continuity of operations procedures to ensure that essential functions are maintained during an emergency.
6. Other special procedures developed with local authorities.
- C. Emergency evacuation and shelter-in-place procedures or maps shall be posted in a location conspicuous to staff and children on each floor of each building.
- D. A 911 or local dial number for police, fire, and emergency medical services and the number of the regional poison control center shall be posted in a visible and conspicuous place.
- E. The vendor shall ensure that all staff receives training regarding emergency evacuation, relocation, shelter-in-place, and lockdown procedures on an annual basis and at the end of each plan update.
- F. The vendor shall ensure that the emergency plans are reviewed with any volunteers who work more than six hours per week prior to volunteering and on an annual basis.
- 22VAC40-665-780. Emergency response drills.**
- A. The emergency response drills shall be practiced, at a minimum:
- 1. Evacuation procedures shall be practiced at least monthly;
  - 2. Shelter-in-place procedures shall be practiced twice a year; and
  - 3. Lockdown procedures shall be practiced at least annually.
- B. The vendor shall maintain a record of the dates of the practice drills for one year. For vendors offering multiple shifts, the simulated drills shall be divided evenly among the various shifts.
- 22VAC40-665-790. Nutrition and food services.**
- A. Drinking water shall be accessible to all children.
- B. When vendors provide meals or snacks, the following shall apply:
- 1. Vendors offering both meals and snacks shall serve a variety of nutritious foods and sufficient portions.
  - 2. Children three years of age or younger shall not be offered foods that are considered to be potential choking hazards.

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# Regulations

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C. When food is brought from home, the following shall apply:

1. The food container shall be clearly labeled in a way that identifies the owner;
2. The vendor shall have extra food or shall have provisions to obtain food to serve to children so that they can have an appropriate snack or meal if they forget to bring food from home, bring an inadequate meal or snack, or bring perishable food; and
3. Unused portions of opened food shall be discarded by the end of the day or returned to the parent.

D. Food shall be prepared, stored, transported, and served in a clean and sanitary manner.

E. When food is prepared to which a child in care is allergic, staff shall take steps to avoid cross contamination in order to prevent an allergic reaction.

F. Staff shall not serve prohibited food to a child.

G. Tables and high chair trays shall be sanitized before and after each use for feeding and cleaned at least daily.

## **22VAC40-665-800. Special feeding needs.**

A. High chairs, infant carrier seats, or feeding tables shall be used for children less than 12 months who are not held while being fed.

B. When a child is placed in an infant seat, high chair, or feeding table, the protective belt shall be fastened securely.

C. Bottle fed infants who cannot hold their own bottles shall be held when fed. Bottles shall not be propped or used while the child is in his designated sleeping location.

D. Infants shall be fed on demand or in accordance with parental instructions.

E. Prepared infant formula shall be refrigerated, dated, and labeled with the child's name if more than one infant is in care.

F. Heated formula and baby food shall be stirred or shaken and tested for temperature before serving to children.

G. Milk, formula, or breast milk shall not be heated or warmed directly in a microwave. Water for warming milk, formula, or breast milk may be heated in a microwave.

H. Formula or breast milk shall not remain unrefrigerated for more than two hours and may not be reheated.

I. Prepared baby food not consumed during that feeding by an infant may be used by that same infant later in the same day, provided that the food is not served out of the baby jar and is labeled with the child's name, dated, and stored in the refrigerator; otherwise, it shall be discarded or returned to the parent at the end of the day.

## **22VAC40-665-810. Transportation and field trips.**

A. If the vendor provides transportation, the vendor shall be responsible for care of the child from the time the child boards the vehicle until returned to the parent or person designated by the parent.

B. Drivers must be 18 years of age or older and possess a valid driver's license to operate the vehicle being driven.

C. Any vehicle used by the vendor for the transportation of children shall meet the following requirements:

1. The vehicle shall be manufactured for the purpose of transporting people seated in an enclosed area;
2. The vehicle's seats shall be attached to the floor;
3. The vehicle shall be insured with at least the minimum limits established by Virginia state statutes as required by § 46.2-472 of the Code of Virginia;
4. The vehicle shall meet the safety standards set by the Department of Motor Vehicles and shall be kept in satisfactory condition to assure the safety of children; and
5. If volunteers supply personal vehicles, the vendor is responsible for ensuring that the requirements of this subsection are met.

