VIRGINIA REGISTER OF REGULATIONS

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VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

The *Virginia Register* is cited by volume, issue, page number, and date. **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.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the Virginia Register of Regulations website (http://register.dls.virginia.gov).

August 2018 through August 2019

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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	September17, 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 **(Monday)**	December 10, 2018
35:9	December 5, 2018	December 24, 2018
35:10	December 14, 2018 **(Friday)**	January 7, 2019
35:11	January 2, 2019	January 21, 2019
35:12	January 16, 2019	February 4, 2019
35:13	January 30, 2019	February18, 2019
35:14	February 13, 2019	March 4, 2019
35:15	February 27, 2019	March 18, 2019
35:16	March 13, 2019	April 1, 2019
35:17	March 27, 2019	April 15, 2019
35:18	April 10, 2019	April 29, 2019
35:19	April 24, 2019	May 13, 2019
35:20	May 8, 2019	May 27, 2019
35:21	May 22, 2019	June 10, 2019
35:22	June 5, 2019	June 24, 2019
35:23	June 19, 2019	July 8, 2019
35:24	July 3, 2019	July 22, 2019
35:25	July 17, 2019	August 5, 2019
35:26	July 31, 2019	August 19, 2019

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PSYCHOLOGY

Agency Decision

Title of Regulation: **18VAC125-20. Regulations Governing the Practice of Psychology.**

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

Name of Petitioner: Andrew Byrnes.

Nature of Petitioner's Request: To amend 18VAC125-20-43 to allow an Employment Verification Form from a third party employer contracting to provide psychological services to a local school system.

Agency Decision: Request denied.

Statement of Reason for Decision: The board is concerned about the quality of care and the loss of oversight if there is a disconnect between the school system and the psychological services provided. For protection of the children, the board confirmed the need for accountability to the local school.

Agency Contact: Jaime Hoyle, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. R18-30; Filed July 10, 2018, 1:11 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Initial Agency Notice

Title of Regulation: **24VAC35-30. VASAP Case Management Policy and Procedure Manual.**

Statutory Authority: §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

Name of Petitioner: Cynthia Ellen Hites.

Nature of Petitioner's Request: Petition to amend Virginia Administrative Code 24VAC35-30, pursuant to § 2.2-4007. I, Cynthia Ellen Hites, as a citizen of the Commonwealth of Virginia, pursuant to Virginia Code § 2.2-4007, do humbly submit this petition for the following amendment to Virginia Administrative Code 24VAC35-30 (VASAP Policy and Procedures Manual). Part VII Ignition Interlock Violations: "Under no circumstances shall the ASAP accept any other means of clearing a failing BAC registered on an interlock device other than the interlock device itself. This includes, but is not limited to, preliminary breath machines, urine screens, etc." This clause leaves absolutely no failsafe for the citizens who have not been drinking, yet are violated by the ASAP for readings of alcohols aside from ethanol. The BAIIDs measure all alcohols, therefore a scientific failsafe must be put in place to protect innocent citizens from the devices registering a compound aside from ethanol as drinking liquor, thus creating "false violations." I propose the following language be adopted, in lieu of the current: "Upon client request, the ASAP shall accept proof of a urine screen, or blood test from an accredited lab that results in a negative reading for EtOH for the time frame in question. Also to be considered in conjunction with BAIID data logs are officially filed reports or eyewitness testimony from city police and/or state police that contradict the ignition interlock device." This unethical guessing game of "pin the tail on the alcohol" must cease, because it is making what is inherently objective, subjective to case workers' knowledge, or opinion, of ethanol metabolization. Electrochemical fuel cells are not ethanol specific. The law (Virginia Administrative Code 24VAC35-60-70) is written as such that it fundamentally contradicts itself, rendering it scientifically impossible. One can either have an electrochemical fuel cell, or ethanol specificity, but not both. Only a gas chromatograph - mass spectrometer can distinguish EtOH from its dozens of cousins; and the law, courts, VASAP and ASAPs must take that into account. While completely sober for months, I was held hostage on nine different days, for the duration of twenty-three high BrAC readings, as police administered their PBTs which read ZERO, sometimes simultaneously to the BAIID lockouts, and sometimes only mere minutes after the BAIID gave readings as high as 0.07 BrAC. No ethanol was present during any high BrAC events, and that fact is borne out in the extreme elimination (and impossible absorption) rates. One of the nine events included an initial startup at 0.000 BrAC, then rose within three minutes to 0.07 upon rolling retest, then back to zero, all within a span of 24 minutes. A BrAC for ethanol of 0.07 will take over four hours to achieve total elimination. Also, directly refuting the ignition interlock readings are the contradicting PBTs, the police eyewitness reports, and negative urine screen. If scientific failsafes had been in place, perhaps such an egregious miscarriage of justice would not have occurred in my case, at least not to such an outrageous degree. I beg of the Commission members to take this petition under advisement. Virginians' liberties are being traipsed upon by the ignition interlock companies and by the ASAP's inability to ferret out "real" ethanol violations. Please begin to utilize science, for the sake of what's right, to help prevent any more collateral damage at the hands of such an unsophisticated and antiquated technology. Humbly and most sincerely, Cynthia Ellen Hites.

Agency Plan for Disposition of Request: This petition will be considered by the Commission on Virginia Alcohol Safety Action Program at its meeting on December 7, 2018.

Public Comment Deadline: September 28, 2018.

Agency Contact: Richard Foy, Field Service Specialist, Commission on the Virginia Alcohol Safety Action Program, 701 East Franklin Street, Suite 1110, Richmond, VA 23219, telephone (804) 786-5895, or email rfoy@vasap.virginia.gov.

VA.R. Doc. No. R18-44; Filed July 12, 2018, 4:43 p.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Behavioral Health and Developmental Services intends to consider amending **12VAC35-105, Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services**. The purpose of the proposed action is to comply with the quality and risk management system requirements of the U.S. Department of Justice's Settlement Agreement with Virginia (United States of America v. Commonwealth of Virginia, Civil Action No. 3:12cv059-JAG) and develop and implement a system to ensure that individuals in the Settlement Agreement population who are receiving services in Virginia's public system of services receive a level of care that is good quality, meets individuals' needs, and helps individuals achieve positive outcomes. Quality improvement measures are required of community services boards for services they provide, but those services are not currently in the Department of Behavioral Health and Developmental Services (DBHDS) licensing regulations for providers. The proposed amendments will clarify and expand the requirements for the quality practices for the health, safety, care, and treatment for adults who receive services from DBHDS service providers.

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

Statutory Authority: §§ 37.2-302 and 37.2-400 of the Code of Virginia.

Public Comment Deadline: September 5, 2018.

Agency Contact: Emily Bowles, Legal Coordinator, Office of Licensing, Department of Behavioral Health and Developmental Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218, telephone (804) 225-3281, FAX (804) 692-0066, TTY (804) 371-8977, or email emily.bowles@dbhds.virginia.gov.

VA.R. Doc. No. R18-4381; Filed July 12, 2018, 9:52 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Dentistry intends to consider amending **18VAC60-21, Regulations Governing the Practice of Dentistry**. The purpose of the proposed action is to replace regulatory provisions specific to the advertising of dental specialties with reference to the statutory language regarding the use of trade names. Specifically being considered for removal are provisions prohibiting (i) advertising a claim of a dental specialty unless it is approved by the National Certifying Boards for Dental Specialists of the American Dental Association and (ii) representation by a dentist who does not hold specialty certification that his practice is limited to providing services in such specialty area without disclosing that he is a general dentist. The prohibition of a claim of professional superiority remains in the regulation.

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

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

Public Comment Deadline: September 5, 2018.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4437, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

VA.R. Doc. No. R18-5206; Filed July 5, 2018, 5:12 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Dentistry intends to consider amending **18VAC60-21, Regulations Governing the Practice of Dentistry**. The purpose of the proposed action is to amend regulations relating to administration of sedation or anesthesia in dental offices. The goals of the proposed action are greater consistency and clarity of the requirements, depending on the level of sedation and the risk to the patient, and closer alignment with the American Dental Association Guidelines for the Use of Sedation and General Anesthesia. The board intends to amend provisions that are problematic to dentists, such as compliance with current regulations regarding special needs patients. The board intends to incorporate guidelines and best practices for sedation and anesthesia, such as the use of a three-person team in the operatory during administration of moderate sedation.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2709.5 of the Code of Virginia.

Public Comment Deadline: September 5, 2018.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4437, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

VA.R. Doc. No. R18-5513; Filed July 5, 2018, 5:12 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Dentistry intends to consider amending **18VAC60-21, Regulations Governing the Practice of Dentistry**; **18VAC60-25, Regulations Governing the Practice of Dental Hygiene**; and **18VAC60-30, Regulations Governing the Practice of Dental Assistants**. The purpose of the proposed action is to change the license renewal schedule from the set date of March 31 to renewal in the licensee's birth month. The change will occur in the calendar year after the effective date of the regulation. The intent is to distribute the workload associated with renewal across a calendar year and to make the renewal deadline easier for licensees to remember.

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

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

Public Comment Deadline: September 5, 2018.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4437, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

VA.R. Doc. No. R18-5382; Filed July 5, 2018, 5:11 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Dentistry intends to consider amending **18VAC60-30, Regulations Governing the Practice of Dental Assistants**. The purpose of the proposed action is to modify the educational qualifications for registration of a dental assistant II by moving to a competency-based program in which basic didactic course work is followed by clinical training under the direction and supervision of a dentist who has successfully completed a calibration exercise on evaluating the clinical skills of a student. The intent of the proposed regulatory action is to make entry into the profession more accessible to students and ensure greater consistency in their training and assurance of competency.

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

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

Public Comment Deadline: September 5, 2018.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4437, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

VA.R. Doc. No. R18-5287; Filed July 17, 2018, 3:59 p.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to consider amending **18VAC65-40, Regulations for the Funeral Service Internship Program**. The purpose of the proposed action is to provide clear, enforceable regulations for the supervision and practice of interns so that interns and funeral homes are not misleading the public about their status and are being appropriately supervised to protect public health and safety in the handling of human remains. The proposed action will amend 18VAC65-40-130 to (i) indicate that training should be completed within a timeframe of 18 months through 60 months and provide that the board will only consider extensions for extenuating circumstances; (ii) reduce the initial intern supervisor application fee to $25 but institute a yearly renewal fee of $25 to allow the board to track active supervisors and make sure supervisors are in good standing; and (iii) add a requirement that interns be identified as interns in titles, correspondence, and communications with the public.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2817 of the Code of Virginia.

Public Comment Deadline: September 5, 2018.

Agency Contact: Corie Tillman-Wolf, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4424, FAX (804) 527-4637, or email corie.wolf@dhp.virginia.gov.

VA.R. Doc. No. R18-5595; Filed July 17, 2018, 4:00 p.m.

BOARD OF OPTOMETRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Optometry intends to consider amending **18VAC105-20, Regulations Governing the Practice of Optometry**. The purpose of the proposed action is to issue inactive licenses. The intent is to allow licensees who are no longer practicing, either because they

have located to another state or have retired, to place their Virginia licenses in an inactive status, which will allow them to reactivate should they decide to resume practice.

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

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

Public Comment Deadline: September 5, 2018.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4508, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

VA.R. Doc. No. R18-5434; Filed July 5, 2018, 5:13 p.m.

BOARD OF PHARMACY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Pharmacy intends to consider amending **18VAC110-20, Regulations Governing the Practice of Pharmacy**. The purpose of the proposed action is to regulate brown bagging of drugs requiring reconstitution or compounding prior to administration and to set specific requirements for specialty pharmacies participating in white bagging. The intent of the regulatory action is to ensure drugs are appropriately dispensed and administered.

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

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

Public Comment Deadline: September 5, 2018.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

VA.R. Doc. No. R18-5376; Filed July 5, 2018, 5:13 p.m.

BOARD OF SOCIAL WORK

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Social Work intends to consider amending **18VAC140-20, Regulations Governing the Practice of Social Work**. The purpose of the proposed action is to add hours in ethics or standards of practice to address a concern about complaints against social workers, almost all of which stem from an ethical issue or a failure to adhere to professional standards of practice. Currently, 30 hours of continuing education are required every two years for renewal of a clinical social work license and 15 hours of continuing education are required for renewal of a social work license. A minimum of two of those hours must pertain to ethics or the standards of practice for the behavioral health professions or to laws governing the practice of social work in Virginia. The proposed action increases continuing education in ethics or the standards of practice for behavioral health professions from a minimum of two hours to a minimum of six hours every two years. The total hours of required continuing education would not change.

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

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

Public Comment Deadline: September 5, 2018.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. R18-5436; Filed July 17, 2018, 4:08 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulation have been 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 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.

Title of Regulation: **12VAC5-431. Sanitary Regulations for Hotels.**

Contact Information: Olivia McCormick, Program Manager, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, email olivia.mccormick@vdh.virginia.gov.

FORMS (12VAC5-431)

Application for a Hotel Plan Review, TER-H-1 (eff. 7/2018)

Application for a Hotel Operations Permit, TER-H-2 (eff. 7/2018)

VA.R. Doc. No. R18-5563; Filed July 6, 2018, 12:25 p.m.

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulation have been 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 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.

Title of Regulation: **12VAC5-481. Virginia Radiation Protection Regulations.**

Contact Information: Beth Schilke, Radiation Safety Specialist, Virginia Department of Health, 109 Governor Street, Room 730, Richmond, VA 23219, email beth.schilke@vdh.virginia.gov.

FORMS (12VAC5-481)

Applications for a New Radioactive Material License

~~Academic, Research and Development, and Other Licenses of Limited Scope, Revision 3 (1/2016)~~

Academic, Research and Development, and Other Licenses of Limited Scope, Revision 4 (6/2018)

Broad Scope, Revision 3 (1/2016)

~~Fixed Gauge Devices, Revision 3 (1/2016)~~

~~Industrial Radiography, Revision 3 (1/2016)~~

~~Irradiators – Part XII, Revision 1 (1/2016)~~

~~Medical Use, Revision 2 (1/2016)~~

~~Portable Gauges, Revision 2 (1/2016)~~

~~Radiopharmacy, Revision 1 (1/2016)~~

~~Sealed Sources, Revision 3 (1/2016)~~

~~Self-Shielded Irradiators, Revision 3 (1/2016)~~

Fixed Gauge Devices, Revision 4 (6/2018)

Industrial Radiography, Revision 4 (6/2018)

Irradiators – Part XII, Revision 2 (6/2018)

Medical Use, Revision 3 (6/2018)

Portable Gauges, Revision 3 (6/2018)

Radiopharmacy, Revision 2 (6/2018)

Sealed Sources, Revision 4 (6/2018)

Self-Shielded Irradiators, Revision 4 (6/2018)

Material in Well Logging, Tracer, and Field Flood Study, Revision 3 (1/2016)

~~XRF Devices, Revision 2 (1/2016)~~

XRF Devices, Revision 3 (6/2018)

Manufacturing and Distribution, Revision 3 (6/2018)

Applications for Renewal of a Radioactive Material License

~~Academic, Research and Development and Other Licenses of Limited Scope, Revision 3 (1/2016)~~

Academic, Research and Development and Other Licenses of Limited Scope, Revision 4 (6/2018)

Broad Scope, Revision 3 (1/2016)

~~Fixed Gauge Devices, Revision 3 (1/2016)~~

~~Industrial Radiography, Revision 3 (1/2016)~~

~~Irradiators – Part XII, Revision 0 (7/2016)~~

~~Medical Use, Revision 2 (1/2016)~~

~~Portable Gauges, Revision 4 (1/2016)~~

~~Radiopharmacy, Revision 1 (1/2016)~~

~~Sealed Sources, Revision 3 (1/2016)~~

~~Self-Shielded Irradiators, Revision 3 (1/2016)~~

Fixed Gauge Devices, Revision 4 (6/2018)

Industrial Radiography, Revision 4 (6/2018)

Irradiators – Part XII, Revision 1 (6/2018)

Medical Use, Revision 3 (6/2018)

Portable Gauges, Revision 5 (6/2018)

Radiopharmacy, Revision 2 (6/2018)

Sealed Sources, Revision 4 (6/2018)

Self-Shielded Irradiators, Revision 4 (6/2018)

Material in Well Logging, Tracer, and Field Flood Study, Revision 3 (1/2016)

~~XRF Devices, Revision 4 (1/2016)~~

XRF Devices, Revision 5 (6/2018)

Manufacturing and Distribution, Revision 3 (6/2018)

Training, Experience, and Preceptor Attestations

A: Radiation Safety Officer for Medical Use, Revision 0 (7/2016)

B: Authorized User - Written Directive Not Required, Revision 0 (7/2016)

C: Unsealed Radioactive Material Requiring Written Directive, Revision 2, (6/2014)

D: Authorized User for Manual Brachytherapy Sources, Revision 0 (7/2016)

E: Authorized User of Remote Afterloader, Teletherapy, or Gamma Stereotactic Radiosurgery Units, Revision 0 (7/2016)

F: Authorized Medical Physicist, Revision 0 (7/2016)

G: Authorized Nuclear Pharmacist, Revision 0 (7/2016)

Other Forms

Certificate of Disposition of Materials, Revision 0 (7/2016)

Certificate - Use of Depleted Uranium under General License, Revision 0 (7/2016)

Cumulative Occupational Exposure History, Revision 1 (1/2015)

Fingerprint Record, Federal Bureau of Investigation, FD-258, (rev. 9/2013)

Notice to Employees, RH-F-12 (1/2011)

Occupational Exposure Record per Monitoring Period, Revision 1 (1/2015)

Registration Certificate - In Vitro Testing with Radioactive Material under General License, Revision 0 (7/2016)

Reciprocity Privileges Checklist, Revision 0 (7/2016)

VA.R. Doc. No. R18-5560; Filed July 6, 2018, 9:51 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

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

Title of Regulation: **12VAC30-20. Administration of Medical Assistance Services (amending 12VAC30-20-150, 12VAC30-20-160).**

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

Effective Date: September 5, 2018.

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

Summary:

The amendments decrease the cost sharing amount charged per inpatient hospitalization from $100 to $75 to comply with 42 CFR 447.52(b)(2).

Part III
Recipient Cost Sharing

12VAC30-20-150. Copayments and deductibles for categorically needy and QMBs for services other than under 42 CFR 447.53.

A. The following charges are imposed on the categorically needy and Qualified Medicare Beneficiaries for services other than those provided under 42 CFR 447.53.

Service*	Type Charge			Amount and Basis for Determination
	Deduct	Coins	Copay	
Inpatient Hospital	~~$100.00~~ ~~-0-~~	-0-	~~-0-~~ $75	State's average daily payment of $594 is used as basis.
Outpatient Hospital Clinic	-0-	-0-	$3.00	State's average payment of $136 is used as basis.
Clinic Visit	-0-	-0-	$1.00	State's average payment of $29 is used as basis.
Physician Office Visit	-0-	-0-	$1.00	State's average payment of $23 is used as basis.
Eye Examination	-0-	-0-	$1.00	State's payment of $30 is used as basis.
Prescriptions:				
--Generic	-0-	-0-	$1.00	State's average per generic script of $25 is used as payment basis.
--Brand Name	-0-	-0-	$3.00	State's average per brand-name script of $97 is used as payment basis.
Home Health Visit	-0-	-0-	$3.00	State's average payment of $56 is used as basis.
Other Physician Services	-0-	-0-	$3.00	State's average payment of $56 is used as basis.
Rehab Therapy Services (PT, OT, Sp/Lang.)	-0-	-0-	$3.00	State's average payment $78 is used as basis.

*NOTE: The applicability of copays to emergency services is discussed further in this section.

B. The method used to collect cost sharing charges for categorically needy individuals requires that providers be responsible for collecting the cost sharing charges from individuals.