D. The vendor shall ensure that during transportation of children:

1. Virginia state statutes about safety belts and child restraints are followed as required by §§ 46.2-1095 through 46.2-1100 of the Code of Virginia, and the stated maximum number of passengers in a given vehicle is not exceeded;
2. The children remain seated and each child's arms, legs, and head remain inside the vehicle;
3. Doors are closed properly and locked unless locks were not installed by the manufacturer of the vehicle;
4. At least one staff member or the driver always remains in the vehicle when children are present; and
5. Staff has a list of the names of the children being transported and allergy care plans, if necessary.

E. When entering and leaving vehicles, children shall enter and leave the vehicle from the curb side of the vehicle or in a protected parking area or driveway.

F. Children shall cross streets at corners or crosswalks or other designated safe crossing points if no corner or crosswalk is available.

G. Staff shall verify that all children have been removed from the vehicle at the conclusion of any trip.

## **22VAC40-665-820. Animals and pets.**

Animals that are kept on the premises of the center shall be vaccinated, if applicable, against diseases that present a hazard to the health or safety of children.

## **22VAC40-665-830. Evening and overnight care.**

A. All supervision requirements apply during evening and overnight care.

B. For evening care, beds with mattresses or cots with at least one inch of dense padding shall be used by children who sleep longer than two hours and are not required to sleep in cribs.

C. For overnight care, beds with mattresses or cots with at least two inches of dense padding shall be used by children who are not required to sleep in cribs.

D. In addition to 22VAC40-665-720 about linens, bedding appropriate to the temperature and other conditions of the rest area shall be provided.

E. When children are eight years of age or older, boys and girls shall have separate sleeping areas.

F. For vendors providing overnight care, an operational tub or shower with heated and cold water shall be provided.

G. When bath towels are used, they shall be assigned for individual use.

H. For children in evening and overnight care, quiet activities and experiences shall be available immediately before bedtime.

**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 (22VAC40-665)

[Child Care Subsidy Program Child Care Center Vendor Agreement, 032-12-0047-01 \(rev. 12/2017\)](#)

[Child Care Subsidy Program Family Day Home Vendor Agreement, 032-12-0046-00 \(rev. 12/2017\)](#)

[Commonwealth of Virginia Certificate of Religious Exemption, Form CRE-1 \(rev. 1992\)](#)

[Commonwealth of Virginia School Entrance Health Form, MCH 213G \(rev. 3/2014\)](#)

DOCUMENTS INCORPORATED BY REFERENCE  
(22VAC40-665)

[Child Care and Development Fund \(CCDF\) Plan for Virginia FFY 2016-2018, effective October 1, 2015](#)

V.A.R. Doc. No. R16-4602; Filed January 11, 2018, 8:14 a.m.

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# GOVERNOR

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## EXECUTIVE ORDER NUMBER ONE (2018)

### **Equal Opportunity**

#### Importance of the Initiative

By virtue of the authority vested in me as Governor, I hereby declare that it is the firm and unwavering policy of the Commonwealth of Virginia to ensure equal opportunity in all facets of state government. The foundational tenet of this Executive Order is premised upon a steadfast commitment to foster a culture of inclusion, diversity, and mutual respect for all Virginians.

This policy specifically prohibits discrimination on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity or expression, age, political affiliation, or against otherwise qualified persons with disabilities. The policy permits appropriate employment preferences for veterans and specifically prohibits discrimination against veterans.

State appointing authorities and other management principals are hereby directed to take affirmative measures, as determined by the Director of the Department of Human Resource Management, to emphasize the recruitment of qualified minorities, women, disabled persons, and older Virginians to serve at all levels of state government. This directive does not permit or require the lowering of bona fide job requirements, performance standards, or qualifications to give preference to any state employee or applicant for state employment.

Allegations of violations of this policy shall be brought to the attention of the Office of Equal Employment Services of the Department of Human Resource Management. No state appointing authority, other management principal, or supervisor shall take retaliatory actions against persons making such allegations.

Any state employee found in violation of this policy shall be subject to appropriate disciplinary action.

The Secretary of Administration is directed to review and update annually state procurement, employment, and other relevant policies to ensure compliance with the non-discrimination mandate contained herein, and shall report to the Governor his or her findings together with such recommendations as he or she deems appropriate. This review shall ensure that state procurement policies fully implement and align with the non-discrimination directives in the Virginia Public Procurement Act, including its prohibitions on discrimination based on race, religion, color, sex, sexual orientation, gender identity or expression, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment. The Director of the Department of Human Resource Management shall assist in this review.

No state employee or agent within the Executive Branch may engage in discrimination in the provision of public services based on race, religion, color, sex, sexual orientation, gender identity or expression, national origin, age, political affiliation, disability, or veteran status. Any state employee or agent who engages in such discrimination will be subject to appropriate disciplinary action. The Department of Human Resource Management is directed to promulgate, review and update appropriate policies in the Commonwealth's Standards of Conduct to implement these requirements in accordance with any other applicable laws and regulations.

This Executive Order supersedes and rescinds Executive Order No. 1 (2014), Equal Opportunity, issued by Governor Terence R. McAuliffe on January 11, 2014.

#### Effective Date of the Executive Order

This Executive Order shall become effective upon its signing and shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 13th day of January 2018.

/s/ Ralph S. Northam  
Governor

## EXECUTIVE ORDER NUMBER TWO (2018)

### **Authority and Responsibility of the Chief of Staff**

#### Importance of the Initiative

By virtue of the authority vested in me as Governor under Article V, Sections 1, 7, 8, and 10 of the Constitution of Virginia and Sections 2.2-100 and 2.2-104 of the Code of Virginia, and subject always to my continuing ultimate authority and responsibility to act in such matters and to reserve to myself any and all such powers, I hereby affirm and delegate to my Chief of Staff the powers and duties enumerated below.

1. To direct, as the deputy planning and budget officer, the administration of the state government planning and budget process, except as to the responsibilities enumerated below, which are retained by me:
  - a. Submission of the budget and accompanying documents to the General Assembly;
  - b. Final review and determination of all proposed expenditures and of estimated revenues and borrowings to be included in the Executive Budget for each state department, division, office, board, commission, institution, or other agency or undertaking;
  - c. Amendment of Position Levels; and
  - d. Authorization of deficits.

2. To direct, as the deputy personnel officer, the administration of the state government personnel system, except as to the responsibility enumerated below, which are retained by me:

- a. Final determination with respect to employee compensation plans;
- b. Submission of reports to the General Assembly by the Governor as required by law;
- c. Issuance, amendment, or suspension of the Rules for the Administration of the Virginia Personnel Act; and
- d. Final action on appeals from appointing authorities to the Governor.

3. To review, in the event of my absence or unavailability, major planning, budgetary, personnel, policy, and legislative matters that require my decision.

4. To review, in the event of my absence or unavailability, policy or operational differences that may arise among or between my Secretaries and other Cabinet members.

5. To administer the direction and supervision of the Governor's Office, as well as budgetary and personnel authority for the Office.

Effective Date of the Executive Order

This Executive Order rescinds Executive Order No. 3 (2014) issued on January 11, 2014, by Governor Terence R. McAuliffe. This Executive Order shall become effective upon its signing and shall remain in full force and effect until January 31, 2022, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 13th day of January 2018.

/s/ Ralph S. Northam  
Governor

EXECUTIVE ORDER NUMBER THREE (2018)

**Delegation of Governor's Authority to Declare a State of Emergency, to Call the Virginia National Guard to Active Service for Emergencies or Disasters, and to Declare the Governor Unable to Discharge the Powers and Duties of His Office When the Governor Cannot Be Reached or is Incapacitated**

Importance of the Initiative

By virtue of the authority vested in me by Section 2.2-104 of the Code of Virginia, and subject to the provisions stated herein, I hereby affirm and delegate to the Chief of Staff, followed in protocol order by the Secretary of Public Safety and Homeland Security, the State Coordinator of the Virginia Department of Emergency Management, and the Secretary of Veterans and Defense Affairs, my authorities under Sections

44-146.17 and 44-75.1 of the Code of Virginia, to declare a state of emergency and to call forth the Virginia National Guard or any part thereof to state-active duty in any of the circumstances outlined in subsections 4 and 5 of Section 44-75.1 A.