C. The basis for determining whether an individual is unable to pay the charge, and the means by which such an individual is identified to providers, is described ~~below~~ in this subsection:

Providers will, based on information available to them, make a determination of the recipient's ability to pay the copayment. In the absence of knowledge or indications to the contrary, providers may accept the recipient's assertion that he or she is unable to pay the required copayment.

Recipients have been notified that inability to meet a copayment at a particular time does not relieve them of that responsibility.

D. The procedures for implementing and enforcing the exclusions from cost sharing contained in 42 CFR 447.53(b) are described ~~below~~ in this subsection:

The application and exclusion of cost sharing is administered through the program's ~~MMIS~~ Medicaid Management Information System. Documentation of the certified computer system delineates, for each type of provider invoice used, protected eligible groups, protected services and applicable eligible groups and services.

Providers have been informed about: copay exclusions; applicable services and amounts; prohibition of service denial if recipient is unable to meet cost-sharing changes.

E. State policy does not provide for cumulative maximums on charges.

F. Emergency Services. No recipient copayment shall be collected for the following services:

1. Services provided in a hospital, clinic, office, or other facility that is equipped to furnish the required care, after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:

a. Placing the patient's health in serious jeopardy;

b. Serious impairment to bodily functions; or

c. Serious dysfunction of any bodily organ or part; and

2. All services delivered in emergency rooms.

12VAC30-20-160. Copayments and deductibles for medically needy and QMBs for services other than under 42 CFR 447.53.

A. The following charges are imposed on the medically needy and Qualified Medicare Beneficiaries for services other than those provided under 42 CFR 447.53.

Service*	Type Charge			Amount and Basis for Determination
	Deduct	Coins	Copay	
Inpatient Hospital	~~$100.00~~ ~~-0-~~	-0-	~~-0-~~ $75	State's average daily payment of $594 is used as basis.
Outpatient Hospital Clinic	-0-	-0-	$3.00	State's average payment of $136 is used as basis.
Clinic Visit	-0-	-0-	$1.00	State's average payment of $29 is used as basis.
Physician Office Visit	-0-	-0-	$1.00	State's average payment of $23 is used as basis.
Eye Examination	-0-	-0-	$1.00	State's payment of $30 is used as basis.
Prescriptions:				
--Generic	-0-	-0-	$1.00	State's average per generic script of $25 is used as payment basis.
--Brand Name	-0-	-0-	$3.00	State's average per brand-name script of $97 is used as payment basis.
Home Health Visit	-0-	-0-	$3.00	State's average payment of $56 is used as basis.
Other Physician Services	-0-	-0-	$3.00	State's average payment of $56 is used as basis.
Rehab Therapy Services (PT, OT, Sp/Lang.)	-0-	-0-	$3.00	State's average payment $78 is used as basis.

*NOTE: The applicability of copays to emergency services is discussed further in this section.

B. The method used to collect cost sharing charges for medically needy individuals requires that providers be responsible for collecting the cost sharing charges from individuals.

C. The basis for determining whether an individual is unable to pay the charge, and the means by which such an individual is identified to providers, is described ~~below~~ in this subsection:

Providers will, based on information available to them, make a determination of the recipient's ability to pay the copayment. In the absence of knowledge or indications to the contrary, providers may accept the recipient's assertion that he or she is unable to pay the required copayment.

Recipients have been notified that inability to meet a copayment at a particular time does not relieve them of that responsibility.

D. The procedures for implementing and enforcing the exclusions from cost sharing contained in 42 CFR 447.53(b) are described ~~below~~ in this subsection:

The application and exclusion of cost sharing is administered through the program's ~~MMIS~~ Medicaid Management Information System. Documentation of the certified computer system delineates, for each type of provider invoice used, protected eligible groups, protected services and applicable eligible groups and services.

Providers have been informed about: copay exclusions; applicable services and amounts; and prohibition of service denial if recipient is unable to meet cost-sharing changes.

E. State policy does not provide for cumulative maximums.

F. Emergency Services. No recipient copayment shall be collected for the following services:

1. Services provided in a hospital, clinic, office, or other facility that is equipped to furnish the required care, after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:

a. Placing the patient's health in serious jeopardy;

b. Serious impairment to bodily functions; or

c. Serious dysfunction of any bodily organ or part; and

2. All services delivered in emergency rooms.

VA.R. Doc. No. R18-5231; Filed July 16, 2018, 3:34 p.m.

Fast-Track Regulation

Title of Regulation: **12VAC30-90. Methods and Standards for Establishing Payment Rates for Long-Term Care (adding 12VAC30-90-21).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 5, 2018.

Effective Date: September 20, 2018.

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

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the State Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the State Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Purpose: In the event of a disaster resulting in an evacuation, nursing facilities seek to relocate individuals to nursing facilities in safer areas. Therefore, the purpose of this action is to clarify reimbursement provisions relating to reimbursement to the disaster struck nursing facility.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action is being promulgated as a fast-track rulemaking action because it is not expected to be controversial. Further, there will be no fiscal or budgetary impact to DMAS as the funds for this amendment are already provided in the agency's appropriations. As this action coordinates reimbursement requirements to nursing facilities, which service primarily older adults and individuals with complex care needs, members of the public are expected to support these regulatory changes that may positively impact a disadvantaged population.

Substance: The Centers for Medicare and Medicaid Services announced a final rule in November 2016, entitled "Emergency Preparedness" (42 CFR 483.73), which requires long-term care facilities to establish and maintain an emergency preparedness program.

The Virginia Department of Health, the Virginia Department of Emergency Management, the Virginia Hospital and Healthcare Association, and the long-term care provider community worked to establish a Long Term Care Mutual Aid Plan, which includes a Memorandum of Understanding (MOU) for all facilities to sign. Most nursing facilities in Virginia have signed this MOU, which details their responsibilities in the event of a disaster.

Reimbursement to a disaster struck nursing facility for individuals who have to be temporarily evacuated to another facility (resident accepting nursing facility) may continue up to 30 calendar days after the disaster event. The disaster struck nursing facility must also meet specific conditions, which are outlined in the regulations.

Issues: The primary advantage to the agency and to the public, including Medicaid providers and Medicaid members, is the alignment of Virginia requirements with federal regulations so that the reimbursement requirements for such nursing facilities are clear and put into practice. There are no disadvantages to the agency or the public.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed regulation clarifies Medicaid reimbursement to disaster struck nursing facilities.

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

Estimated Economic Impact. In November 2016, the Centers for Medicare and Medicaid Servicers announced a final rule entitled "Emergency Preparedness" (42 CFR 483.73), which requires long term care facilities to establish and maintain an emergency preparedness program. The Virginia Department of Health, the Virginia Department of Emergency Management, the Virginia Hospital and Healthcare Association, and the nursing facility provider community worked to establish a Long Term Care Mutual Aid Plan, which includes a Memorandum of Understanding for all facilities to sign. As a part of the overall plan, this regulatory action clarifies Medicaid reimbursement to disaster struck nursing facilities.

The proposed regulation allows a disaster struck facility to temporarily transfer its residents to an accepting facility up to 30 days without having to discharge its residents. Sending and receiving facilities must have a contract or must have signed the Memorandum of Understanding contained in the Long Term Care Mutual Aid Plan. The disaster struck facility must determine within 15 days whether individuals will be able to return to the facility within 30 days. The standard reimbursement for the residents transferred to another facility will continue to be made to the disaster struck facility. The disaster struck facility will pass on the payments to the receiving facility according to the contract between them. No other reimbursement will be made to either the sending or the receiving facility. If the sending facility determines that it is unable to reopen within 30 days, it must discharge its residents at which point it will no longer receive

reimbursement. Thus, no fiscal impact is expected from this change.

The proposed change is beneficial because it would help avoid some potential administrative costs. Under the proposed regulations, the disaster struck facility will not be required to discharge its residents if it can be reopened within 30 days. According to the Department of Medical Assistance Services (DMAS), the discharge and intake procedures at nursing facilities are administratively cumbersome and may take up to 15 days. In addition, by avoiding discharge and intake procedures, the regulators, the facilities, the residents, and the family members will know which residents are moving to which facilities fairly quickly.

Businesses and Entities Affected. The proposed amendments potentially affect the 275 nursing homes providing services to Medicaid recipients.[1]

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

Projected Impact on Employment. No impact on employment is expected.

Effects on the Use and Value of Private Property. No impact on the use and value of private property is expected.

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

Small Businesses:

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

Costs and Other Effects. Approximately 50 of the nursing homes are small businesses.[2] The proposed regulation does not impose costs on them, but will likely help avoid potential administrative costs in case of an emergency.

Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Adverse Impacts:

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

Localities. The proposed amendments will not adversely affect localities.

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

[1]Source: DMAS.

[2]Source: DMAS.

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

Summary:

The action conforms requirements relating to reimbursement to disaster struck nursing facilities to a federal Centers for Medicare and Medicaid Services final rule, which requires long-term care facilities to establish and maintain an emergency preparedness program (November 2016, "Emergency Preparedness" 42 CFR 483.73). The action (i) allows a disaster struck nursing facility to temporarily transfer its residents to an accepting facility for up to 30 days without having to discharge its residents; (ii) requires the sending and receiving facilities to have a contract or have signed the Memorandum of Understanding contained in the Long Term Care Mutual Aid Plan; (iii) requires the disaster struck nursing facility to determine within 15 days whether individuals will be able to return to the facility within 30 days; and (iv) provides that the standard reimbursement for the residents transferred to another nursing facility will continue to be made to the disaster struck nursing facility, which will then pass on the payments to the receiving facility according to the contract between them.

12VAC30-90-21. Reimbursement for individuals in a disaster struck nursing facility.

Reimbursement to a disaster struck nursing facility for individuals who must be temporarily evacuated to another facility (resident accepting nursing facility) may continue for up to 30 days after the disaster event. Reimbursement will be the same as if the individual was residing in the disaster struck nursing facility. No other reimbursement will be made to either the disaster struck nursing facility or the resident accepting nursing facility. The disaster struck nursing facility must meet the following conditions:

1. The disaster struck nursing facility must have a contract with the resident accepting nursing facility. The contract must include (i) terms of reimbursement and mechanisms to resolve any contract disputes, (ii) protocols for sharing care and treatment information between the two facilities, and (iii) requirements that both facilities meet all conditions of Medicaid participation determined by the Virginia Department of Health. The Virginia Long-Term Mutual Aid Plan, which includes a Memorandum of Understanding, is an acceptable contract.

2. The disaster struck nursing facility must notify the Department of Medical Assistance Services (DMAS) of the disaster event; maintain records of evacuated individuals with names, dates, and destinations of evacuated residents; and update DMAS on the status of the repairs.

3. The disaster struck nursing facility must determine within 15 days of the event whether individuals will be able to return to the facility within 30 days of the disaster event. If the disaster struck nursing facility determines that it is not able to reopen within 30 days, it must discharge the individuals and work with them to choose admission to other facilities or alternative placements. Nothing shall preclude an individual from asking to be discharged and admitted to another facility or alternative placement. Reimbursement to the disaster struck nursing facility shall cease when an individual is discharged.

VA.R. Doc. No. R18-5276; Filed July 17, 2018, 4:08 p.m.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Emergency Regulation

Title of Regulation: **12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (amending 12VAC35-105-20, 12VAC35-105-30, 12VAC35-105-50, 12VAC35-105-120, 12VAC35-105-150, 12VAC35-105-155, 12VAC35-105-160, 12VAC35-105-170, 12VAC35-105-320, 12VAC35-105-330, 12VAC35-105-400, 12VAC35-105-440, 12VAC35-105-450, 12VAC35-105-460, 12VAC35-105-520, 12VAC35-105-580, 12VAC35-105-590, 12VAC35-105-620, 12VAC35-105-650, 12VAC35-105-660, 12VAC35-105-665, 12VAC35-105-675, 12VAC35-105-691, 12VAC35-105-800, 12VAC35-105-830, 12VAC35-105-1140, 12VAC35-105-1250, 12VAC35-105-1360; adding 12VAC35-105-1245).**

Statutory Authority: §§ 37.2-302 and 37.2-400 of the Code of Virginia.

Effective Dates: September 1, 2018, through February 29, 2020.

Agency Contact: Emily Bowles, Legal Coordinator, Office of Licensing, Department of Behavioral Health and Developmental Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218, telephone (804) 225-3281, FAX (804) 692-0066, TTY (804) 371-8977, or email emily.bowles@dbhds.virginia.gov.

Preamble:

Section 2.2-4011 A of the Code of Virginia states that regulations that an agency finds are necessitated by an emergency situation may be adopted upon consultation with the Attorney General, which approval shall be granted only after the agency has submitted a request stating in writing the nature of the emergency, and the necessity for such action shall be at the sole discretion of the Governor.

The emergency regulation establishes requirements needed immediately to address the concerns of health and safety of individuals receiving services from providers of adult services licensed by the Department of Behavioral Health and Developmental Services. The purpose of this regulation is to comply with requirements of the U.S. Department of Justice's Settlement Agreement with Virginia. The Settlement Agreement includes provisions of quality and risk management.

This regulatory action addresses several items that have been cited by the Independent Reviewer as obstacles to compliance with the provisions of the Settlement Agreement, facilitates the submission of necessary information by providers after a serious incident occurs and the development of the required quality and risk management processes, and strengthens case management services as required by the Settlement Agreement.

Specifically, the amendments (i) enhance the requirements of providers for establishing effective risk management and quality improvement processes by requiring the person leading risk management activities to have training in risk management, investigations, root cause analysis, and data analysis; requiring annual risk assessments, to include review of the environment, staff competence, seclusion and restraint, serious incidents, and risk triggers and thresholds; and requiring a quality improvement plan that is reviewed and updated at least annually; (ii) improve reporting of serious incidents and injuries to allow the Commonwealth to obtain more consistent data regarding the prevalence of serious incidents by establishing three levels of incidents and requiring providers to report on and conduct root cause analysis of more serious incidents and to track and monitor less serious incidents; and (iii) strengthen expectations for case management by adding assessment for unidentified risks, status of previously identified risks, and assessing whether the risk management plan is being implemented appropriately and remains appropriate for the individual.

Since the Settlement Agreement was signed, the definition of "developmental disability" was expanded to include "intellectual disability" in the Code of Virginia (Chapter 458 of the 2017 Acts of Assembly), and changes have been made to Medicaid waivers in the past year. Both of these developments impact the amendments in this action.

Article 2
Definitions

12VAC35-105-20. Definitions.

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

"Abuse" ~~(§ 37.2-100 of the Code of Virginia)~~ means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the department, excluding those operated by the Virginia Department of Corrections, that was

performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to ~~a person~~ an individual receiving care or treatment for mental illness, ~~mental retardation (intellectual disability)~~ developmental disabilities, or substance abuse ~~(substance use disorders)~~. Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;

2. Assault or battery;

3. Use of language that demeans, threatens, intimidates, or humiliates the ~~person~~ individual;

4. Misuse or misappropriation of the ~~person's~~ individual's assets, goods, or property;

5. Use of excessive force when placing ~~a person~~ an individual in physical or mechanical restraint;

6. Use of physical or mechanical restraints on ~~a person~~ an individual that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice, or ~~the person's~~ his individualized services plan;

7. Use of more restrictive or intensive services or denial of services to punish ~~the person~~ an individual or that is not consistent with his individualized services plan.

"Activities of daily living" or "ADLs" means personal care activities and includes bathing, dressing, transferring, toileting, grooming, hygiene, feeding, and eating. An individual's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Admission" means the process of acceptance into a service as defined by the provider's policies.

"Authorized representative" means a person permitted by law or 12VAC35-115 to authorize the disclosure of information or consent to treatment and services or participation in human research.

"Behavior intervention" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address challenging behavior in a constructive and safe manner. Behavior intervention principles and methods ~~must~~ shall be employed in accordance with the individualized services plan and written policies and procedures governing service expectations, treatment goals, safety, and security.

"Behavioral treatment plan," "functional plan," or "behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic data collection, such as a functional assessment, for the purpose of assisting individuals to achieve the following:

1. Improved behavioral functioning and effectiveness;

2. Alleviation of symptoms of psychopathology; or

3. Reduction of challenging behaviors.

"Brain injury" means any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders or injuries induced by birth trauma.

"Care," ~~or~~ "treatment," or "support" means the individually planned therapeutic interventions that conform to current acceptable professional practice and that are intended to improve or maintain functioning of an individual receiving services delivered by a provider.

"Case management service" or "support coordination service" means services that can include assistance to individuals and their family members in ~~assessing~~ accessing needed services that are responsive to the ~~person's individual~~ individual's needs. Case management services include: identifying potential users of the service; assessing needs and planning services; linking the individual to services and supports; assisting the individual directly to locate, develop, or obtain needed services and resources; coordinating services with other providers; enhancing community integration; making collateral contacts; monitoring service delivery; discharge planning; and advocating for individuals in response to their changing needs. "Case management service" does not include assistance in which the only function is maintaining service waiting lists or periodically contacting or tracking individuals to determine potential service needs.

"Clinical experience" means providing direct services to individuals with mental illness or the provision of direct geriatric services or special education services. Experience may include supervised internships, practicums, and field experience.

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

"Community gero-psychiatric residential services" means 24-hour care provided to individuals with mental illness, behavioral problems, and concomitant health problems who are usually age 65 or older in a geriatric setting that is less intensive than a psychiatric hospital but more intensive than a nursing home or group home. Services include assessment and individualized services planning by an interdisciplinary services team, intense supervision, psychiatric care, behavioral treatment planning and behavior interventions, nursing, and other health related services.

~~"Community intermediate care facility/mental retardation (ICF/MR)" means a residential facility in which care is~~

~~provided to individuals who have mental retardation (intellectual disability) or a developmental disability who need more intensive training and supervision than may be available in an assisted living facility or group home. Such facilities shall comply with Title XIX of the Social Security Act standards and federal certification requirements, provide health or rehabilitative services, and provide active treatment to individuals receiving services toward the achievement of a more independent level of functioning or an improved quality of life.~~

"Complaint" means an allegation of a violation of ~~these regulations~~ this chapter or a provider's policies and procedures related to ~~these regulations~~ this chapter.

"Co-occurring disorders" means the presence of more than one and often several of the following disorders that are identified independently of one another and are not simply a cluster of symptoms resulting from a single disorder: mental illness, ~~mental retardation (intellectual disability)~~ a developmental disability, ~~or~~ substance abuse (substance use disorders)~~;~~, or brain injury~~; or developmental disability~~.

"Co-occurring services" means individually planned therapeutic treatment that addresses in an integrated concurrent manner the service needs of individuals who have co-occurring disorders.

"Corrective action plan" means the provider's pledged corrective action in response to cited areas of noncompliance documented by the regulatory authority. ~~A corrective action plan must be completed within a specified time.~~

"Correctional facility" means a facility operated under the management and control of the Virginia Department of Corrections.

"Crisis" means a deteriorating or unstable situation often developing suddenly or rapidly that produces acute, heightened, emotional, mental, physical, medical, or behavioral distress~~; or any situation or circumstance in which the individual perceives or experiences a sudden loss of his ability to use effective problem solving and coping skills~~.

"Crisis stabilization" means direct, intensive nonresidential or residential direct care and treatment to nonhospitalized individuals experiencing an acute crisis that may jeopardize their current community living situation. Crisis stabilization is intended to avert hospitalization or rehospitalization; provide normative environments with a high assurance of safety and security for crisis intervention; stabilize individuals in crisis; and mobilize the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Day support service" means structured programs of ~~activity or training services~~ training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills for adults with ~~an intellectual disability or~~ a developmental disability~~, generally in clusters of two or more continuous hours per day~~ provided to groups or individuals in nonresidential community-based settings. Day support services may provide opportunities for peer interaction and community integration and are designed to enhance the following: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, social skills, medication management, prevocational skills, and transportation skills. The term "day support service" does not include services in which the primary function is to provide employment-related services, general educational services, or general recreational services.