I further hereby affirm and delegate to the Chief of Staff, my authority under Article V Section 16 of the Constitution and under Section 24.2-211 of the Code of Virginia to transmit to the President pro tempore of the Senate and the Speaker of the House of Delegates, a declaration that I am unable to discharge the powers and duties of the Governor's office. Each of these declarations is subject to the following conditions:

1. Such delegation is subject always to my continuing, ultimate authority and responsibility to act in such matters, and in the case of a declaration that I am unable to discharge the powers and duties of my office, my ability to transmit to the Clerk of the Senate and Clerk of the House of Delegates my written declaration that no inability continues to exist and to resume the powers and duties of my office.

2. Use of this delegation is contingent upon my being unable to be reached so as to give my approval for the declaration of a state of emergency, as defined in Section 44-146.16 of the Code of Virginia, or use of the Virginia National Guard.

3. Use of this delegation to declare that I am unable to discharge the powers and duties of my office is specifically contingent upon my being unable to be reached or otherwise incapacitated for over 24 hours and the unavailability of any one of the Attorney General, President pro tempore of the Senate, or the Speaker of the House of Delegates.

4. This delegation is strictly standby in nature, to be held in abeyance until such time as there may be explicit circumstances involving an emergency whereby human lives and public and private property are threatened in the event of natural or man-made emergencies or disasters.

5. If the authority granted under this Executive Order is used, the Lieutenant Governor and I shall be informed of such use as soon as practicable.

Effective Date of the Executive Order

This Executive Order rescinds Executive Order No. 4 (2014) issued on January 11, 2014 (revised January 13, 2014), by Governor Terence R. McAuliffe. This Executive Order shall become effective upon its signing and shall remain in full force and effect until January 31, 2022, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 13th day of January 2018.

/s/ Ralph S. Northam  
Governor

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# GENERAL NOTICES/ERRATA

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## STATE AIR POLLUTION CONTROL BOARD

### Air State Implementation Plan Revision

**Notice of action:** The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia State Implementation Plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. The Commonwealth intends to submit the regulation amendments to EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

**Regulations affected:** The regulation of the board affected by this action is Part I, NO<sub>x</sub> Budget Trading Program, 9VAC5-140 (Regulation for Emissions Trading Programs).

**Purpose of notice:** DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

**Public comment period:** February 5, 2018, to March 7, 2018.

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

**Public comment stage:** The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent EPA regulations. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

**Description of proposal:** The transport of nitrogen oxides (NO<sub>x</sub>) across state lines, which contributes to the formation of ozone, was first addressed by EPA's NO<sub>x</sub> Budget Trading Program as implemented via the NO<sub>x</sub> State Implementation Plan (SIP) Call. This program controlled NO<sub>x</sub> emissions primarily from electric generating units (EGUs) as well as certain types of non-EGUs. In turn, the State Air Pollution Control Board implemented these federal requirements under its own NO<sub>x</sub> SIP Call Rule (Part I of 9VAC5-140). Subsequently, EPA's NO<sub>x</sub> SIP Call Rule was superseded by the Clean Air Interstate Rule (CAIR), which was in turn

superseded by the Cross-State Air Pollution Rule (CSAPR). Although the state is now subject to CSAPR, and both the NO<sub>x</sub> SIP Call Rule (with respect to EGUs) and CAIR are no longer in effect, non-EGUs cannot be brought into the Transport Rule trading programs, and the NO<sub>x</sub> SIP Call regulations applicable to non-EGUs must be retained. The purpose of this action is to remove unnecessary federal requirements while retaining those requirements needed to control emissions from non-EGUs. This will ensure that Virginia is properly meeting federal requirements for the control of NO<sub>x</sub>.