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

~~"Developmental disabilities" means autism or a severe, chronic disability that meets all of the following conditions identified in 42 CFR 435.1009:~~

~~1. Attributable to cerebral palsy, epilepsy, or any other condition, other than mental illness, that is found to be closely related to mental retardation (intellectual disability) because this condition results in impairment of general intellectual functioning or adaptive behavior similar to behavior of individuals with mental retardation (intellectual disability) and requires treatment or services similar to those required for these individuals;~~

~~2. Manifested before the individual reaches age 18;~~

~~3. Likely to continue indefinitely; and~~

~~4. Results in substantial functional limitations in three or more of the following areas of major life activity:~~

~~a. Self-care;~~

~~b. Understanding and use of language;~~

~~c. Learning;~~

~~d. Mobility;~~

~~e. Self-direction; or~~

~~f. Capacity for independent living.~~

"Developmental disability" means a severe, chronic disability of an individual that (i) is attributable to a mental or physical impairment, or a combination of mental and physical impairments, other than a sole diagnosis of mental illness; (ii) is manifested before the individual reaches 22 years of age; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special interdisciplinary or generic services, individualized supports, or other forms of assistance that are

of lifelong or extended duration and are individually planned and coordinated. An individual from birth to age nine years, inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in clauses (i) through (v) of this definition if the individual, without services and supports, has a high probability of meeting those criteria later in life.

"Developmental services" means planned, individualized, and person-centered services and supports provided to individuals with developmental disabilities for the purpose of enabling these individuals to increase their self-determination and independence, obtain employment, participate fully in all aspects of community life, advocate for themselves, and achieve their fullest potential to the greatest extent possible.

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

"Discharge" means the process by which the individual's active involvement with a service is terminated by the provider, individual, or authorized representative.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates delivery of any services needed after discharge.

"Dispense" means to deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery. (§ 54.1-3400 et seq. of the Code of Virginia.)

"Emergency service" means unscheduled and sometimes scheduled crisis intervention, stabilization, and referral assistance provided over the telephone or face-to-face, if indicated, available 24 hours a day and seven days per week. Emergency services also may include walk-ins, home visits, jail interventions, and preadmission screening activities associated with the judicial process-.

"Group home or community residential service" means a congregate service providing 24-hour supervision in a community-based home having eight or fewer residents. Services include supervision, supports, counseling, and training in activities of daily living for individuals whose individualized services plan identifies the need for the specific types of services available in this setting.

"HCBS Waiver" means a Medicaid Home and Community Based Services Waiver.

"Home and noncenter based" means that a service is provided in the individual's home or other noncenter-based setting. This includes noncenter-based day support, supportive in-home, and intensive in-home services.

~~"IFDDS Waiver" means the Individual and Family Developmental Disabilities Support Waiver.~~

"Individual" or "individual receiving services" means a ~~person receiving services that are licensed under this chapter whether that person is referred to as a patient,~~ current direct recipient of public or private mental health, developmental, or substance abuse treatment, rehabilitation, or habilitation services and includes the terms "consumer," ~~client~~ "patient," "resident," ~~student, individual,~~ "recipient," ~~family member, relative,~~ or ~~other term~~ "client." When the term is used in this chapter, the requirement applies to every individual receiving licensed services from the provider.

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care, which are all considered individualized service plans.

"Informed choice" means a decision made after considering options based on adequate and accurate information and knowledge. These options are developed through collaboration with the individual and his authorized representative, as applicable, and the provider with the intent of empowering the individual and his authorized representative to make decisions that will lead to positive service outcomes.

"Informed consent" means the voluntary written agreement of an individual, or that individual's authorized representative, to surgery, electroconvulsive treatment, use of psychotropic medications, or any other treatment or service that poses a risk of harm greater than that ordinarily encountered in daily life or for participation in human research. To be voluntary, informed consent must be given freely and without undue inducement; any element of force, fraud, deceit, or duress; or any form of constraint or coercion.

"Initial assessment" means an assessment conducted prior to or at admission to determine whether the individual meets the service's admission criteria; what the individual's immediate service, health, and safety needs are; and whether the provider has the capability and staffing to provide the needed services.

"Inpatient psychiatric service" means intensive 24-hour medical, nursing, and treatment services provided to individuals with mental illness or substance abuse (substance use disorders) in a hospital as defined in § 32.1-123 of the Code of Virginia or in a special unit of such a hospital.

"Instrumental activities of daily living" or "IADLs" means meal preparation, housekeeping, laundry, and managing money. ~~A person's~~ An individual's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Intellectual disability" means a disability, originating before the age of 18 years, characterized concurrently by (i) significant subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Intensive ~~Community Treatment (ICT)~~ community treatment service" or "ICT service" means a self-contained interdisciplinary team of at least five full-time equivalent clinical staff, a program assistant, and a full-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illness especially those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;

2. Minimally refers individuals to outside service providers;

3. Provides services on a long-term care basis with continuity of caregivers over time;

4. Delivers 75% or more of the services outside program offices; and

5. Emphasizes outreach, relationship building, and individualization of services.

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are at-risk of serious emotional disturbance, including individuals who also have a diagnosis of ~~mental retardation (intellectual disability)~~ developmental disability. Intensive in-home service is usually time-limited and is provided typically in the residence of an individual who is at risk of being moved to out-of-home placement or who is being transitioned back home from an out-of-home placement. The service includes 24-hour per day emergency response; crisis treatment; individual and family counseling; life, parenting, and communication skills; and case management and coordination with other services.

"Intermediate care facility/individuals with intellectual disability" or "ICF/IID" means a facility or distinct part of a facility certified by the Virginia Department of Health as meeting the federal certification regulations for an intermediate care facility for individuals with intellectual disability and persons with related conditions and that addresses the total needs of the residents, which include physical, intellectual, social, emotional, and habilitation providing active treatment as defined in 42 CFR 435.1010 and 42 CFR 483.440.

"Investigation" means a detailed inquiry or systematic examination of the operations of a provider or its services regarding an alleged violation of regulations or law. An investigation may be undertaken as a result of a complaint, an incident report, or other information that comes to the attention of the department.

"Licensed mental health professional ~~(LMHP)~~" or "LMHP" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, or certified psychiatric clinical nurse specialist.

"Location" means a place where services are or could be provided.

"Medically managed withdrawal services" means detoxification services to eliminate or reduce the effects of alcohol or other drugs in the individual's body.

"Mandatory outpatient treatment order" means an order issued by a court pursuant to § 37.2-817 of the Code of Virginia.

"Medical detoxification" means a service provided in a hospital or other 24-hour care facility under the supervision of medical personnel using medication to systematically eliminate or reduce effects of alcohol or other drugs in the individual's body.

"Medical evaluation" means the process of assessing an individual's health status that includes a medical history and a physical examination of an individual conducted by a licensed medical practitioner operating within the scope of his license.

"Medication" means prescribed or over-the-counter drugs or both.

"Medication administration" means the direct application of medications by injection, inhalation, ingestion, or any other means to an individual receiving services by (i) persons legally permitted to administer medications or (ii) the individual at the direction and in the presence of persons legally permitted to administer medications.

"Medication assisted treatment (Opioid treatment service)" means an intervention strategy that combines outpatient treatment with the administering or dispensing of synthetic narcotics, such as methadone or buprenorphine (suboxone), approved by the federal Food and Drug Administration for

the purpose of replacing the use of and reducing the craving for opioid substances, such as heroin or other narcotic drugs.

"Medication error" means an error in administering a medication to an individual and includes when any of the following occur: (i) the wrong medication is given to an individual, (ii) the wrong individual is given the medication, (iii) the wrong dosage is given to an individual, (iv) medication is given to an individual at the wrong time or not at all, or (v) the wrong method is used to give the medication to the individual.

"Medication storage" means any area where medications are maintained by the provider, including a locked cabinet, locked room, or locked box.

"Mental Health Community Support Service ~~(MHCSS)~~" or "MHCSS" means the provision of recovery-oriented services to individuals with long-term, severe mental illness. MHCSS includes skills training and assistance in accessing and effectively utilizing services and supports that are essential to meeting the needs identified in the individualized services plan and development of environmental supports necessary to sustain active community living as independently as possible. MHCSS may be provided in any setting in which the individual's needs can be addressed, skills training applied, and recovery experienced.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

~~"Mental retardation (intellectual disability)" means a disability originating before the age of 18 years characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning administered in conformity with accepted professional practice that is at least two standard deviations below the mean; and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills (§ 37.2-100 of the Code of Virginia).~~

"Missing" means a circumstance in which an individual is not physically present when and where he should be and his absence cannot be accounted for or explained by his supervision needs or pattern of behavior.

"Neglect" means ~~the~~ failure by ~~an individual~~ a person, or a program or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of ~~a person~~ an individual receiving care or treatment for mental illness, ~~mental retardation (intellectual disability)~~ developmental disabilities, or substance abuse ~~(substance use disorders)~~.

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury that affect an individual's ability to function successfully in the community.

"Outpatient service" means treatment provided to individuals on an hourly schedule, on an individual, group, or family basis, and usually in a clinic or similar facility or in another location. Outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory and other ancillary services, medical services, and medication services. "Outpatient service" specifically includes:

1. Services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;

2. Services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or

3. Services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Partial hospitalization service" means time-limited active treatment interventions that are more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms, and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization is focused on individuals with serious mental illness, substance abuse (substance use disorders), or co-occurring disorders at risk of hospitalization or who have been recently discharged from an inpatient setting.

"Person-centered" means focusing on the needs and preferences of the individual; empowering and supporting the individual in defining the direction for his life; and promoting self-determination, community involvement, and recovery.

"Program of Assertive Community Treatment (PACT) service" means a self-contained interdisciplinary team of at least 10 full-time equivalent clinical staff, a program assistant, and a full-time or part-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses, including those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;

2. Minimally refers individuals to outside service providers;

3. Provides services on a long-term care basis with continuity of caregivers over time;

4. Delivers 75% or more of the services outside program offices; and

5. Emphasizes outreach, relationship building, and individualization of services.

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to individuals with mental illness, ~~mental retardation (intellectual disability)~~ developmental disabilities, or substance abuse (substance use disorders)~~,~~ or (ii) ~~services to individuals who receive day support, in-home support, or crisis stabilization services funded through the IFDDS Waiver, or (iii)~~ residential services for individuals with brain injury. The person, entity, or organization shall include a hospital as defined in § 32.1-123 of the Code of Virginia, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-2901, 54.1-3001, 54.1-3501, 54.1-3601 and 54.1-3701 of the Code of Virginia.

"Psychosocial rehabilitation service" means a program of two or more consecutive hours per day provided to groups of adults in a nonresidential setting. Individuals must demonstrate a clinical need for the service arising from a condition due to mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. This service provides education to teach the individual about mental illness, substance abuse, and appropriate medication to avoid complication and relapse and opportunities to learn and use independent skills and to enhance social and interpersonal skills within a consistent program structure and environment. Psychosocial rehabilitation includes skills training, peer support, vocational rehabilitation, and community resource development oriented toward empowerment, recovery, and competency.

"Qualified developmental disability professional ~~(QDDP)~~" or "QDDP" means a person who possesses at least one year of documented experience working directly with individuals who have a developmental disability and one of the following credentials: (i) a doctor of medicine or osteopathy licensed in Virginia, (ii) a registered nurse licensed in Virginia, or (iii) completion of at least a bachelor's degree in a human services field, including sociology, social work, special education, rehabilitation counseling, or psychology.

"Quality improvement plan" means a detailed work plan developed by a provider that defines steps the provider will take to review the quality of services it provides and to manage initiatives to improve quality. It consists of systematic and continuous actions that lead to measurable improvement in the services, supports, and health status of the individuals receiving services.

"Qualified Mental Health Professional-Adult ~~(QMHP-A)~~" or "QMHP-A" means a person in the human services field who is trained and experienced in providing psychiatric or mental health services to ~~individuals~~ adults who have a mental illness; including (i) a doctor of medicine or osteopathy licensed in Virginia; (ii) a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia; (iii) an individual with a master's degree in psychology from an accredited college or university with at least one year of clinical experience; (iv) a social worker: an individual with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling, or other degree deemed equivalent to those described) from an accredited college and with at least one year of clinical experience providing direct services to individuals with a diagnosis of mental illness; (v) a person with at least a bachelor's degree from an accredited college in an unrelated field that includes at least 15 semester credits (or equivalent) in a human services field and who has at least three years of clinical experience; (vi) a Certified Psychiatric Rehabilitation Provider (CPRP) registered with the United States Psychiatric Rehabilitation Association (USPRA); (vii) a registered nurse licensed in Virginia with at least one year of clinical experience; or (viii) any other licensed mental health professional.

"Qualified Mental Health Professional-Child ~~(QMHP-C)~~" or "QMHP-C" means a person in the human services field who is trained and experienced in providing psychiatric or mental health services to children who have a mental illness. To qualify as a QMHP-C, the individual must have the designated clinical experience and must either (i) be a doctor of medicine or osteopathy licensed in Virginia; (ii) have a master's degree in psychology from an accredited college or university with at least one year of clinical experience with children and adolescents; (iii) have a social work bachelor's or master's degree from an accredited college or university with at least one year of documented clinical experience with children or adolescents; (iv) be a registered nurse with at least one year of clinical experience with children and adolescents; (v) have at least a bachelor's degree in a human services field or in special education from an accredited college with at least one year of clinical experience ~~with~~ providing direct services to children and adolescents with a diagnosis of mental illness, or (vi) be a licensed mental health professional.

"Qualified Mental Health Professional-Eligible ~~(QMHP-E)~~" or "QMHP-E" means a person who has: (i) at least a bachelor's degree in a human service field or special

education from an accredited college without one year of clinical experience or (ii) at least a bachelor's degree in a nonrelated field and is enrolled in a master's or doctoral clinical program, taking the equivalent of at least three credit hours per semester and is employed by a provider that has a triennial license issued by the department and has a department and DMAS-approved supervision training program.

~~"Qualified Mental Retardation Professional (QMRP)" means a person who possesses at least one year of documented experience working directly with individuals who have mental retardation (intellectual disability) or other developmental disabilities and one of the following credentials: (i) a doctor of medicine or osteopathy licensed in Virginia, (ii) a registered nurse licensed in Virginia, or (iii) completion of at least a bachelor's degree in a human services field, including, but not limited to sociology, social work, special education, rehabilitation counseling, or psychology.~~

"Qualified Paraprofessional in Mental Health ~~(QPPMH)~~" or "QPPMH" means a person who must, at a minimum, meet one of the following criteria: (i) registered with the United States Psychiatric Association (USPRA) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) has an associate's degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to individuals with a diagnosis of mental illness; or (iii) has a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a QMHP-Adult providing services to individuals with mental illness and at least one year of experience (including the 12 weeks of supervised experience).

"Recovery" means a journey of healing and transformation enabling an individual with a mental illness to live a meaningful life in a community of his choice while striving to achieve his full potential. For individuals with substance abuse (substance use disorders), recovery is an incremental process leading to positive social change and a full return to biological, psychological, and social functioning. For individuals with ~~mental retardation (intellectual disability)~~ a developmental disability, the concept of recovery does not apply in the sense that individuals with ~~mental retardation (intellectual disability)~~ a developmental disability will need supports throughout their entire lives although these may change over time. With supports, individuals with ~~mental retardation (intellectual disability)~~ a developmental disability are capable of living lives that are fulfilling and satisfying and that bring meaning to themselves and others whom they know.

"Referral" means the process of directing an applicant or an individual to a provider or service that is designed to provide the assistance needed.

"Residential crisis stabilization service" means (i) providing short-term, intensive treatment to nonhospitalized individuals who require multidisciplinary treatment in order to stabilize acute psychiatric symptoms and prevent admission to a psychiatric inpatient unit; (ii) providing normative environments with a high assurance of safety and security for crisis intervention; and (iii) mobilizing the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Residential service" means providing 24-hour support in conjunction with care and treatment or a training program in a setting other than a hospital or training center. Residential services provide a range of living arrangements from highly structured and intensively supervised to relatively independent requiring a modest amount of staff support and monitoring. Residential services include residential treatment, group ~~or community~~ homes, supervised living, residential crisis stabilization, community gero-psychiatric residential, ~~community intermediate care facility MR~~ ICF/IID, sponsored residential homes, medical and social detoxification, neurobehavioral services, and substance abuse residential treatment for women and children.

"Residential treatment service" means providing an intensive and highly structured mental health, substance abuse, or neurobehavioral service, or services for co-occurring disorders in a residential setting, other than an inpatient service.

"Respite care service" means providing for a short-term, time limited period of care of an individual for the purpose of providing relief to the individual's family, guardian, or regular care giver. Persons providing respite care are recruited, trained, and supervised by a licensed provider. These services may be provided in a variety of settings including residential, day support, in-home, or a sponsored residential home.

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual receiving services from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the individual's freedom of movement or functioning of a limb or portion of an individual's body when that behavior places him or others at imminent risk.

2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.

3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to

prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntary restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency; (ii) nonphysical interventions are not viable; and (iii) safety issues require an immediate response.

"Restraints for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related post-procedure care processes, when use of the restraint is not the accepted clinical practice for treating the individual's condition.

"Restraints for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove the device. The device may limit an individual's movement, for example, bed rails or a gerichair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Risk management" means an integrated system-wide program to ensure the safety of individuals, employees, visitors, and others through identification, mitigation, early detection, monitoring, evaluation, and control of risks.

"Root cause analysis" means a method of problem solving designed to identify the underlying causes of a problem. The focus of a root cause analysis is on systems, processes, and outcomes that require change to reduce the risk of harm.

"Screening" means the process or procedure for determining whether the individual meets the minimum criteria for admission.

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical means so that the individual cannot leave it.

"Serious incident" means any event or circumstance that causes or could cause harm to the health, safety, or well-being of an individual. The term "serious incident" includes death and serious injury. "Level I serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider and does not meet the definition of a Level II or Level III serious incident. "Level I serious incidents" do not result in significant harm to individuals, but may include events that result in minor injuries that do not require medical attention or events that have the potential to cause serious injury, even when no injury occurs. "Level II serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider that results in a significant harm or threat to the health and safety of an individual that does not meet the definition of a Level III serious incident. "Level II serious incident" includes a significant harm or threat to the health or safety of others caused by an individual. "Level II serious incidents" include:

1. A serious injury;

2. An individual who is missing;

3. An emergency room or urgent care facility visit when not used in lieu of a primary care physician visit;

4. An unplanned psychiatric or unplanned medical hospital admission;

5. Choking incidents that require direct physical intervention by another person;

6. Ingestion of any hazardous material; or

7. A diagnosis of:

a. A decubitus ulcer or an increase in severity of level of previously diagnosed decubitus ulcer;

b. A bowel obstruction; or

c. Aspiration pneumonia.

"Level III serious incident" means a serious incident whether or not the incident occurs while in the provision of a service or on the provider's premises and results in:

1. Any death of an individual;

2. A sexual assault of an individual;

3. A serious injury of an individual that results in or likely will result in permanent physical or psychological impairment; or

4. A suicide attempt by an individual admitted for services that results in a hospital admission.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician, doctor of osteopathic medicine, physician assistant, or nurse practitioner ~~while the individual is supervised by or involved in services, such as attempted suicides, medication overdoses, or reactions from medications administered or prescribed by the service~~.

"Service" ~~or "services"~~ means (i) planned individualized interventions intended to reduce or ameliorate mental illness, ~~mental retardation (intellectual disability)~~ developmental disabilities, or substance abuse (substance use disorders) through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, ~~mental retardation (intellectual disability)~~

developmental disabilities, or substance abuse (substance use disorders). Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, in-home services, crisis stabilization, and other residential services; and (ii) ~~day support, in-home support, and crisis stabilization services provided to individuals under the IFDDS Medicaid Waiver; and (iii)~~ planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports ~~or~~ provided in residential services for persons with brain injury.

"Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Social detoxification service" means providing nonmedical supervised care for the individual's natural process of withdrawal from use of alcohol or other drugs.

"Sponsored residential home" means a service where providers arrange for, supervise, and provide programmatic, financial, and service support to families or persons (sponsors) providing care or treatment in their own homes for individuals receiving services.

"State board" means the State Board of Behavioral Health and Developmental Services. The board has statutory responsibility for adopting regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner or the department.

"State methadone authority" means the Virginia Department of Behavioral Health and Developmental Services that is authorized by the federal Center for Substance Abuse Treatment to exercise the responsibility and authority for governing the treatment of opiate addiction with an opioid drug.

"Substance abuse (substance use disorders)" means the use of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.) without a compelling medical reason or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior; and (iii), because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care.

"Substance abuse intensive outpatient service" means treatment provided in a concentrated manner for two or more consecutive hours per day to groups of individuals in a nonresidential setting. This service is provided over a period of time for individuals requiring more intensive services than an outpatient service can provide. Substance abuse intensive outpatient services include multiple group therapy sessions during the week, individual and family therapy, individual monitoring, and case management.

"Substance abuse residential treatment for women with children service" means a 24-hour residential service providing an intensive and highly structured substance abuse service for women with children who live in the same facility.

"Supervised living residential service" means the provision of significant direct supervision and community support services to individuals living in apartments or other residential settings. These services differ from supportive in-home service because the provider assumes responsibility for management of the physical environment of the residence, and staff supervision and monitoring are daily and available on a 24-hour basis. Services are provided based on the needs of the individual in areas such as food preparation, housekeeping, medication administration, personal hygiene, treatment, counseling, and budgeting.

"Supportive in-home service" (formerly supportive residential) means the provision of community support services and other structured services to assist individuals, to strengthen individual skills, and that provide environmental supports necessary to attain and sustain independent community residential living. Services include drop-in or friendly-visitor support and counseling to more intensive support, monitoring, training, in-home support, respite care, and family support services. Services are based on the needs of the individual and include training and assistance. These services normally do not involve overnight care by the provider; however, due to the flexible nature of these services, overnight care may be provided on an occasional basis.

"Systemic deficiency" means violations of regulations documented by the department that demonstrate multiple or repeat defects in the operation of one or more services.

"Therapeutic day treatment for children and adolescents" means a treatment program that serves (i) children and adolescents from birth through age 17 and under certain circumstances up to 21 with serious emotional disturbances, substance use, or co-occurring disorders or (ii) children from birth through age seven who are at risk of serious emotional

disturbance, in order to combine psychotherapeutic interventions with education and mental health or substance abuse treatment. Services include: evaluation; medication education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills; and individual, group, and family counseling.

"Time out" means the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Volunteer" means a person who, without financial remuneration, provides services to individuals on behalf of the provider.

Part II
Licensing Process

12VAC35-105-30. Licenses.

A. Licenses are issued to providers who offer services to individuals who have mental illness, ~~mental retardation (intellectual disability)~~ a developmental disability, or substance abuse (substance use disorders)~~; have developmental disability and are served under the IFDDS Waiver;~~ or have brain injury and are receiving residential services.

B. Providers shall be licensed to provide specific services as defined in this chapter or as determined by the commissioner. These services include:

1. Case management;

2. Community gero-psychiatric residential;

3. ~~Community intermediate care facility-MR~~ ICF/IID;

4. Residential crisis stabilization;

5. Nonresidential crisis stabilization;

6. Day support;

7. Day treatment, includes therapeutic day treatment for children and adolescents;

8. Group home and community residential;

9. Inpatient psychiatric;

10. Intensive Community Treatment (ICT);

11. Intensive in-home;

12. Managed withdrawal, including medical detoxification and social detoxification;

13. Mental health community support;

14. Opioid treatment/medication assisted treatment;

15. Emergency;

16. Outpatient;

17. Partial hospitalization;

18. Program of assertive community treatment (PACT);

19. Psychosocial rehabilitation;

20. Residential treatment;

21. Respite care;

22. Sponsored residential home;

23. Substance abuse residential treatment for women with children;

24. Substance abuse intensive outpatient;

25. Supervised living residential; and

26. Supportive in-home.

C. A license addendum shall describe the services licensed, the disabilities of individuals who may be served, the specific locations where services are to be provided or administered, and the terms and conditions for each service offered by a licensed provider. For residential and inpatient services, the license identifies the number of individuals each residential location may serve at a given time.

12VAC35-105-50. Issuance of licenses.

A. The commissioner may issue the following types of licenses:

1. A conditional license ~~shall~~ may be issued to a new provider for services that demonstrates compliance with administrative and policy regulations but has not demonstrated compliance with all the regulations.

a. A conditional license shall not exceed six months.

b. A conditional license may be renewed if the provider is not able to demonstrate compliance with all the regulations at the end of the license period. A conditional license and any renewals shall not exceed 12 successive months for all conditional licenses and renewals combined.

c. A provider holding a conditional license for a service shall demonstrate progress toward compliance.

d. A provider holding a conditional license shall not add services or locations during the conditional period.

e. A group home or community residential service provider shall be limited to providing services in a single location, serving no more than four individuals during the conditional period.

2. A provisional license may be issued to a provider for a service that has demonstrated an inability to maintain compliance with ~~regulations~~ Human Rights Regulations (12VAC35-115) or this chapter, has violations of human

rights or licensing regulations that pose a threat to the health or safety of individuals ~~being served~~ receiving services, has multiple violations of human rights or licensing regulations, or has failed to comply with a previous corrective action plan.

a. A provisional license may be issued at any time.

b. The term of a provisional license shall not exceed six months.

c. A provisional license may be renewed; but a provisional license and any renewals shall not exceed 12 successive months for all provisional licenses and renewals combined.

d. A provider holding a provisional license for a service shall demonstrate progress toward compliance.

e. A provider holding a provisional license for a service shall not increase its services or locations or expand the capacity of the service.

f. A provisional license for a service shall be noted as a stipulation on the provider license. The stipulation shall also indicate the violations to be corrected and the expiration date of the provisional license.

3. A full license shall be issued after a provider or service demonstrates compliance with all the applicable regulations.

a. A full license may be granted to a provider for service for up to three years. The length of the license shall be in the sole discretion of the commissioner.

b. If a full license is granted for three years, it shall be referred to as a triennial license. A triennial license shall be granted to providers for services that have demonstrated full compliance with ~~the~~ all applicable regulations. The commissioner may issue a triennial license to a provider for service that had violations during the previous license period if those violations did not pose a threat to the health or safety of individuals ~~being served~~ receiving services, and the provider or service has demonstrated consistent compliance for more than a year and has a process in place that provides sufficient oversight to maintain compliance.

c. If a full license is granted for one year, it shall be referred to as an annual license.

d. The term of the first full renewal license after the expiration of a conditional or provisional license shall not exceed one year.

B. The commissioner may add stipulations on a license issued to a provider that may place limits on the provider or to impose additional requirements on the provider.

C. A license shall not be transferred or assigned to another provider. A new application shall be made and a new license issued when there is a change in ownership.

~~D. A license shall not be issued or renewed unless the provider is affiliated with a local human rights committee.~~

~~E.~~ D. No service shall be issued a license with an expiration date that is after the expiration date of the provider license.

~~F.~~ E. A license shall continue in effect after the expiration date if the provider has submitted a renewal application before the date of expiration and there are no grounds to deny the application. The department shall issue a letter stating the provider or service license shall be effective for six additional months if the renewed license is not issued before the date of expiration.

12VAC35-105-120. Variances.

The commissioner may grant a variance to a specific regulation if he determines that such a variance will not jeopardize the health, safety, or welfare of individuals ~~and upon demonstration by the provider requesting~~. A provider shall submit a request for such variance in writing to the commissioner. The request shall demonstrate that complying with the regulation would be a hardship unique to the provider and that the variance will not jeopardize the health, safety, or welfare of individuals. The department may limit the length of time a variance will be effective. ~~A provider shall submit a request for a variance in writing to the commissioner. A variance may be time-limited or have other conditions attached to it. The department must approve a variance prior to implementation.~~ The provider shall not implement a variance until it has been approved in writing by the commissioner.

12VAC35-105-150. Compliance with applicable laws, regulations and policies.

The provider including its employees, contractors, students, and volunteers shall comply with:

1. ~~These regulations~~ This chapter;

2. The terms and stipulations of the license;

3. All applicable federal, state, or local laws and regulations including:

a. Laws regarding employment practices including the Equal Employment Opportunity Act;

b. The Americans with Disabilities Act and the Virginians with Disabilities Act;

c. For home and community-based services waiver settings subject to this chapter, 42 CFR 441.301(c)(1) through (4), Contents of request for a waiver;

~~c.~~ d. Occupational Safety and Health Administration regulations;

~~d.~~ e. Virginia Department of Health regulations;

~~e. Laws and regulations of the~~ f. Virginia Department of Health Professions regulations;

~~f.~~ g. Virginia Department of Medical Assistance Services regulations;

~~g.~~ h. Uniform Statewide Building Code; and

~~h.~~ i. Uniform Statewide Fire Prevention Code.

4. Section 37.2-400 of the Code of Virginia and related human rights regulations adopted by the state board; and

5.The provider's own policies. All required policies shall be in writing.

12VAC35-105-155. Preadmission screening, discharge planning, involuntary commitment, and mandatory outpatient treatment orders.

A. Providers responsible for complying with §§ 37.2-505 and 37.2-606 of the Code of Virginia regarding community ~~service~~ services board and behavioral health authority preadmission screening and discharge planning shall implement policies and procedures that include:

1. Identification, qualification, training, and responsibilities of employees responsible for preadmission screening and discharge planning.

2. Completion of a discharge plan prior to an individual's discharge in consultation with the state facility that:

a. Involves the individual or his authorized representative and reflects the individual's preferences to the greatest extent possible consistent with the individual's needs.

b. Involves mental health, ~~mental retardation (intellectual disability)~~ developmental disability, substance abuse, social, educational, medical, employment, housing, legal, advocacy, transportation, and other services that the individual will need upon discharge into the community and identifies the public or private agencies or persons that have agreed to provide them.

B. Any provider who serves individuals through an emergency custody order, temporary detention order, or mandatory outpatient treatment order shall implement policies and procedures to comply with §§ 37.2-800 through 37.2-817 of the Code of Virginia.

12VAC35-105-160. Reviews by the department; requests for information; required reporting.

A. The provider shall permit representatives from the department to conduct reviews to:

1. Verify application information;

2. Assure compliance with this chapter; and

3. Investigate complaints.

B. The provider shall cooperate fully with inspections and investigations and shall provide all information requested ~~to assist representatives from~~ by the department ~~who conduct inspections~~.

C. The provider shall collect, maintain, and review at least quarterly all Level I serious incidents as part of the quality improvement program in accordance with 12VAC35-105-620 to include an analysis of trends, potential systemic issues or causes, indicated remediation, and documentation of steps taken to mitigate the potential for future incidents.

D. The provider shall collect, maintain, and report or make available to the department the following information:

1. Each allegation of abuse or neglect shall be reported to the ~~assigned human rights advocate and the individual's authorized representative within 24 hours from the receipt of the initial allegation. Reported information shall include the type of abuse, neglect, or exploitation that is alleged and whether there is physical or psychological injury to the individual~~ department as provided in 12VAC35-115-230 A.

2. ~~Each instance of death or serious injury in writing to the department's assigned licensing specialist~~ Level II and Level III serious incidents shall be reported using the department's web-based reporting application and by telephone to anyone designated by the individual to receive such notice and to the individual's authorized representative within 24 hours of discovery ~~and by phone to the individual's authorized representative within 24 hours~~. Reported information shall include the information specified by the department as required in its web-based reporting application, but at least the following: the date ~~and~~, place, and circumstances of the ~~individual's death or serious injury;~~ serious incident. For serious injuries and deaths, the reported information shall also include the nature of the individual's injuries or circumstances of the death and ~~the~~ any treatment received~~; and the circumstances of the death or serious injury~~. For all other Level II and Level III serious incidents, the reported information shall also include the consequences or risk of harm that resulted from the serious incident. Deaths that occur in a hospital as a result of illness or injury occurring when the individual was in a licensed service shall be reported.

3. ~~Each instance~~ Instances of seclusion or restraint ~~that does not comply with the human rights regulations or approved variances or that results in injury to an individual shall be reported to the individual's authorized representative and the assigned human rights advocate within 24 hours~~ shall be reported to the department as provided in 12VAC35-115-230 C 4.

E. A root cause analysis shall be conducted by the provider within 30 days of discovery of Level II and Level III serious

incidents. The root cause analysis shall include at least the following information: (i) a detailed description of what happened; (ii) an analysis of why it happened, including identification of all identifiable underlying causes of the incident that were under the control of the provider; and (iii) identified solutions to mitigate its reoccurrence.

~~D.~~ F. The provider shall submit, or make available, reports and information that the department requires to establish compliance with these regulations and applicable statutes.

~~E.~~ G. Records that are confidential under federal or state law shall be maintained as confidential by the department and shall not be further disclosed except as required or permitted by law; however, there shall be no right of access to communications that are privileged pursuant to § 8.01-581.17 of the Code of Virginia.

~~F.~~ H. Additional information requested by the department if compliance with a regulation cannot be determined shall be submitted within 10 business days of the issuance of the licensing report requesting additional information. Extensions may be granted by the department when requested prior to the due date, but extensions shall not exceed an additional 10 business days.

~~G.~~ I. Applicants and providers shall not submit any misleading or false information to the department.

12VAC35-105-170. Corrective action plan.

A. If there is noncompliance with any applicable regulation during an initial or ongoing review, inspection, or investigation, the department shall issue a licensing report describing the noncompliance and requesting the provider to submit a corrective action plan for each violation cited.

B. The provider shall submit to the department and implement a written corrective action plan for each ~~regulation with which it is found to be in violation as identified in the licensing report~~ violation cited.

C. The corrective action plan shall include a:

1. ~~Description~~ Detailed description of the corrective actions to be taken that will minimize the possibility that the violation will occur again and correct any systemic deficiencies;

2. Date of completion for each corrective action; and

3. Signature of the person responsible for the service.

D. The provider shall submit a corrective action plan to the department within 15 business days of the issuance of the licensing report. ~~Extensions~~ One extension may be granted by the department when requested prior to the due date, but extensions shall not exceed an additional 10 business days. An immediate corrective action plan shall be required if the department determines that the violations pose a danger to individuals receiving the service.

E. Upon receipt of the corrective action plan, the department shall review the plan and determine whether the plan is approved or not approved. The provider has an additional 10 business days to submit a revised corrective action plan after receiving a notice that ~~the plan submitted has not been approved by~~ the department has not approved the revised plan. If the submitted revised corrective action plan is still unacceptable, the provider shall follow the dispute resolution process identified in this section.

F. When the provider disagrees with a citation of a violation or the disapproval of the revised corrective action plans, the provider shall discuss this disagreement with the licensing specialist initially. If the disagreement is not resolved, the provider may ask for a meeting with the licensing specialist's supervisor, in consultation with the director of licensing, to challenge a finding of noncompliance. The determination of the director is final.

G. The provider shall ~~monitor implementation of~~ implement and monitor the approved corrective action ~~and include a plan for monitoring~~ plan. The provider shall incorporate corrective actions in its quality ~~assurance activities~~ improvement program specified in 12VAC30-105-620.

12VAC35-105-320. Fire inspections.

The provider shall document at the time of its original application and annually thereafter that buildings and equipment in residential service locations ~~serving more than eight individuals~~ are maintained in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51). ~~This section does not apply to correctional facilities or home and noncenter-based or sponsored residential home services.~~ The provider shall evaluate each individual and, based on that evaluation, shall provide appropriate environmental supports and adequate staff to safely evacuate all individuals during an emergency.

Article 3
Physical Environment of ~~Residential/Inpatient~~ Residential and Inpatient Service Locations

12VAC35-105-330. Beds.

A. The provider shall not operate more beds than the number for which its service location or locations are licensed.

B. ~~A community ICF/MR~~ An ICF/IID may not have more than 12 beds at any one location. This applies to new applications for services and not to existing services or locations licensed prior to December 7, 2011.

12VAC35-105-400. Criminal ~~registry~~ background checks and registry searches.

A. Providers shall comply with the requirements for obtaining criminal history background ~~check requirements for direct care positions~~ checks as outlined in §§ 37.2-416, 37.2-

506, and 37.2-607 of the Code of Virginia for individuals hired after July 1, 1999.

~~B. Prior to a new employee beginning his duties, the provider shall obtain the employee's written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect maintained by the Virginia Department of Social Services.~~

~~C.~~ B. The provider shall develop a written policy for criminal history background checks and registry ~~checks for all employees, contractors, students, and volunteers~~ searches. The policy shall require at a minimum a disclosure statement ~~from the employee, contractor, student, or volunteer~~ stating whether the person has ever been convicted of or is the subject of pending charges for any offense and shall address what actions the provider will take should it be discovered that ~~an employee, student, contractor, or volunteer~~ a person has a founded case of abuse or neglect or both, or a conviction or pending criminal charge.

~~D.~~ C. The provider shall submit all information required by the department to complete the criminal history background checks and registry ~~checks for all employees and for contractors, students, and volunteers if required by the provider's policy~~ searches.

~~E.~~ D. The provider shall maintain the following documentation:

1. The disclosure statement from the applicant stating whether he has ever been convicted of or is the subject of pending charges for any offense; and

2. Documentation that the provider submitted all information required by the department to complete the criminal history background checks and registry ~~checks~~ searches, memoranda from the department transmitting the results to the provider, and the results from the Child Protective Registry ~~check~~ search.

12VAC35-105-440. Orientation of new employees, contractors, volunteers, and students.

New employees, contractors, volunteers, and students shall be oriented commensurate with their function or job-specific responsibilities within 15 business days. The provider shall document that the orientation covers each of the following policies, procedures, and practices:

1. Objectives and philosophy of the provider;

2. Practices of confidentiality including access, duplication, and dissemination of any portion of an individual's record;

3. Practices that assure an individual's rights including orientation to human rights regulations;

4. Applicable personnel policies;

5. Emergency preparedness procedures;

6. Person-centeredness;

7. Infection control practices and measures; ~~and~~

8. Other policies and procedures that apply to specific positions and specific duties and responsibilities; and

9. Serious incident reporting, including when, how, and under what circumstances a serious incident report must be submitted and the consequences of failing to report a serious incident to the department in accordance with this chapter.

12VAC35-105-450. Employee training and development.

The provider shall provide training and development opportunities for employees to enable them to support the individuals ~~served~~ receiving services and to carry out ~~the~~ their job responsibilities ~~of their jobs~~. The provider shall develop a training policy that addresses the frequency of retraining on serious incident reporting, medication administration, behavior intervention, emergency preparedness, and infection control, to include flu epidemics. Employee participation in training and development opportunities shall be documented and accessible to the department.

12VAC35-105-460. Emergency medical or first aid training.

There shall be at least one employee or contractor on duty at each location who holds a current certificate (i) issued by the American Red Cross, the American Heart Association, or comparable authority in standard first aid and cardiopulmonary resuscitation (CPR) or (ii) as an emergency medical technician. A licensed medical professional who holds a current professional license shall be deemed to hold a current certificate in first aid, but not in CPR. The certification process shall include a hands-on, in-person demonstration of first aid and CPR competency.