**Federal information:** This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104.

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

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

- 1) Main Street Office, 1111 East Main Street, Suite 1400, Richmond, VA, telephone (804) 698-4070,
- 2) Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (276) 676-4800,
- 3) Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,
- 4) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800,
- 5) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,
- 6) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and
- 7) Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA, telephone (757) 518-2000.

**Contact Information:** Karen G. Sabasteanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, (804) 698-4423, FAX

(804) 698-4319, or email [karen.sabasteanski@deq.virginia.gov](mailto:karen.sabasteanski@deq.virginia.gov).

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### TPE Pamplin2 Small Renewable Energy Project (Solar) Permit by Rule - Prince Edward County

TPE Pamplin2 Solar, an entity owned by TurningPoint Energy (the client), has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Pamplin, Prince Edward County, Virginia, pursuant to Virginia regulation. The site comprises approximately 309 acres of land (site) and is located off Good Hope Road in Pamplin, Prince Edward County. According to client provided details and the Prince Edward County GIS website, the site is comprised of two parcels (Prince Edward County Parcel ID #'s 043 A 36 and 044 A 83) that consist of cleared and undeveloped wooded land. The proposed project is anticipated to be an approximately 15.6-megawatt alternating current solar power plant and will include photovoltaic panels and supporting steel frames.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4319, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

## STATE BOARD OF HEALTH

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

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Health is conducting a periodic review and small business impact review of **12VAC5-20, Regulations for the Conduct of Human Research**. 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 February 5, 2018, and ends February 26, 2018.

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 Janice Hicks, Policy Planning Specialist, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7686, FAX (804) 864-7652, or email [janice.hicks@vdh.virginia.gov](mailto:janice.hicks@vdh.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.

## DEPARTMENT OF HEALTH

### January 2018 - Drinking Water State Revolving Funds Deadlines

The Virginia Department of Health (VDH) is pleased to announce several opportunities for funding drinking water infrastructure. All applications may be submitted year round; however, VDH will conduct one round of evaluations for requests submitted by the deadline. Applications postmarked or received after the due date will be considered for funding in the following round. Funding is made possible by the Drinking Water State Revolving Fund (DWSRF) Program and the Water Supply Assistance Grant Fund (WSAG) Program (if funds are available). The Fiscal Year 2019 DWSRF Intended Use Plan will be developed using public input on these issues.

(1) Public Comments and Set-Aside Suggestions Invited (Submission deadline April 1, 2018):

To identify ways to improve the program, VDH seeks meaningful input from the public, the waterworks industry, or any other interested party. Anyone may make comments or recommendations to support or revise the program. Anyone has the opportunity to suggest new or continuing set-aside (nonconstruction) activities. Set-aside funds help VDH assist waterworks owners prepare for future drinking water challenges and assure the sustainability of safe drinking water.

(2) Construction and Refinance Fund Requests (Application deadline April 1, 2018):

Owners of community waterworks and nonprofit noncommunity waterworks are eligible to apply for construction funds. VDH makes selections based on criteria described in the DWSRF Program Design Manual, such as existing public health problems, noncompliance, affordability, regionalization, the availability of matching funds. VDH anticipates a funding level of \$25 million.

(3) 1452(k) Source Water Protection Initiatives (Application deadline April 1, 2018):

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## General Notices/Errata

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Loan funds are available to (1) community and nonprofit noncommunity waterworks to acquire land or conservation easements and (2) community waterworks, only to establish local voluntary incentive-based protection measures.

(4) Lead Service Line (LSL) Replacement Program (Application deadline April 1, 2018):

In an effort to accelerate the removal of lead in drinking water, the DWSRF Program has made funding available for the complete removal of the public or private portion of the LSLs. In conjunction with other available funds this program intends to provide up to \$5000 as grant funds (of which up to \$500 may be eligible as an administrative fee) for each service line replaced on the homeowners side of the meter. The LSL includes pipe entry into the structure (up to and including a shut-off valve) but excludes the premise plumbing.