Article 5
Health and Safety Management

12VAC35-105-520. Risk management.

A. The provider shall designate a person responsible for the risk management function who has training and expertise in conducting investigations, root cause analysis, and data analysis.

B. The provider shall implement a written plan to identify, monitor, reduce, and minimize ~~risks associated with~~ harms and risk of harm, including personal injury, infectious disease, property damage or loss, and other sources of potential liability.

C. The provider shall conduct systemic risk assessment reviews at least annually to identify and respond to practices, situations, and policies that could result in the risk of harm to individuals receiving services. The risk assessment review shall address (i) the environment of care; (ii) clinical

assessment or reassessment processes; (iii) staff competence and adequacy of staffing; (iv) use of high risk procedures, including seclusion and restraint; and (v) a review of serious incidents. This process shall incorporate uniform risk triggers and thresholds as defined by the department.

~~C.~~ D. The provider shall conduct and document that a safety inspection has been performed at least annually of each service location owned, rented, or leased by the provider. Recommendations for safety improvement shall be documented and implemented by the provider.

~~D.~~ E. The provider shall document serious injuries to employees, contractors, students, volunteers, and visitors that occur during the provision of a service or on the provider's property. Documentation shall be kept on file for three years. The provider shall evaluate serious injuries at least annually. Recommendations for improvement shall be documented and implemented by the provider.

12VAC35-105-580. Service description requirements.

A. The provider shall develop, implement, review, and revise its descriptions of services offered according to the provider's mission and shall make service descriptions available for public review.

B. The provider shall outline how each service offers a structured program of individualized interventions and care designed to meet the individuals' physical and emotional needs; provide protection, guidance and supervision; and meet the objectives of any required individualized services plan.

C. The provider shall prepare a written description of each service it offers. Elements of each service description shall include:

1. Service goals;

2. A description of care, treatment, ~~training~~ skills acquisition, or other supports provided;

3. Characteristics and needs of individuals to ~~be served~~ receive services;

4. Contract services, if any;

5. Eligibility requirements and admission, continued stay, and exclusion criteria;

6. Service termination and discharge or transition criteria; and

7. Type and role of employees or contractors.

D. The provider shall revise the written service description whenever the operation of the service changes.

E. The provider shall not implement services that are inconsistent with its most current service description.

F. The provider shall admit only those individuals whose service needs are consistent with the service description, for whom services are available, and for which staffing levels and types meet the needs of the individuals ~~served~~ receiving services.

G. The provider shall provide for the physical separation of children and adults in residential and inpatient services and shall provide separate group programming for adults and children, except in the case of family services. The provider shall provide for the safety of children accompanying parents receiving services. Older adolescents transitioning from school to adult activities may participate in ~~mental retardation (intellectual disability)~~ developmental day support services with adults.

H. The service description for substance abuse treatment services shall address the timely and appropriate treatment of pregnant women with substance abuse (substance use disorders).

I. If the provider plans to serve individuals as of a result of a temporary detention order to a service, prior to admitting those individuals to that service, the provider shall submit a written plan for adequate staffing and security measures to ensure the individual can ~~be served~~ receive services safely within the service to the department for approval. If the plan is approved, the department ~~will~~ shall add a stipulation to the license authorizing the provider to serve individuals who are under temporary detention orders.

12VAC35-105-590. Provider staffing plan.

A. The provider shall implement a written staffing plan that includes the types, roles, and numbers of employees and contractors that are required to provide the service. This staffing plan shall reflect the:

1. Needs of the individuals ~~served~~ receiving services;

2. Types of services offered;

3. The service description; ~~and~~

4. Number of ~~people~~ individuals to ~~be served~~ receive services at a given time; and

5. Adequate number of staff required to safely evacuate all individuals during an emergency.

B. The provider shall develop a written transition staffing plan for new services, added locations, and changes in capacity.

C. The provider shall meet the following staffing requirements related to supervision.

1. The provider shall describe how employees, volunteers, contractors, and student interns will be supervised in the staffing plan and how that supervision will be documented.

2. Supervision of employees, volunteers, contractors, and student interns shall be provided by persons who have experience in working with individuals receiving services and in providing the services outlined in the service description.

3. Supervision shall be appropriate to the services provided and the needs of the individual. Supervision shall be documented.

4. Supervision shall include responsibility for approving assessments and individualized services plans, as appropriate. This responsibility may be delegated to an employee or contractor who meets the qualification for supervision as defined in this section.

5. Supervision of mental health, substance abuse, or co-occurring services that are of an acute or clinical nature such as outpatient, inpatient, intensive in-home, or day treatment shall be provided by a licensed mental health professional or a mental health professional who is license-eligible and registered with a board of the Department of Health Professions.

6. Supervision of mental health, substance abuse, or co-occurring services that are of a supportive or maintenance nature, such as psychosocial rehabilitation~~,~~ or mental health supports, shall be provided by a QMHP-A. An individual who is a QMHP-E may not provide this type of supervision.

7. Supervision of ~~mental retardation (intellectual disability)~~ developmental services shall be provided by a person with at least one year of documented experience working directly with individuals who have ~~mental retardation (intellectual disability) or other~~ developmental disabilities and holds at least a bachelor's degree in a human services field such as sociology, social work, special education, rehabilitation counseling, nursing, or psychology. Experience may be substituted for the education requirement.

8. ~~Supervision of individual and family developmental disabilities support (IFDDS) services shall be provided by a person possessing at least one year of documented experience working directly with individuals who have developmental disabilities and is one of the following: a doctor of medicine or osteopathy licensed in Virginia; a registered nurse licensed in Virginia; or a person holding at least a bachelor's degree in a human services field such as sociology, social work, special education, rehabilitation counseling, or psychology. Experience may be substituted for the education requirement.~~

~~9.~~ Supervision of brain injury services shall be provided at a minimum by a clinician in the health professions field who is trained and experienced in providing brain injury services to individuals who have a brain injury diagnosis including: (i) a doctor of medicine or osteopathy licensed in Virginia; (ii) a psychiatrist who is a doctor of medicine or osteopathy specializing in psychiatry and licensed in Virginia; (iii) a psychologist who has a master's degree in psychology from a college or university with at least one year of clinical experience; (iv) a social worker who has a bachelor's degree in human services or a related field (social work, psychology, psychiatric evaluation, sociology, counseling, vocational rehabilitation, human services counseling, or other degree deemed equivalent to those described) from an accredited college or university with at least two years of clinical experience providing direct services to individuals with a diagnosis of brain injury; (v) a Certified Brain Injury Specialist; (vi) a registered nurse licensed in Virginia with at least one year of clinical experience; or (vii) any other licensed rehabilitation professional with one year of clinical experience.

D. The provider shall employ or contract with persons with appropriate training, as necessary, to meet the specialized needs of and to ensure the safety of individuals ~~being served~~ receiving services in residential services with medical or nursing needs; speech, language, or hearing problems; or other needs where specialized training is necessary.

E. Providers of brain injury services shall employ or contract with a neuropsychologist or licensed clinical psychologist specializing in brain injury to assist, as appropriate, with initial assessments, development of individualized services plans, crises, staff training, and service design.

F. Direct care staff who provide brain injury services shall have at least a high school diploma and two years of experience working with individuals with disabilities or shall have successfully completed an approved training curriculum on brain injuries within six months of employment.

12VAC35-105-620. Monitoring and evaluating service quality.

The provider shall develop and implement a quality improvement program sufficient to identify, ~~written policies and procedures to~~ monitor, and evaluate clinical and service quality and effectiveness on a systematic and ongoing basis. The program shall (i) include a quality improvement plan that is reviewed and updated at least annually; (ii) establish measurable goals and objectives; (iii) include and report on statewide performance measures, if applicable, as required by DBHDS; (iv) utilize standard quality improvement tools, including root cause analysis; (v) implement a process to regularly evaluate progress toward meeting established goals and objectives; and (vi) incorporate any corrective action plans pursuant to 12VAC35-105-170. Input from individuals receiving services and their authorized representatives, if applicable, about services used and satisfaction level of participation in the direction of service planning shall be part of the provider's quality ~~assurance system~~ improvement plan. The provider shall implement improvements, when indicated.

12VAC35-105-650. Assessment policy.

A. The provider shall implement a written assessment policy. The policy shall define how assessments will be conducted and documented.

B. The provider shall actively involve the individual and authorized representative, if applicable, in the preparation of initial and comprehensive assessments and in subsequent reassessments. In these assessments and reassessments, the provider shall consider the individual's needs, strengths, goals, preferences, and abilities within the individual's cultural context.

C. The assessment policy shall designate employees or contractors who are responsible for conducting assessments. These employees or contractors shall have experience in working with the needs of individuals who are being assessed, the assessment tool or tools being utilized, and the provision of services that the individuals may require.

D. Assessment is an ongoing activity. The provider shall make reasonable attempts to obtain previous assessments or relevant history.

E. An assessment shall be initiated prior to or at admission to the service. With the participation of the individual and the individual's authorized representative, if applicable, the provider shall complete an initial assessment detailed enough to determine whether the individual qualifies for admission and to initiate an ISP for those individuals who are admitted to the service. This assessment shall assess immediate service, health, and safety needs, and at a minimum include the individual's:

1. Diagnosis;

2. Presenting needs including the individual's stated needs, psychiatric needs, support needs, and the onset and duration of problems;

3. Current medical problems;

4. Current medications;

5. Current and past substance use or abuse, including co-occurring mental health and substance abuse disorders; and

6. At-risk behavior to self and others.

F. A comprehensive assessment shall update and finalize the initial assessment. The timing for completion of the comprehensive assessment shall be based upon the nature and scope of the service but shall occur no later than 30 days, after admission for providers of mental health and substance abuse services and 60 days after admission for providers of ~~mental retardation (intellectual disability) and~~ developmental ~~disabilities~~ services. It shall address:

1. Onset and duration of problems;

2. Social, behavioral, developmental, and family history and supports;

3. Cognitive functioning including strengths and weaknesses;

4. Employment, vocational, and educational background;

5. Previous interventions and outcomes;

6. Financial resources and benefits;

7. Health history and current medical care needs, to include:

a. Allergies;

b. Recent physical complaints and medical conditions;

c. Nutritional needs;

d. Chronic conditions;

e. Communicable diseases;

f. Restrictions on physical activities if any;

g. Restrictive protocols or special supervision requirements;

h. Past serious illnesses, serious injuries, and hospitalizations;

~~h.~~ i. Serious illnesses and chronic conditions of the individual's parents, siblings, and significant others in the same household; and

~~i.~~ j. Current and past substance use including alcohol, prescription and nonprescription medications, and illicit drugs.

8. Psychiatric and substance use issues including current mental health or substance use needs, presence of co-occurring disorders, history of substance use or abuse, and circumstances that increase the individual's risk for mental health or substance use issues;

9. History of abuse, neglect, sexual, or domestic violence, or trauma including psychological trauma;

10. Legal status including authorized representative, commitment, and representative payee status;

11. Relevant criminal charges or convictions and probation or parole status;

12. Daily living skills;

13. Housing arrangements;

14. Ability to access services including transportation needs; and

15. As applicable, and in all residential services, fall risk, communication methods or needs, and mobility and adaptive equipment needs.

G. Providers of short-term intensive services including inpatient and crisis stabilization services shall develop policies for completing comprehensive assessments within the time frames appropriate for those services.

H. Providers of non-intensive or short-term services shall meet the requirements for the initial assessment at a minimum. Non-intensive services are services provided in jails, nursing homes, or other locations when access to records and information is limited by the location and nature of the services. Short-term services typically are provided for less than 60 days.

I. Providers may utilize standardized state or federally sanctioned assessment tools that do not meet all the criteria of 12VAC35-105-650 as the initial or comprehensive assessment tools as long as the tools assess the individual's health and safety issues and substantially meet the requirements of this section.

J. Individuals who receive medication-only services shall be reassessed at least annually to determine whether there is a change in the need for additional services and the effectiveness of the medication.

12VAC35-105-660. Individualized services plan (ISP).

A. The provider shall actively involve the individual and authorized representative, as appropriate, in the development, review, and revision of a person-centered ISP. The individualized services planning process shall be consistent with laws protecting confidentiality, privacy, human rights of individuals receiving services, and rights of minors.

B. The provider shall develop and implement an initial person-centered ISP for the first 60 days for ~~mental retardation (intellectual disability) and~~ developmental ~~disabilities~~ services or for the first 30 days for mental health and substance abuse services. This ISP shall be developed and implemented within 24 hours of admission to address immediate service, health, and safety needs and shall continue in effect until the ISP is developed or the individual is discharged, whichever comes first.

C. The provider shall implement a person-centered comprehensive ISP as soon as possible after admission based upon the nature and scope of services but no later than 30 days after admission for providers of mental health and substance abuse services and 60 days after admission for providers of ~~mental retardation (intellectual disability) and~~ developmental ~~disabilities~~ services.

D. The initial ISP and the comprehensive ISP shall be developed based on the respective assessment with the participation and informed choice of the individual receiving services. To ensure the individual's participation and informed choice, the provider shall explain to the individual or his authorized representative, as applicable, in a reasonable and comprehensible manner, the proposed services to be delivered, alternative services that might be advantageous for the individual, and accompanying risks or benefits. The provider shall clearly document that this information was explained to the individual or his authorized representative and the reasons the individual or his authorized representative chose the option included in the ISP.

12VAC35-105-665. ISP requirements.

A. The comprehensive ISP shall be based on the individual's needs, strengths, abilities, personal preferences, goals, and natural supports identified in the assessment. The ISP shall include:

1. Relevant and attainable goals, measurable objectives, and specific strategies for addressing each need;

2. Services and supports and frequency of services required to accomplish the goals including relevant psychological, mental health, substance abuse, behavioral, medical, rehabilitation, training, and nursing needs and supports;

3. The role of the individual and others in implementing the service plan;

4. A communication plan for individuals with communication barriers, including language barriers;

5. A behavioral support or treatment plan, if applicable;

6. A safety plan that addresses identified risks to the individual or to others, including a fall risk plan;

7. A crisis or relapse plan, if applicable;

8. Target dates for accomplishment of goals and objectives;

9. Identification of employees or contractors responsible for coordination and integration of services, including employees of other agencies; ~~and~~

10. Recovery plans, if applicable; and

11. Services the individual elects to self direct, if applicable.

B. The ISP shall be signed and dated at a minimum by the person responsible for implementing the plan and the individual receiving services or the authorized representative in order to document agreement. If the signature of the individual receiving services or the authorized representative cannot be obtained, the provider shall document ~~his attempt~~ attempts to obtain the necessary signature and the reason why he was unable to obtain it. The ISP shall be distributed to the individual and others authorized to receive it.

C. The provider shall designate a person who ~~will~~ shall be responsible for developing, implementing, reviewing, and revising each individual's ISP in collaboration with the individual or authorized representative, as appropriate.

D. Employees or contractors who are responsible for implementing the ISP shall demonstrate a working knowledge of the objectives and strategies contained in the individual's current ISP.

E. Providers of short-term intensive services such as inpatient and crisis ~~stabilization~~ services that are typically provided for less than 30 days shall implement a policy to develop an ISP within a timeframe consistent with the length of stay of individuals.

F. ~~The ISP shall be consistent with the plan of care for individuals served by the IFDDS Waiver.~~

~~G.~~ When a provider provides more than one service to an individual the provider may maintain a single ISP document that contains individualized objectives and strategies for each service provided.

~~H.~~ G. Whenever possible the identified goals in the ISP shall be written in the words of the individual receiving services.

12VAC35-105-675. Reassessments and ISP reviews.

A. Reassessments shall be completed at least annually and ~~when~~ any time there is a need based on changes in the medical, psychiatric, ~~or~~ behavioral, or other status of the individual.

B. Providers shall complete changes to the ISP as a result of the assessments.

C. The provider shall update the ISP at least annually and any time assessments identify risks, injuries, needs, or a change in status of the individual.

D. The provider shall review the ISP at least every three months from the date of the implementation of the ISP or whenever there is a revised assessment based upon the individual's changing needs or goals.

1. These reviews shall evaluate the individual's progress toward meeting the ~~plan's~~ ISP's goals and objectives and the continued relevance of the ISP's objectives and strategies. The provider shall update the goals, objectives, and strategies contained in the ISP, if indicated, and implement any updates made.

2. These reviews shall document evidence of progression toward or achievement of a specific targeted outcome for each goal and objective.

3. For goals and objectives that were not accomplished by the identified target date, the provider and any appropriate treatment team members shall meet to review the reasons for lack of progress and provide the individual an opportunity to make an informed choice of how to proceed.

12VAC35-105-691. Transition of individuals among service.

A. The provider shall implement written procedures that define the process for transitioning an individual between or among services operated by the provider. At a minimum the policy shall address:

1. The process by which the provider will assure continuity of services during and following transition;

2. The participation of the individual or his authorized representative, as applicable, in the decision to move and in the planning for transfer;

3. The process and timeframe for transferring the access to individual's record and ISP to the destination location;

4. The process and timeframe for completing the transfer summary; and

5. The process and timeframe for transmitting or accessing, where applicable, discharge summaries to the destination service.

B. The transfer summary shall include at a minimum the following:

1. Reason for the individual's transfer;

2. Documentation of ~~involvement~~ informed choice by the individual or his authorized representative, as applicable, in the decision to and planning for the transfer;

3. Current psychiatric and known medical conditions or issues of the individual and the identity of the individual's health care providers;

4. Updated progress of the individual in meeting goals and objectives in his ISP;

5. Emergency medical information;

6. Dosages of all currently prescribed medications and over-the-counter medications used by the individual when prescribed by the provider or known by the case manager;

7. Transfer date; and

8. Signature of employee or contractor responsible for preparing the transfer summary.

C. The transfer summary may be documented in the individual's progress notes or in information easily accessible within an electronic health record.

Article 6
Behavior Interventions

12VAC35-105-800. Policies and procedures on behavior interventions and supports.

A. The provider shall implement written policies and procedures that describe the use of behavior interventions,

including seclusion, restraint, and time out. The policies and procedures shall:

1. Be consistent with applicable federal and state laws and regulations;

2. Emphasize positive approaches to behavior interventions;

3. List and define behavior interventions in the order of their relative degree of intrusiveness or restrictiveness and the conditions under which they may be used in each service for each individual;

4. Protect the safety and well-being of the individual at all times, including during fire and other emergencies;

5. Specify the mechanism for monitoring the use of behavior interventions; and

6. Specify the methods for documenting the use of behavior interventions.

B. Employees and contractors trained in behavior support interventions shall implement and monitor all behavior interventions.

C. Policies and procedures related to behavior interventions shall be available to individuals, their families, authorized representatives, and advocates. Notification of policies does not need to occur in correctional facilities.

D. Individuals receiving services shall not discipline, restrain, seclude, or implement behavior interventions on other individuals receiving services.

E. Injuries resulting from or occurring during the implementation of ~~behavior interventions~~ seclusion or restraint shall be ~~recorded in the individual's services record and~~ reported to the ~~assigned human rights advocate and the employee or contractor responsible for the overall coordination of services~~ department as provided in 12VAC35-115-230 C.

12VAC35-105-830. Seclusion, restraint, and time out.

A. The use of seclusion, restraint, and time out shall comply with applicable federal and state laws and regulations and be consistent with the provider's policies and procedures.

B. Devices used for mechanical restraint shall be designed specifically for emergency behavior management of human beings in clinical or therapeutic programs.

C. Application of time out, seclusion, or restraint shall be documented in the individual's record and include the following:

1. Physician's order for seclusion or mechanical restraint or chemical restraint;

2. Date and time;

3. Employees or contractors involved;

4. Circumstances and reasons for use including other emergency behavior management techniques attempted;

5. Duration;

6. Type of technique used; and

7. Outcomes, including documentation of debriefing of the individual and staff involved following the incident.

Article 3
Services in Department of Corrections Correctional Facilities

12VAC35-105-1140. Clinical and security coordination.

A. The provider shall have formal and informal methods of resolving procedural and programmatic issues regarding individual care arising between the clinical and security employees or contractors.

B. The provider shall demonstrate ongoing communication between clinical and security employees to ensure individual care.

C. The provider shall provide cross-training for the clinical and security employees or contractors that includes:

1. Mental health, ~~mental retardation (intellectual disability)~~ developmental disability, and substance abuse education;

2. Use of clinical and security restraints; and

3. Channels of communication.

D. Employees or contractors shall receive periodic in-service training, and have knowledge of and be able to demonstrate the appropriate use of clinical and security restraint.

E. Security and behavioral assessments shall be completed at the time of admission to determine service eligibility and at least weekly for the safety of individuals, other persons, employees, and visitors.

F. Personal grooming and care services for individuals shall be a cooperative effort between the clinical and security employees or contractors.

G. Clinical needs and security level shall be considered when arrangements are made regarding privacy for individual contact with family and attorneys.

H. Living quarters shall be assigned on the basis of the individual's security level and clinical needs.

I. An assessment of the individual's clinical condition and needs shall be made when disciplinary action or restrictions are required for infractions of security measures.

J. Clinical services consistent with the individual's condition and plan of treatment shall be provided when security detention or isolation is imposed.

12VAC35-105-1245. Case management direct assessments.

Case managers shall meet with each individual face to face as dictated by the individual's needs. At face-to-face meetings, the case manager shall (i) observe and assess for any previously unidentified risks, injuries, needs, or other changes in status; (ii) assess the status of previously identified risks, injuries, or needs, or other changes in status; (iii) assess whether the individual's service plan is being implemented appropriately and remains appropriate for the individual; and (iv) assess whether supports and services are being implemented consistent with the individual's strengths and preferences and in the most integrated setting appropriate to the individual's needs.

12VAC35-105-1250. Qualifications of case management employees or contractors.

A. Employees or contractors providing case management services shall have knowledge of:

1. Services and systems available in the community including primary health care, support services, eligibility criteria and intake processes and generic community resources;

2. The nature of serious mental illness, ~~mental retardation (intellectual disability)~~ developmental disability, substance abuse (substance use disorders), or co-occurring disorders depending on the individuals ~~served~~ receiving services, including clinical and developmental issues;

3. Different types of assessments, including functional assessment, and their uses in service planning;

4. Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning, and service coordination;

5. Types of mental health, developmental, and substance abuse programs available in the locality;

6. The service planning process and major components of a service plan;

7. The use of medications in the care or treatment of the population served; and

8. All applicable federal and state laws and regulations and local ordinances.

B. Employees or contractors providing case management services shall have skills in:

1. Identifying and documenting an individual's need for resources, services, and other supports;

2. Using information from assessments, evaluations, observation, and interviews to develop service plans;

3. Identifying and documenting how resources, services, and natural supports such as family can be utilized to promote achievement of an individual's personal habilitative or rehabilitative and life goals; and

4. Coordinating the provision of services by diverse public and private providers.

C. Employees or contractors providing case management services shall have abilities to:

1. Work as team members, maintaining effective inter- and intra-agency working relationships;

2. Work independently performing position duties under general supervision; and

3. Engage in and sustain ongoing relationships with individuals receiving services.

D. Case managers serving individuals with developmental disability shall complete the DBHDS core competency-based curriculum within 30 days of hire.

Article 7
Intensive Community Treatment and Program of Assertive Community Treatment Services

12VAC35-105-1360. Admission and discharge criteria.

A. Individuals must meet the following admission criteria:

1. Diagnosis of a severe and persistent mental illness, predominantly schizophrenia, other psychotic disorder, or bipolar disorder that seriously impairs functioning in the community. Individuals with a sole diagnosis of substance addiction or abuse or ~~mental retardation (intellectual disability)~~ developmental disability are not eligible for services.

2. Significant challenges to community integration without intensive community support including persistent or recurrent difficulty with one or more of the following:

a. Performing practical daily living tasks;

b. Maintaining employment at a self-sustaining level or consistently carrying out homemaker roles; or

c. Maintaining a safe living situation.

3. High service needs indicated due to one or more of the following:

a. Residence in a state hospital or other psychiatric hospital but clinically assessed to be able to live in a more independent situation if intensive services were provided or anticipated to require extended hospitalization, if more intensive services are not available;

b. Multiple admissions to or at least one recent long-term stay (30 days or more) in a state hospital or other acute psychiatric hospital inpatient setting within the past two

years; or a recent history of more than four interventions by psychiatric emergency services per year;

c. Persistent or very recurrent severe major symptoms (e.g., affective, psychotic, suicidal);

d. Co-occurring substance addiction or abuse of significant duration (e.g., greater than six months);

e. High risk or a recent history (within the past six months) of criminal justice involvement (e.g., arrest or incarceration);

f. Ongoing difficulty meeting basic survival needs or residing in substandard housing, homeless, or at imminent risk of becoming homeless; or

g. Inability to consistently participate in traditional office-based services.

B. Individuals receiving PACT or ICT services should not be discharged for failure to comply with treatment plans or other expectations of the provider, except in certain circumstances as outlined. Individuals must meet at least one of the following criteria to be discharged:

1. Change in the individual's residence to a location out of the service area;

2. Death of the individual;

3. Incarceration of the individual for a period to exceed a year or long term hospitalization (more than one year); however, the provider is expected to prioritize these individuals for PACT or ICT services upon ~~their~~ the individual's anticipated return to the community if the individual wishes to return to services and the service level is appropriate to his needs;

4. Choice of the individual with the provider responsible for revising the ISP to meet any concerns of the individual leading to the choice of discharge; or

5. Significant sustained recovery by the individual in all major role areas with minimal team contact and support for at least two years as determined by both the individual and ICT or PACT team.

VA.R. Doc. No. R18-4381; Filed July 12, 2018, 9:52 a.m.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Notice of Suspension of Regulatory Action and Additional Comment Period

Title of Regulation: **13VAC5-51. Virginia Statewide Fire Prevention Code (amending 13VAC5-51-11 through 13VAC5-51-155; adding 13VAC5-51-144.5, 13VAC5-51-144.7, 13VAC5-51-144.8, 13VAC5-51-144.9, 13VAC5-51-154.9; repealing 13VAC5-51-146).**

Statutory Authority: § 27-97 of the Code of Virginia.

Public Comment Deadline: September 5, 2018.

Notice is hereby given that, pursuant to § 2.2-4007.06 of the Code of Virginia, the Board of Housing and Community Development is suspending the final stage of regulatory process regarding the Statewide Fire Prevention Code (13VAC5-51), published in 34:18 VA.R. 1617-1744 April 30, 2018, and is soliciting additional comments on changes made between publication of the proposed regulation and publication of the final regulation.

The additional comment period ends September 5, 2018. Written comments regarding the changes between publication of the proposed regulation and publication of the final regulation may be submitted to the agency contact.

Agency Contact: Kyle Flanders, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, or email kyle.flanders@dhcd.virginia.gov.

VA.R. Doc. No. R16-4665; Filed July 16, 2018, 1:35 p.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulation have been filed by the State Corporation Commission. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Title of Regulation: **14VAC5-300. Rules Governing Credit for Reinsurance.**

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

FORMS (14VAC5-300)

~~Certificate of Assuming Insurer - Year Ended December 31, 2012, R05(09/12) (eff. 01/13).~~

~~Certificate of Certified Reinsurer - Year Ended December 31, 2012, R15(03/12) (eff. 01/13).~~

~~Schedule S, Part 1 - Part 6, 1994-2011 National Association of Insurance Commissioners, (eff. 01/13).~~

~~Schedule F, Part 1 - Part 8, 1994-2011 National Association of Insurance Commissioners, (eff. 01/13).~~

Certificate of Assuming Insurer - Year Ended December 31, 2017, R05 (05/18) (eff. 5/2018)

Certificate of Certified Reinsurer - Year Ended December 31, ____, R15 (02/14) (eff. 2/2014)

Schedule S, Part 1 - Part 7, 1994-2017 National Association of Insurance Commissioners, Annual Statement Blank, Life, Accident & Health (eff. 1/2018)

Schedule F, Part 1 - Part 9, 1994-2017 National Association of Insurance Commissioners, Annual Statement Blank, Property/Casualty (eff. 1/2018)

Form CR-F - Part 1 - Part 2, 2011 National Association of Insurance Commissioners (eff. 1/2013)~~.~~

Form CR-S - Part 1 - Part 3, 2011 National Association of Insurance Commissioners (eff. 1/2013)~~.~~

VA.R. Doc. No. R18-5569; Filed July 10, 2018, 2:16 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Fast-Track Regulation

Title of Regulation: **18VAC30-21. Regulations Governing Audiology and Speech-Language Pathology (amending 18VAC30-21-50, 18VAC30-21-80).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 5, 2018.

Effective Date: September 20, 2018.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4630, FAX (804) 527-4471, or email audbd@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Audiology and Speech-Language Pathology the authority to promulgate regulations to administer the regulatory system, and §§ 54.1-2603 and 54.1-2604 of the Code of Virginia, which provide the board authority to regulate licensing of audiologists and speech-language pathologists.

Purpose: The purpose of the amended regulation is to clarify that licensure by endorsement is intended for applicants who have already been licensed in another state so that the board is assured of current competency and has information about whether disciplinary action has been imposed by the other state. Evidence of competency (continuing education hours and active practice or practice with a provisional license) is necessary to ensure that the licensee can practice audiology or speech-language pathology in a manner to protect the health and welfare of the licensee's clients or patients. Licensure by examination is intended for recent graduates whose competency has been demonstrated by passage of the licensure examination and attainment of the certification of competency.

Rationale for Using Fast-Track Rulemaking Process: The amendments clarify the intent of the regulations for licensure by endorsement. In the case of the application amendment in 18VAC30-21-50, the result will be a reduced fee for applicants who have had a provisional license and are applying for full licensure.

Substance: The amendments clarify that an audiologist or speech-language pathologist who has been licensed in another state must apply for licensure by endorsement and that the license in the other state must either be current and unrestricted or if lapsed, eligible for reinstatement. Another amendment allows an applicant who has already received a provisional license to pay only the difference between the provisional licensure fee and the application licensure fee when he applies for full licensure.

Issues: The advantage to the public is more assurance that a licensee coming from another state has current competency as evidenced by hours of continuing education and that the licensee has either been actively practicing in the other state or will practice in Virginia on a provisional license before full licensure is granted. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Audiology and Speech-Language Pathology (Board) proposes to: 1) credit the provisional licensure fee paid when charging the application licensure fee, and 2) clarify that an audiologist or speech-language pathologist who has been licensed in another state must apply for licensure by endorsement.

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

Estimated Economic Impact.

Fees: The regulation provides that applicants may be issued a provisional license in order to obtain clinical experience that is required in order to obtain initial full licensure. A provisional license may also be issued to applicants who are seeking: 1) licensure by endorsement and have not actively practiced for at least one of the past three years, 2) reactivation of an inactive license, or 3) reinstatement of a lapsed license. Under the current regulation, an individual with a provisional license who is applying for full licensure pays the full license fee.

	Full License	Provisional License	Difference
Audiology	$135	$50	$85
Speech-language Pathology	$135	$50	$85
School Speech-language Pathology	$70	$50	$20

The Board proposes only to charge such applicants the difference between the provisional license fee and the full licensure fee. In other words, all applicants for full licensure who have a provisional license would have their fee reduced by $50. This is, of course, beneficial for these applicants.

Licensure by Endorsement: The current regulation states that individuals who have been licensed in another United States jurisdiction in audiology or speech-language pathology and seek licensure in Virginia may apply for licensure by endorsement in Virginia, provided that they: 1) meet specified continuing education hours, 2) meet specified clinical competence certification, 3) have passed a qualifying examination from an accrediting body recognized by the Board, 4) have no disciplinary action that is pending or unresolved, and 5) either have had active practice in another United States jurisdiction for at least one of the past three years or practice for six months with a Virginia provisional license. The Board proposes to change the "may" to "shall," in order to make clear that applicants for Virginia licensure who have been licensed in other United States jurisdictions are to apply for licensure by endorsement rather than the process intended for those who have never been licensed. According to the Department of Health Professions, applicants who have been licensed out-of-state and have expressed interest in Virginia licensure have in practice been told to apply for licensure by endorsement.

Allowing individuals who have been licensed in another United States jurisdiction to apply for licensure through the route intended for those who have never been licensed would potentially enable those with unresolved disciplinary actions to become licensed in Virginia without the Board's knowledge of past problematic practice. Thus, the proposal to make clear that applicants for Virginia licensure who have been licensed in other United States jurisdictions are to apply for licensure by endorsement would be beneficial in that it reduces the likelihood that incompetent or unethical practitioners may become licensed in Virginia.

The Board also proposes to add that the out-of-state license must be current and unrestricted, or if lapsed is eligible for reinstatement. This further helps reduce the likelihood that incompetent or unethical practitioners may become licensed in Virginia.

Businesses and Entities Affected. The proposed amendments directly affect individuals applying for licensure as an audiologist, a speech-language pathologist, or as a school speech-language pathologist, and indirectly firms and schools that employ them. In the year 2017, there were 30 new licenses issued for audiologists, 381 for speech language pathologists, and 35 for school speech-language pathologists.[1]

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

Projected Impact on Employment. The proposed amendments do not significantly affect total employment.

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

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

Small Businesses:

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

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

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

[1]Source: Department of Health Professions.

Agency's Response to Economic Impact Analysis: The Board of Audiology and Speech-Language Pathology concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

The amendments (i) clarify that an audiologist or speech-language pathologist who has been licensed in another state must apply for licensure by endorsement and that the license in any other state must either be current and unrestricted or if lapsed, eligible for reinstatement and (ii) allow an applicant who has already received a provisional license to pay only the difference between the provisional licensure fee and the application licensure fee.

Part II
Requirements for Licensure

18VAC30-21-50. Application requirements.

A. A person seeking a provisional license or licensure as an audiologist, a speech-language pathologist, or a school speech-language pathologist shall submit:

1. A completed and signed application;

2. The applicable fee prescribed in 18VAC30-21-40, or in the case of an application for licensure as an audiologist, a speech-language pathologist, or a school speech-language pathologist following issuance of a provisional license, the difference between the provisional licensure fee and the application licensure fee;

3. Documentation as required by the board to determine if the applicant has met the qualifications for licensure;

4. An attestation that the applicant has read, understands, and will comply with the statutes and regulations governing the practice of audiology or speech-language pathology; and

5. If licensed or certified in another United States jurisdiction, verification of the status of the license or certification from each jurisdiction in which licensure or certification is held.

B. An incomplete application package shall be retained by the board for a period of one year from the date the application is received by the board. If an application is not completed within the year, an applicant shall reapply and pay a new application fee.

18VAC30-21-80. Qualifications for licensure by endorsement.

An applicant for licensure in audiology or speech-language pathology who has been licensed in another United States jurisdiction ~~may~~ shall apply for licensure in Virginia in accordance with application requirements in 18VAC30-21-50 and submission of documentation of:

1. Ten continuing education hours for each year in which he has been licensed in the other jurisdiction, not to exceed 30 hours, or a current and unrestricted Certificate of Clinical Competence in the area in which he seeks licensure issued by ASHA or certification issued by the American Board of Audiology or any other accrediting body recognized by the board. Verification of currency shall be in the form of a certified letter from a recognized accrediting body issued within six months prior to filing an application for licensure;

2. Passage of the qualifying examination from an accrediting body recognized by the board;

3. Current status of licensure in ~~another~~ any other United States jurisdiction showing that the license is current and unrestricted or if lapsed, is eligible for reinstatement and that no disciplinary action is pending or unresolved. The board may deny a request for licensure to any applicant who has been determined to have committed an act in violation of 18VAC30-21-160; and

4. Evidence of active practice in another United States jurisdiction for at least one of the past three years or practice for six months with a provisional license in accordance with 18VAC30-21-70 and by providing evidence of a recommendation for licensure by his supervisor.

VA.R. Doc. No. R18-5425; Filed July 17, 2018, 3:51 p.m.

BOARD OF DENTISTRY

Fast-Track Regulation

Title of Regulation: **18VAC60-25. Regulations Governing the Practice of Dental Hygiene (amending 18VAC60-25-190).**

Statutory Authority: §§ 54.1-2400 and 54.1-2722 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 5, 2018.

Effective Date: September 20, 2018.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4437, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system, and §§ 54.1-2722 and 54.1-2729 of the Code of Virginia, which provide authority for the board to regulate the practice of dental hygiene, including continuing education.

Purpose: The purpose of the regulatory action is to specify the content and duration of a continuing education course designed to develop the competencies needed to provide care under remote supervision. The goal is an adequate measure of competency and consistency in the course content and in its duration.

Since a dental hygienist working under remote supervision is practicing without a dentist present, it is essential that the hygienist be competent to provide services to the patient and to know the extent and limitation of those services allowed under the law. While the dental care for many citizens, such as persons in long-term care facilities, federally qualified health centers, charitable safety net facilities, free clinics, and schools, may greatly benefit from the practice of a hygienist working under remote supervision, it is as important to protect those citizens' health and safety as it is to increase access to care. This regulation, combined with provisions of § 54.1-2722 of the Code of Virginia, balances safety and access.

Rationale for Using Fast-Track Rulemaking Process: All parties are in agreement on this regulatory action. The only comment in response to the NOIRA published to replace the emergency regulation was support from the Virginia Dental Hygienist Association.

Substance: In accordance with subsection F of § 54.1-2722 of the Code of Virginia, a dental hygienist practicing under remote supervision is required to complete a continuing education course as specified in regulation. The course set out in regulation must be no less than two hours in duration, must be offered by an accredited dental education program or a sponsor, and must include specific course content.

Issues: The primary advantage to the public is the possibility of an increase in the number of dental hygienists who are qualified and competent to provide dental services under remote supervision. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Dentistry (Board) proposes to establish continuing education requirements for dental hygienists to practice under remote supervision.

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

Estimated Economic Impact. Chapter 497 of the 2016 Acts of Assembly[1] authorized dental hygienists to practice, with certain requirements and restrictions, under the remote supervision of a licensed dentist. One of the requirements was that the dental hygienist complete a continuing education course with specific content to cover issues related to remote supervision. Chapter 410 of the 2017 Acts of Assembly[2] further clarified the continuing education requirement. Effective November 2017 the Board established a two-hour continuing education requirement related to remote supervision and its specified content in an emergency regulation.[3] The Board now proposes to make the emergency regulation permanent.

The proposed required two-hour remote supervision continuing education course will be counted toward the currently required 15 hours of annual continuing education required for renewal of a license. Thus, there should not be any significant additional costs beyond meeting the 15 hours of continuing education currently required. The main difference will be what is covered in two of the 15 hours. The proposed regulation prescribes two hours of education with specific content to cover issues related to remote supervision. Because the specific education content will help address issues that may arise in a remote supervision setting without any discernible costs, the proposed regulation should produce net benefits.

Businesses and Entities Affected. There are 6,889 dental hygienists licensed in Virginia. It is unknown how many may practice under remote supervision.

Localities Particularly Affected. The proposed amendment does not affect any particular locality more than others.

Projected Impact on Employment. The proposed regulation establishes only the duration and content of the statutorily required continuing education and not the remote supervision itself. Thus, it is not expected to have any significant impact on employment.