(5) Planning and Design Awards (Applications received and reviewed for award year-round.):

Private and public owners of community and nonprofit noncommunity waterworks are eligible to apply for funds, which can be up to \$50,000 per project, for small, financially stressed waterworks serving fewer than 10,000 persons. Eligible projects may include preliminary engineering planning, design of plans and specifications, performance of source water quality and quantity studies, drilling test wells to determine source feasibility, or other similar technical assistance projects. These funds are to assist waterworks' owners with future applications to construction funding agencies.

The VDH's DWSRF Program Design Manual describes the features of the above opportunities for funding. After receiving public input, VDH will develop an Intended Use Plan (IUP) for public review and comment. When developed, the IUP will describe specific details for use of the funds. A public meeting is planned and written comments will be accepted before submittal of a final version to the U.S. Environmental Protection Agency for approval.

Applications, set-aside suggestion forms, program design manuals, and information materials are available on the VDH website at <http://www.vdh.virginia.gov/drinking-water/financial-construction-assistance-programs/drinking-water-funding-program-details/>. This information can also be obtained from Steven Pellei, PE, FCAP Director, by telephone (804) 864-7500, FAX (804) 864-7521, or postal mail Virginia Department of Health, Office of Drinking Water, 109 Governor Street, 6th Floor, Richmond, VA 23219. Comments can be directed to Mr. Pellei.

### Announcing Drinking Water Construction Funding Workshops

VDH will offer funding informational meetings via webcast. At least one workshop will be recorded for future play back. The webcast is tentatively scheduled for February 20, 2018. Please check the VDH website at <http://www.vdh.virginia.gov/drinking-water/financial-construction-assistance-programs/drinking-water-funding-program-details/>.

Material will focus on drinking water construction funding available through VDH. The Drinking Water State Revolving Loan Fund Program will be discussed.

Viewers will be advised on program updates and then guided through program criteria, program applications, and the project scheduling steps needed for smooth project implementation.

### BOARD OF MEDICAL ASSISTANCE

#### Durable Medical Equipment Provider Manual (Appendix B) Draft for Stakeholder Input

Comment period: January 11, 2018, through February 10, 2018.

The draft versions of Appendix B of the Durable Medical Equipment (DME) and Supplies Provider Manual are posted on the DMAS website at [http://www.dmas.virginia.gov/Content\\_pgs/pd-pmnl.aspx](http://www.dmas.virginia.gov/Content_pgs/pd-pmnl.aspx) for public comment through February 10, 2018.

Overview of Changes: Changes have been made to multiple sections of the Appendix B; please refer to each section of the Appendix B for changes to that section. All changes are noted in bold with effective dates noted at the bottom of each appendix. The changes are effective for dates of service on or after January 1, 2018.

The DME Appendices will be finalized and officially posted by February 15, 2018, at <https://www.virginiamedicaid.dmas.virginia.gov/wps/portal/ProviderManuals>.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov).

### STATE WATER CONTROL BOARD

#### Proposed Consent Special Order for E.T. Gresham Company Inc.

An enforcement action has been proposed for E.T. Gresham Company Inc. for violations at Building 0841 located on Camp Peary in York County, Virginia. The State Water

Control Board proposes to issue a special order by consent to E.T. Gresham Company Inc. to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Kristen Sadtler will accept comments by email at [kristen.sadtler@deq.virginia.gov](mailto:kristen.sadtler@deq.virginia.gov), FAX at (804) 698-4277, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from February 5, 2018, to March 7, 2018.

### **Announcement of a Rescheduled Public Meeting and Notice of Public Comment for a Water Quality Study (TMDL) for the Rudee Inlet Watershed**

**Public meeting:** A rescheduled final public meeting will be held Tuesday, February 6, 2018, at 6 p.m. at the Department of Environmental Quality, Tidewater Regional Office, located at 5636 Southern Boulevard, Virginia Beach, VA 23462. The original meeting was scheduled for January 10, 2018, but after inclement weather, was postponed. This meeting will be open to the public and all are welcome to participate. In the case of inclement weather, an alternate meeting will occur on Wednesday, February 7, 2018, at 6 p.m. at the same location. For more information, please contact Rachel Hamm at telephone (757) 518-2024 or email [rachel.hamm@deq.virginia.gov](mailto:rachel.hamm@deq.virginia.gov).