Effects on the Use and Value of Private Property. No effect 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 proposed amendment should not significantly affect small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendment does not have costs and other significant effects on small businesses.

Adverse Impacts:

Businesses. The proposed amendment does not have adverse impacts on businesses.

Localities. The proposed amendment will not adversely affect localities.

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

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[1]http://lis.virginia.gov/cgi-bin/legp604.exe?161+sum+SB712.

[2]http://lis.virginia.gov/cgi-bin/legp604.exe?171+sum+HB1474.

[3]http://townhall.virginia.gov/l/ViewStage.cfm?stageid=8070.

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

Summary:

The amendment (i) requires a dental hygienist practicing under supervision to complete a continuing education course of at least two hours that is offered by an accredited dental education program or a sponsor and (ii) outlines the content required to be covered in the continuing education course.

18VAC60-25-190. Requirements for continuing education.

A. In order to renew an active license, a dental hygienist shall complete a minimum of 15 hours of approved continuing education. Continuing education hours in excess of the number required for renewal may be transferred or credited to the next renewal year for a total of not more than 15 hours.

1. A dental hygienist shall be required to maintain evidence of successful completion of a current hands-on course in basic cardiopulmonary resuscitation for health care providers.

2. A dental hygienist who monitors patients under general anesthesia, deep sedation, or conscious/moderate sedation shall complete four hours every two years of approved continuing education directly related to monitoring of such anesthesia or sedation as part of the hours required for licensure renewal.

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

B. An approved continuing education program shall be relevant to the treatment and care of patients and shall be:

1. Clinical courses in dental or dental hygiene practice; or

2. Nonclinical subjects that relate to the skills necessary to provide dental hygiene services and are supportive of clinical services (i.e., patient management, legal and ethical responsibilities, risk management, and recordkeeping). Courses not acceptable for the purpose of this subsection include~~, but are not limited to,~~ estate planning, financial planning, investments, and personal health.

C. Continuing education credit may be earned for verifiable attendance at or participation in any course, to include audio and video presentations, that meets the requirements in subdivision B 1 of this section and is given by one of the following sponsors:

1. The American Dental Association and the National Dental Association and their constituent and component/branch associations;

2. The American Dental Hygienists' Association and the National Dental Hygienists Association and their constituent and component/branch associations;

3. The American Dental Assisting Association and its constituent and component/branch associations;

4. The American Dental Association specialty organizations and their constituent and component/branch associations;

5. A provider accredited by the Accreditation Council for Continuing Medical Education for Category 1 credits;

6. The Academy of General Dentistry and its constituent and component/branch associations;

7. Community colleges with an accredited dental hygiene program if offered under the auspices of the dental hygienist program;

8. A college or university that is accredited by an accrediting agency approved by the U.S. Department of Education or a hospital or health care institution accredited by the Joint Commission on Accreditation of Healthcare Organizations;

9. The American Heart Association, the American Red Cross, the American Safety and Health Institute, and the American Cancer Society;

10. A medical school accredited by the American Medical Association's Liaison Committee for Medical Education or a dental school or dental specialty residency program accredited by the Commission on Dental Accreditation of the American Dental Association;

11. State or federal government agencies (i.e., military dental division, Veteran's Administration, etc.);

12. The Commonwealth Dental Hygienists' Society;

13. The MCV Orthodontic Education and Research Foundation;

14. The Dental Assisting National Board and its affiliate, the Dental Auxiliary Learning and Education Foundation;

15. The American Academy of Dental Hygiene, its constituent and component/branch associations; or

16. A regional testing agency (i.e., Central Regional Dental Testing Service, Northeast Regional Board of Dental Examiners, Southern Regional Testing Agency, Council of Interstate Testing Agencies, or Western Regional Examining Board) when serving as an examiner.

D. Verification of compliance.

1. All licensees are required to verify compliance with continuing education requirements at the time of annual license renewal.

2. Following the renewal period, the board may conduct an audit of licensees to verify compliance.

3. Licensees selected for audit shall provide original documents certifying that they have fulfilled their continuing education requirements by the deadline date as specified by the board.

4. Licensees are required to maintain original documents verifying the date and the subject of the program or activity, the sponsor, and the amount of time earned. Documentation shall be maintained for a period of four years following renewal.

5. Failure to comply with continuing education requirements may subject the licensee to disciplinary action by the board.

E. Exemptions.

1. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following the licensee's initial licensure.

2. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters. A written request with supporting documents must be submitted at least 30 days prior to the deadline for renewal.

F. The board may grant an extension for up to one year for completion of continuing education upon written request with an explanation to the board prior to the renewal date.

G. Continuing education hours required by board order shall not be used to satisfy the continuing education requirement for license renewal or reinstatement.

H. In order to practice under remote supervision in accordance with subsection F of § 54.1-2722 of the Code of Virginia, a dental hygienist shall complete a continuing education course of no less than two hours in duration that is offered by an accredited dental education program or a sponsor listed in subsection C of this section and that includes the following course content:

1. Intent and definitions of remote supervision;

2. Review of dental hygiene scope of practice and delegation of services;

3. Administration of controlled substances;

4. Patient records, documentation, and risk management;

5. Remote supervision laws for dental hygienists and dentists;

6. Written practice protocols; and

7. Settings allowed for remote supervision.

VA.R. Doc. No. R18-5208; Filed July 17, 2018, 3:59 p.m.

BOARD OF MEDICINE

Final Regulation

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (adding 18VAC85-20-141).**

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

Effective Date: September 5, 2018.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Summary:

The regulation provides for licensure by endorsement for physicians who hold licenses in other states and who meet certain requirements. To be licensed by endorsement, an applicant would need to have held one current, unrestricted license in another United States jurisdiction or in Canada for five years, actively practiced during that time, have all licenses in good standing, hold current board certification, submit a report from the National Practitioner Data Bank, and have no grounds for denial of licensure.

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

18VAC85-20-141. Licensure by endorsement.

To be licensed by endorsement, an applicant shall:

1. Hold at least one current, unrestricted license in a United States jurisdiction or Canada for the five years immediately preceding application to the board;

2. Have been engaged in active practice, defined as an average of 20 hours per week or 640 hours per year, for five years after postgraduate training and immediately preceding application;

3. Verify that all licenses held in another United States jurisdiction or in Canada are in good standing, defined as [~~not currently under investigation and~~ current and unrestricted, or] if lapsed, eligible for renewal or reinstatement;

4. Hold current certification by one of the following:

a. American Board of Medical Specialties;

b. Bureau of Osteopathic Specialists;

c. American Board of Foot and Ankle Surgery;

d. Fellowship of Royal College of Physicians of Canada;

e. Fellowship of the Royal College of Surgeons of Canada; or

f. College of Family Physicians of Canada;

5. Submit a current report from the U.S. Department of Health and Human Services National Practitioner Data Bank; and

6. Have no grounds for denial based on provisions of § 54.1-2915 of the Code of Virginia or regulations of the board.

VA.R. Doc. No. R17-4970; Filed July 17, 2018, 4:01 p.m.

Fast-Track Regulation

Title of Regulation: **18VAC85-50. Regulations Governing the Practice of Physician Assistants (amending 18VAC85-50-10, 18VAC85-50-101, 18VAC85-50-110, 18VAC85-50-115, 18VAC85-50-181).**

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

Public Hearing Information:

September 7, 2018 - 8:30 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, VA 23233

Public Comment Deadline: September 5, 2018.

Effective Date: September 20, 2018.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system, and §§ 54.1-2952, 54.1-2952.1, and 54.1-2952.2, which provide the Board of Medicine authority to regulate the practice of physician assistants.

Purpose: The purpose of the regulatory action is clarity and consistency in rules relating to supervision of physician assistants and removal of any unnecessary rules that may impede the ability of assistants to practice to the full extent of their training and competency as permitted by law. There are no substantive changes that affect the supervisory role of a physician, and the regulations will continue to protect public health and safety.

Rationale for Using Fast-Track Rulemaking Process: The board initially issued a Notice of Intended Regulatory Action (NOIRA) to begin the regulatory process; the proposed changes identified in the NOIRA were fully supported by the Virginia Academy of Physician Assistants and unanimously approved by members of the advisory board and the full Board of Medicine. Therefore, the board determined to move forward with adoption of a fast-track rulemaking action.

Substance: Relating to the use of supervision, the proposed amendments (i) change the definition of "supervision" by combining the meanings of general and continuous supervision; (ii) eliminate definitions of "direct supervision" and "personal supervision" and move the definitions of "alternative supervising physician" and "supervising physician" to the appropriate places in the chapter; (iii) delete the examples of various levels of supervision that may be spelled out in the practice agreement between the parties; and (iv) change the word "supervising" to "observing" to clarify the responsibility of the physician in attesting to the competency of a physician assistant to perform invasive procedures.

Relating to provisions on pharmacotherapy for weight loss, the amendments add language similar to that in regulations for physicians to read, "If specifically authorized in his practice agreement with a supervising physician, a physician assistant may perform the physical examination, review tests, and prescribe Schedules III through VI controlled substances for treatment of obesity, as specified in subsection B of this section."

Issues: There are no advantages or disadvantages to the public. The public continues to be protected by maintaining the requirement for physician oversight and certification of the physician assistant's competency to perform invasive procedures. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medicine (Board) proposes to 1) add a provision in the regulation on pharmacotherapy for weight loss to clarify that a physician assistant can conduct the physical examination, review tests, and prescribe drugs if so authorized in a practice agreement with a supervising physician, and 2) amend supervision language to improve clarity.

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

Estimated Economic Impact. The Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (18VAC85-20) specify that "If specifically authorized in his practice agreement with a supervising or collaborating physician, a physician assistant or nurse practitioner may perform the physical examination, review tests, and prescribe Schedules III through VI controlled substances for treatment of obesity…" Nevertheless, the Advisory Board on Physician Assistants (Advisory Board) has noted that not all pharmacies are filling prescriptions written by physician assistants for weight loss.[1] The Advisory Board stated that "It was thought that adding this [language to the physician assistant regulation] would remove any confusion pharmacists might have regarding physician assistants writing prescriptions for weight loss medications."

Thus, the Board proposes to add (for physician assistants) the above quoted language in the Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic to the Regulations Governing the Practice of Physician Assistants. This would be beneficial in that it would help ensure that pharmacists and anyone else who only reads the physician assistant regulation are aware that physician assistants are legally permitted to prescribe drugs in these circumstances and to conduct the other listed activities.

Businesses and Entities Affected. The proposed amendments affect current and future physician assistants in the Commonwealth, and their supervising physicians. There are 3,612 persons who hold a current Virginia license as a physician assistant, each of whom may have multiple supervising physicians.[2]

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

Projected Impact on Employment. The proposed amendments do not significantly affect employment.

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

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

Small Businesses:

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

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

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

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[1]See http://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\\meeting\26\25460\Minutes_DHP_25460_v2.pdf.

[2]Data source: Department of Health Professions.

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

Summary:

The amendments (i) simplify and clarify the definitions and usage of various terms for supervision for more consistency with the Code of Virginia and with actual practice of physician assistants and supervising physicians and (ii) add a provision regarding pharmacotherapy for weight loss to clarify that a physician assistant can conduct the physical examination, review tests, and prescribe drugs for treatment of obesity if so authorized in a practice agreement with a supervising physician.

Part I
General Provisions

18VAC85-50-10. Definitions.

A. The following words and terms shall have the meanings ascribed to them in § 54.1-2900 of the Code of Virginia:

"Board."

"Physician assistant."

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

"Group practice" means the practice of a group of two or more doctors of medicine, osteopathy, or podiatry licensed by the board who practice as a partnership or professional corporation.

"Institution" means a hospital, nursing home or other health care facility, community health center, public health center, industrial medicine or corporation clinic, a medical service facility, student health center, or other setting approved by the board.

"NCCPA" means the National Commission on Certification of Physician Assistants.

"Practice agreement" means a written agreement developed by the supervising physician and the physician assistant that defines the supervisory relationship between the physician assistant and the physician, the prescriptive authority of the physician assistant, and the circumstances under which the physician will see and evaluate the patient.

"Supervision" means~~:~~

~~1. "Alternate supervising physician" means a member of the same group or professional corporation or partnership of any licensee, any hospital or any commercial enterprise with the supervising physician. Such alternating supervising physician shall be a physician licensed in the Commonwealth who has registered with the board and who has accepted responsibility for the supervision of the service that a physician assistant renders.~~

~~2. "Direct supervision" means the physician is in the room in which a procedure is being performed.~~

~~3. "General supervision" means the supervising physician is easily available and can be physically present or accessible for consultation with the physician assistant within one hour.~~

~~4. "Personal supervision" means the supervising physician is within the facility in which the physician's assistant is functioning.~~

~~5. "Supervising physician" means the doctor of medicine, osteopathy, or podiatry licensed in the Commonwealth who has accepted responsibility for the supervision of the service that a physician assistant renders.~~

~~6. "Continuous supervision" means the supervising physician has on-going, regular communication with the physician assistant on the care and treatment of patients~~ the supervising physician has on-going, regular communication with the physician assistant on the care and treatment of patients, is easily available, and can be physically present or accessible for consultation with the physician assistant within one hour.

Part IV
Practice Requirements

18VAC85-50-101. Requirements for a practice agreement.

A. Prior to initiation of practice, a physician assistant and his supervising physician shall enter into a written or electronic practice agreement that spells out the roles and functions of the assistant.

1. The supervising physician shall be a doctor of medicine, osteopathy, or podiatry licensed in the Commonwealth who has accepted responsibility for the supervision of the service that a physician assistant renders.

2. Any such practice agreement shall take into account such factors as the physician assistant's level of competence, the number of patients, the types of illness treated by the physician, the nature of the treatment, special procedures, and the nature of the physician availability in ensuring direct physician involvement at an early stage and regularly thereafter.

3. The practice agreement shall also provide an evaluation process for the physician assistant's performance, including a requirement specifying the time period, proportionate to the acuity of care and practice setting, within which the supervising physician shall review the record of services rendered by the physician assistant.

4. The practice agreement may include requirements for periodic site visits by supervising licensees who supervise and direct assistants who provide services at a location other than where the licensee regularly practices.

B. The board may require information regarding the level of supervision~~, (i.e., "direct," "personal," or "general")~~ with which the supervising physician plans to supervise the physician assistant for selected tasks. The board may also require the supervising physician to document the assistant's competence in performing such tasks.

C. If the role of the assistant includes prescribing ~~for~~ drugs and devices, the written practice agreement shall include those schedules and categories of drugs and devices that are within the scope of practice and proficiency of the supervising physician.

D. If the initial practice agreement did not include prescriptive authority, there shall be an addendum to the practice agreement for prescriptive authority.

E. If there are any changes in supervision, authorization, or scope of practice, a revised practice agreement shall be entered into at the time of the change.

18VAC85-50-110. Responsibilities of the supervisor.

The supervising physician shall:

1. Review the clinical course and treatment plan for any patient who presents for the same acute complaint twice in

a single episode of care and has failed to improve as expected. The supervising physician shall be involved with any patient with a continuing illness as noted in the written or electronic practice agreement for the evaluation process.

2. Be responsible for all invasive procedures.

a. Under ~~general~~ supervision, a physician assistant may insert a nasogastric tube, bladder catheter, needle, or peripheral intravenous catheter, but not a flow-directed catheter, and may perform minor suturing, venipuncture, and subcutaneous intramuscular or intravenous injection.

b. All other invasive procedures not listed in subdivision 2 a of this section must be performed under ~~direct~~ supervision with the physician in the room unless, after directly ~~supervising~~ observing the performance of a specific invasive procedure three times or more, the supervising physician attests on the practice agreement to the competence of the physician assistant to perform the specific procedure without direct observation and supervision.

3. Be responsible for all prescriptions issued by the assistant and attest to the competence of the assistant to prescribe drugs and devices.

18VAC85-50-115. Responsibilities of the physician assistant.

A. The physician assistant shall not render independent health care and shall:

1. Perform only those medical care services that are within the scope of the practice and proficiency of the supervising physician as prescribed in the physician assistant's practice agreement. When a physician assistant is to be supervised by an alternate supervising physician outside the scope of specialty of the supervising physician, then the physician assistant's functions shall be limited to those areas not requiring specialized clinical judgment, unless a separate practice agreement for that alternate supervising physician is approved and on file with the board.

2. Prescribe only those drugs and devices as allowed in Part V (18VAC85-50-130 et seq.) of this chapter.

3. Wear during the course of performing his duties identification showing clearly that he is a physician assistant.

B. An alternate supervising physician shall be a member of the same group or professional corporation or partnership of any licensee who supervises a physician assistant or shall be a member of the same hospital or commercial enterprise with the supervising physician. Such alternating supervising physician shall be a physician licensed in the Commonwealth who has registered with the board and who has accepted responsibility for the supervision of the service that a physician assistant renders.

~~B.~~ C. If, due to illness, vacation, or unexpected absence, the supervising physician or alternate supervising physician is unable to supervise the activities of his assistant, such supervising physician may temporarily delegate the responsibility to another doctor of medicine, osteopathic medicine, or podiatry.

Temporary coverage may not exceed four weeks unless special permission is granted by the board.

~~C.~~ D. With respect to assistants employed by institutions, the following additional regulations shall apply:

1. No assistant may render care to a patient unless the physician responsible for that patient has signed the practice agreement to act as supervising physician for that assistant. The board shall make available appropriate forms for physicians to join the practice agreement for an assistant employed by an institution.

2. Any such practice agreement as described in subdivision 1 of this subsection shall delineate the duties which said physician authorizes the assistant to perform.

3. The assistant shall, as soon as circumstances may dictate, report an acute or significant finding or change in clinical status to the supervising physician concerning the examination of the patient. The assistant shall also record his findings in appropriate institutional records.

~~D.~~ E. Practice by a physician assistant in a hospital, including an emergency department, shall be in accordance with § 54.1-2952 of the Code of Virginia.

18VAC85-50-181. Pharmacotherapy for weight loss.

A. A practitioner shall not prescribe amphetamine, Schedule II, for the purpose of weight reduction or control.

B. A practitioner shall not prescribe controlled substances, Schedules III through VI, for the purpose of weight reduction or control in the treatment of obesity, unless the following conditions are met:

1. An appropriate history and physical examination are performed and recorded at the time of initiation of pharmacotherapy for obesity by the prescribing physician, and the physician reviews the results of laboratory work, as indicated, including testing for thyroid function;

2. If the drug to be prescribed could adversely affect cardiac function, the physician shall review the results of an electrocardiogram performed and interpreted within 90 days of initial prescribing for treatment of obesity;

3. A diet and exercise program for weight loss is prescribed and recorded;

4. The patient is seen within the first 30 days following initiation of pharmacotherapy for weight loss, by the prescribing physician or a licensed practitioner with prescriptive authority working under the supervision of the

prescribing physician, at which time a recording shall be made of blood pressure, pulse, and any other tests as may be necessary for monitoring potential adverse effects of drug therapy; and

5. The treating physician shall direct the follow-up care, including the intervals for patient visits and the continuation of or any subsequent changes in pharmacotherapy. Continuation of prescribing for treatment of obesity shall occur only if the patient has continued progress toward achieving or maintaining a target weight and has no significant adverse effects from the prescribed program.

C. If specifically authorized in his practice agreement with a supervising physician, a physician assistant may perform the physical examination, review tests, and prescribe Schedules III through VI controlled substances for treatment of obesity as specified in subsection B of this section.

VA.R. Doc. No. R18-5334; Filed July 17, 2018, 4:04 p.m.

Fast-Track Regulation

Title of Regulation: **18VAC85-130. Regulations Governing the Practice of Licensed Midwives (amending 18VAC85-130-45).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957.9 of the Code of Virginia.