**Purpose of meeting:** The Department of Environmental Quality (DEQ) and its contractors, the Virginia Institute of Marine Science, have developed a draft water quality report on the bacteria impairments in the Rudee Inlet watershed located in Virginia Beach, Virginia. A public meeting will be held to introduce the local community to the total maximum daily loads (TMDLs) for bacteria and gather public comment on the draft report. A public comment period on the draft TMDL report will occur January 11, 2018 until February 19, 2018.

**Description of study:** Portions of the Rudee Inlet watershed including Lake Rudee, Lake Wesley, and Owl Creek were identified in Virginia's 2014 Water Quality Assessment and Integrated Report as impaired due to violations of the state's water quality standards for Enterococci and fecal coliform and do not support the designated uses of "primary contact (recreational or swimming)" and "shellfishing." Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. Reductions and TMDLs for the causes of the impairments have been developed and are available for community review in the TMDL report located online at the following link: <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx>.

**How to comment and participate:** The meetings of the TMDL process are open to the public, and all interested parties are welcome. Written comments will be accepted through February 19, 2018, and should include the name, address, and telephone number of the person submitting the comments. For more information or to submit written comments, please contact Rachel Hamm, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, telephone (757) 518-2024, FAX (757) 518-2009, or email [rachel.hamm@deq.virginia.gov](mailto:rachel.hamm@deq.virginia.gov).

### **Public Meeting and 30-day Public Comment Period on a Draft Total Maximum Daily Load Implementation Plan**

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons in a total maximum daily load (TMDL) implementation plan for the Powell River watershed in Lee and Wise Counties. There are 10 different impaired stream segments in this area, including Butcher Fork, South Fork Powell River, North Fork Powell River, and Powell River. All segments are listed as impaired on Virginia's § 303(d) TMDL Priority List and Report due to violations of the state's water quality standard for bacteria and aquatic life. A complete list of the Powell River and tributary impairment segments, listing years, river miles, and locations can be found at [http://bit.do/DEQPowellandTributaries\\_Impairments](http://bit.do/DEQPowellandTributaries_Impairments).

The implementation plan (IP) will provide measurable goals, corrective actions needed, and associated costs, benefits, and environmental impacts. The draft IP can be found on the DEQ website under "Draft TMDL Implementation Plans": <http://www.deq.virginia.gov/programs/water/waterqualityinformationtmdls/tmdl/tmdlimplementation/tmdlimplementationplans.aspx>.

DEQ completed bacteria and benthic TMDL for the Powell River and tributaries in 2011. The TMDL was approved by the Environmental Protection Agency in March of 2011 and is available on the DEQ website at <http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/tenbigvr/powell.pdf>.

DEQ will host two public meetings to present the draft TMDL implementation plan for the Powell River because of the large geographic size of the watershed. One meeting will be held on Tuesday, February 6, 2018, from 6 p.m. to 8 p.m. at the Pennington Gap Community Center, 41670 West Morgan Avenue, Pennington Gap, VA 24277. The other meeting will be held Thursday, February 8, 2018, from 6 p.m. to 8 p.m. at the Big Stone Gap Visitor Center, 306 Wood Avenue East, Big Stone Gap, VA 24219. In the event of inclement weather, please call the number below to confirm postponement of the meeting.

A 30-day public comment period for the meetings will begin February 6, 2018, and end March 6, 2018. Written comments

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## General Notices/Errata

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should include the name, address, and telephone number of the person submitting the comments and should be sent to Stephanie Kreps, Southwest Regional Office, Department of Environmental Quality, 355A Deadmore Street, Abingdon, VA 24210, telephone (276) 676-4803, or emailed to [stephanie.kreps@deq.virginia.gov](mailto:stephanie.kreps@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](mailto:varegs@dls.virginia.gov).

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <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: 22VAC40-73. Standards for Licensed Assisted Living Facilities.**

**Publication: 34:6 VA.R. 645-705 November 13, 2017**

**Correction to Final Regulation:**

Page 668, 22VAC40-73-310, subdivision H 3, line 3, after "Virginia" change "except" to "or"

VA.R. Doc. No. R12-3227; Filed January 29, 2018