Public Hearing Information:

September 7, 2018 - 8:30 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, VA 23233

Public Comment Deadline: September 5, 2018.

Effective Date: September 20, 2018.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system, and § 54.1-2957.9 of the Code of Virginia, which provides that the board shall adopt regulations governing the practice of midwifery.

Purpose: The purpose of the amended regulation is to provide a sufficient timeframe for completion of a midwifery portfolio for evaluation by the North American Registry of Midwives (NARM) to qualify a person to sit for the certification examination and thus qualify for licensure. Since persons engaged in gaining practical experience are directly and immediately supervised by a licensed physician or midwife, the public continues to be protected. The goal is to ensure that supervised practice continues for the time period that may be necessary for someone to complete a portfolio.

Rationale for Using Fast-Track Rulemaking Process: The amended regulation was requested by the Advisory Board on Midwifery and unanimously approved by the Board of Medicine. It is less burdensome and noncontroversial.

Substance: The amendment will change the timeframe from three years to 10 years in which a person who is enrolled in a midwifery education program or completing a midwifery portfolio is allowed to perform tasks related to the practice of midwifery under direct and immediate supervision.

Issues: The primary advantage to the public may be the ability for some persons to complete a NARM portfolio within a more reasonable timeframe and thereby become licensed to provide midwifery services. There are no disadvantages to the public since such persons must provide services under direct and immediate supervision. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medicine (Board) proposes to amend its Regulations Governing the Practice of Licensed Midwives to change the time during which a person who is enrolled in a midwifery education program, or completing her portfolio,[1] is allowed to perform tasks related to the practice of midwifery under direct and immediate supervision.[2]

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

Estimated Economic Impact. Current regulation allows individuals enrolled in an accredited midwifery education program, or who are completing their portfolio, to perform midwifery tasks under direct and immediate supervision without being licensed until those individuals have either taken and received the results for the examination required for the Certified Professional Midwife (CPM) or for a period of three years, whichever occurs sooner. Current regulation also allows individuals who are practicing under supervision to request, "for good cause shown," an extension not to exceed one year in length to the three-year limit on supervised practice. The Board now proposes to extend the time limitation on supervised practice to 10 years and to eliminate the extension allowance. Under the proposed regulation, individuals working toward midwife licensure will be able to work under supervision for a maximum of 10 years, rather than the maximum four years that is currently allowed.

As all practice under this provision will still have to be directly and immediately supervised, the new time limits does not raise safety concerns. Accordingly, no affected entities are likely to incur any additional costs on account of the

proposed regulatory change. This proposed change will benefit those who are working to obtain midwife licensure because it allows them greater flexibility to get "on-the-job experience" as they complete their educational requirements.

Businesses and Entities Affected. This regulatory action will affect all individuals who may wish to pursue midwife licensure in the future. Board staff does not know how many individuals are currently enrolled in midwifery education programs or completing a North American Registry of Midwives (NARM) portfolio but does report that there were seven individuals licensed as midwives in 2016-2017.

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.

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[1]The North American Registry of Midwives (NARM) Portfolio Evaluation Process allows candidates who have been educated outside of established pathways to have their qualifications evaluated for credentialing. In order to be licensed in Virginia, midwives must have NARM's Certified Professional Midwife credential.

[2]Licensed doctors of medicine or osteopathic medicine, certified nurse midwives and licensed midwives may provide supervision.

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

Summary:

The amendment changes the timeframe from three years to 10 years during which a person enrolled in a midwifery education program or completing a midwifery portfolio is allowed to perform tasks related to the practice of midwifery under direct and immediate supervision.

18VAC85-130-45. ~~Practice while enrolled in an accredited midwifery education program~~ Practical experience under supervision.

A person may perform tasks related to the practice of midwifery under the direct and immediate supervision of a licensed doctor of medicine or osteopathic medicine, a certified nurse midwife, or a licensed midwife while enrolled in an accredited midwifery education program or during completion of the North American Registry of Midwives' Portfolio Evaluation Process Program without obtaining a license issued by the board until such person has taken and received the results of any examination required for CPM certification or for a period of ~~three~~ 10 years, whichever occurs sooner. ~~For good cause shown, a person may request that the board grant any extension of time beyond the three years, for a period not to exceed one additional year.~~

VA.R. Doc. No. R18-5302; Filed July 17, 2018, 4:06 p.m.

BOARD OF NURSING

Fast-Track Regulation

Title of Regulation: **18VAC90-27. Regulations for Nursing Education Programs (amending 18VAC90-27-10, 18VAC90-27-70).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 5, 2018.

Effective Date: September 20, 2018.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Nursing the authority to promulgate regulations to administer the regulatory system, and § 54.1-3005 of the Code of Virginia, which gives the board authority to regulate nursing educational programs.

Purpose: Hospitals and clinics that serve as settings for clinical training are better assured of the safety and welfare of their patients by having a more recent criminal background check rather than relying on the initial check at the time of a student's application to nursing school. There may be as much as a two-year gap from the time an applicant to nursing school has a background check and the time that nursing student begins a clinical experience involving direct patient care. By requiring a background check prior to the clinical experience rather than prior to admission, any prior or subsequent criminal activity will be known, and there is more protection for patient health and safety.

Rationale for Using Fast-Track Rulemaking Process: The action is intended to clarify the term "full approval" and to address the gap of time between the criminal background check conducted at the time of admission to a nursing education program and the time a student would begin clinical experience. The action was recommended by the Nursing Education Informal Conference Committee and unanimously approved by the board. It is beneficial to students, nursing programs, and clinical settings, so it should not be controversial.

Substance: The board is adding a definition for "full approval" of a nursing education program and changing the timing of a criminal background check for nursing students from requiring the check prior to admission to prior to the clinical experience involving direct patient care.

Issues: The primary advantage to the public of the amendment is better assurance that nursing students providing direct patient care have had a recent criminal background check. There are no disadvantages to the public. There are no advantages or disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Nursing (Board) proposes to add a definition for "full approval" of a nursing education program and to change the timing of a required criminal background check for nursing students from requiring the check prior to admission to prior to the clinical experience involving direct patient care.

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

Estimated Economic Impact. Sections 150 and 160 of the regulation reference "full approval," but the current regulation does not define "full approval." The Board proposes to add a definition to improve clarity. The proposed definition is consistent with the meaning as it has been interpreted. To the extent that adding the definition reduces confusion among potential readers of the regulation, the proposal would be beneficial.

The current regulation provides that "Except for high school students, all applicants to a nursing education program shall be required to submit to a criminal background check prior to admission."[1] The Board proposes to instead provide that "Except for high school students, all students enrolled in a nursing education program shall be required to submit to a criminal background check prior to a clinical experience involving direct patient care."[2] This proposed amendment should not affect health and safety since the students will still be checked prior to direct patient care. The proposed amendment is beneficial in that the expense of criminal background checks can be saved for applicants who are not granted admission. The Virginia State Police fee for a national criminal background check for employees or volunteers providing care to children, the elderly, and disabled is $25 for employees and $19 for volunteers.[3]

According to the Department of Health Professions, hospitals and clinics where students are engaged in a clinical experience require a criminal background check prior to providing direct patient care. Typically, there is a gap of months or even years between the time a check was submitted prior to admission and the time of the clinical experience. Therefore, the clinical settings often require a second check to ensure that there has not been any criminal activity during that gap period. By just requiring that there be criminal background check prior to a clinical experience involving direct patient care rather than prior to admission may thus effectively reduce the number of background checks that admitted nursing students are subjected to from two to one. Consequently, the cost for background checks for admitted students may decrease as well.

Businesses and Entities Affected. The proposed amendments affect the 138 programs[4] approved by the Board to provide education for practical and professional nursing.

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

Projected Impact on Employment. The proposed amendments do not significantly affect employment.

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

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

Small Businesses:

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

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

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

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[1]Bold on "prior to admission" is for emphasis and is not in the regulation.

[2]Ibid.

[3]See http://www.vsp.state.va.us/downloads/SP-024.pdf.

[4]Data source: Department of Health Professions.

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

Summary:

The amendments (i) add a definition for "full approval" of a nursing education program and (ii) change the timing of a criminal background check for nursing students from requiring the check prior to admission to requiring it prior to the clinical experience involving direct patient care.

Part I
General Provisions

18VAC90-27-10. Definitions.

In addition to words and terms defined in § 54.1-3000 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Accreditation" means having been accredited by an agency recognized by the U.S. Department of Education to include the Accreditation Commission for Education in Nursing, the Commission on Collegiate Nursing Education, the Commission for Nursing Education Accreditation, or a national nursing accrediting organization recognized by the board.

"Advisory committee" means a group of persons from a nursing education program and the health care community who meets regularly to advise the nursing education program on the quality of its graduates and the needs of the community.

"Approval" means the process by which the board or a governmental agency in another state or foreign country evaluates and grants official recognition to nursing education programs that meet established standards not inconsistent with Virginia law.

"Associate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or other institution and designed to lead to an associate degree in nursing, provided that the institution is authorized to confer such degree by SCHEV.

"Baccalaureate degree nursing program" or "prelicensure graduate degree program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or university and designed to lead to a baccalaureate or a graduate degree with a major in nursing, provided that the institution is authorized to confer such degree by SCHEV.

"Board" means the Board of Nursing.

"Clinical setting" means any location in which the clinical practice of nursing occurs as specified in an agreement between the cooperating agency and the school of nursing.

"Conditional approval" means a time-limited status that results when an approved nursing education program has failed to maintain requirements as set forth in this chapter.

"Cooperating agency" means an agency or institution that enters into a written agreement to provide clinical or observational experiences for a nursing education program.

"Diploma nursing program" means a nursing education program preparing for registered nurse licensure, offered by a hospital and designed to lead to a diploma in nursing, provided the hospital is licensed in this state.

"Full approval" means the status granted to a nursing education program when compliance with regulations pertaining to nursing education programs has been verified.

"Initial approval" means the status granted to a nursing education program that allows the admission of students.

"National certifying organization" means an organization that has as one of its purposes the certification of a specialty in nursing based on an examination attesting to the knowledge of the nurse for practice in the specialty area.

"NCLEX" means the National Council Licensure Examination.

"NCSBN" means the National Council of State Boards of Nursing.

"Nursing education program" means an entity offering a basic course of study preparing persons for licensure as registered nurses or as licensed practical nurses. A basic course of study shall include all courses required for the degree, diploma, or certificate.

"Nursing faculty" means registered nurses who teach the practice of nursing in nursing education programs.

"Practical nursing program" means a nursing education program preparing for practical nurse licensure that leads to a diploma or certificate in practical nursing, provided the school is authorized by the Virginia Department of Education or by an accrediting agency recognized by the U.S. Department of Education.

"Preceptor" means a licensed nurse who is employed in the clinical setting, serves as a resource person and role model, and is present with the nursing student in that setting, providing clinical supervision.

"Program director" means a registered nurse who holds a current, unrestricted license in Virginia or a multistate licensure privilege and who has been designated by the controlling authority to administer the nursing education program.

"Recommendation" means a guide to actions that will assist an institution to improve and develop its nursing education program.

"Requirement" means a mandatory condition that a nursing education program must meet to be approved or maintain approval.

"SCHEV" means the State Council of Higher Education for Virginia.

"Site visit" means a focused onsite review of the nursing program by board staff, usually completed within one day for the purpose of evaluating program components such as the physical location (skills lab, classrooms, learning resources) for obtaining initial program approval, in response to a complaint, compliance with NCLEX plan of correction, change of location, or verification of noncompliance with this chapter.

"Survey visit" means a comprehensive onsite review of the nursing program by board staff, usually completed within two days (depending on the number of programs or campuses being reviewed) for the purpose of obtaining and maintaining full program approval. The survey visit includes the program's completion of a self-evaluation report prior to the visit, as well as a board staff review of all program resources, including skills lab, classrooms, learning resources, and clinical facilities, and other components to ensure compliance with this chapter. Meetings with faculty, administration, students, and clinical facility staff will occur.

18VAC90-27-70. Admission of students.

A. Requirements for admission to a registered nursing education program shall not be less than the requirements of § 54.1-3017 A 1 of the Code of Virginia that will permit the graduate to be admitted to the appropriate licensing examination. The equivalent of a four-year high school course of study as required pursuant to § 54.1-3017 shall be considered to be:

1. A General Educational Development (GED) certificate for high school equivalence; or

2. Satisfactory completion of the college courses required by the nursing education program.

B. Requirements for admission to a practical nursing education program shall not be less than the requirements of § 54.1-3020 A 1 of the Code of Virginia that will permit the graduate to be admitted to the appropriate licensing examination.

C. Requirements for admission, readmission, advanced standing, progression, retention, dismissal, and graduation shall be available to the students in written form.

D. Except for high school students, all ~~applicants to~~ students enrolled in a nursing education program shall be required to submit to a criminal background check prior to ~~admission~~ a clinical experience involving direct patient care.

E. Transfer students may not be admitted until a nursing education program has received full approval from the board.

VA.R. Doc. No. R18-5288; Filed July 17, 2018, 4:07 p.m.

BOARD OF PHARMACY

Final Regulation

REGISTRAR'S NOTICE: The Board of Pharmacy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 13 of the Code of Virginia, which exempts amendments to regulations of the board to schedule a substance in Schedule I or II pursuant to subsection D of § 54.1-3443 of the Code of Virginia. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-322; adding 18VAC110-20-323).**

Statutory Authority: §§ 54.1-2400 and 54.1-3443 of the Code of Virginia.

Effective Date: September 5, 2018.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Summary:

The amendments (i) add eight compounds into Schedule I of the Drug Control Act as recommended by the Virginia Department of Forensic Science pursuant to § 54.1-3443 of the Code of Virginia, which will remain in effect for 18 months or until the compounds are placed in Schedule I by legislative action of the General Assembly; and (ii) add

one drug to Schedule I, add one drug to Schedule II, and remove one drug from Schedule II to conform Virginia's Drug Control Act with federal law.

18VAC110-20-322. Placement of chemicals in Schedule I.

~~A. Pursuant to subsection D of § 54.1 3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:~~

~~1. 1 (1,3 benzodioxol 5 yl) 2 (dimethylamino) 1 pentanone (other names: N,N Dimethylpentylone, Dipentylone);~~

~~2. 4 chloro alpha Pyrrolidinovalerophenone (other name: 4 chloro alpha PVP);~~

~~3. 4 methyl alpha Pyrrolidinohexiophenone (other name: MPHP);~~

~~4. 4 fluoro alpha Pyrrolidinoheptiophenone (other name: 4 fluoro PV8);~~

~~5. 1 (4 methoxyphenyl) 2 (pyrrolidin 1 yl)octan 1 one (other name: 4 methoxy PV9);~~

~~6. 4 allyloxy 3,5 dimethoxyphenethylamine (other name: Allylescaline);~~

~~7. 4 methyl alpha ethylaminopentiophenone; and~~

~~8. N (4 fluorophenyl) 2 methyl N [1 (2 phenylethyl) 4 piperidinyl] propanamide (other name: para fluoroisobutyryl fentanyl).~~

~~The placement of drugs listed in this subsection shall remain in effect until August 22, 2018, unless enacted into law in the Drug Control Act.~~

~~B. Pursuant to subsection D of § 54.1 3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:~~

~~1. 6 ethyl 6 nor lysergic acid diethylamide (other name: ETH LAD), its optical, position, and geometric isomers, salts, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation;~~

~~2. 6 allyl 6 nor lysergic acid diethylamide (other name: AL LAD), its optical, position, and geometric isomers, salts, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation;~~

~~3. Synthetic opioids:~~

~~a. N [1 [2 hydroxy 2 (2 thienyl)ethyl] 4 piperidinyl] N phenylpropanamide (other name: beta hydroxythiofentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation;~~

~~b. N (2 fluorophenyl) N [1 (2 phenylethyl) 4 piperidinyl] propanamide (other names: 2 fluorofentanyl, ortho fluorofentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation; and~~

~~c. N phenyl N [1 (2 phenylethyl) 4 piperidinyl] 2 propenamide (other name: Acryl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation;~~

~~4. Cannabimimetic agents:~~

~~a. 1 pentyl N (phenylmethyl) 1H indole 3 carboxamide (other name: SDB 006), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation; and~~

~~b. Quinolin 8 yl 1 (4 fluorobenzyl) 1H indole 3 carboxylate (other name: FUB PB 22), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation; and~~

~~5. Benzodiazepine: flubromazepam, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.~~

~~The placement of drugs listed in this subsection shall remain in effect until December 13, 2018, unless enacted into law in the Drug Control Act.~~

~~C. Pursuant to subsection D of § 54.1 3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:~~

~~1. 4 Bromo 2,5 dimethoxy N [(2 hydroxyphenyl)methyl] benzeneethanamine (25B NBOH), its optical, position, and geometric isomers, salts and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.~~

~~2. Methyl N [1 (cyclohexylmethyl) 1H indole 3 carbonyl]valinate (MMB CHMICA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.~~

~~3. N (1 phenethylpiperidin 4 yl) N phenyltetrahydrofuran 2 carboxamide (Tetrahydrofuran fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of~~

~~these isomers, esters, ethers, and salts is possible within the specific chemical designation.~~

~~The placement of drugs listed in this subsection shall remain in effect until February 18, 2019, unless enacted into law in the Drug Control Act.~~

~~D. Pursuant to subsection D of § 54.1 3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:~~

~~1. 5 methoxy N,N dimethyltryptamine (5 MeO DMT), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.~~

~~2. 5 methoxy N ethyl N isopropyltryptamine (5 MeO EIPT), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.~~

~~3. 4 hydroxy N,N diisopropyltryptamine (4 OH DIPT), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.~~

~~4. (N methyl aminopropyl) 2,3 dihydrobenzofuran (MAPDB), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.~~

~~5. 3,4 tetramethylene alpha pyrrolidinovalerophenone (TH PVP), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.~~

~~6. 4 chloro alpha methylamino valerophenone (4 chloropentedrone), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.~~

~~7. Synthetic opioids:~~

~~a. 2 methoxy N phenyl N [1 (2 phenylethyl) 4 piperidinyl] acetamide (Methoxyacetyl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.~~

~~b. N (1 phenethylpiperidin 4 yl) N phenylcyclopropanecarboxamide (Cyclopropyl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.~~

~~8. Cannabimimetic agent: N (1 amino 3,3 dimethyl 1 oxobutan 2 yl) 1 (5 fluoropentyl)indazole 3 carboxamide (5 fluoro ADB PINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.~~

~~The placement of drugs listed in this subsection shall remain in effect until June 12, 2019, unless enacted into law in the Drug Control Act.~~

~~E.~~ A. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. 2-(methylamino)-2-phenyl-cyclohexanone (other name: Deschloroketamine), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. 2-methyl-1-(4-(methylthio)phenyl)-2-morpholinopropiophenone (other name: MMMP), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. Alpha-ethylaminohexanophenone (other name: N-ethylhexedrone), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

4. N-ethyl-1-(3-methoxyphenyl)cyclohexylamine (other name: 3-methoxy-PCE), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

5. 4-fluoro-alpha-pyrrolidinohexiophenone (other name: 4-fluoro-alpha-PHP), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

6. N-ethyl-1,2-diphenylethylamine (other name: Ephenidine), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

7. Synthetic opioids:

a. N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-1,3-benzodioxole-5-carboxamide (other name: Benzodioxole fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted,

whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. 3,4-dichloro-N-[2-(diethylamino)cyclohexyl]-N-methylbenzamide (other name: U-49900), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

c. 2-(2,4-dichlorophenyl)-N-[2-(dimethylamino) cyclohexyl]-N-methylacetamide (other name: U-48800), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

8. Central nervous system stimulants:

a. Methyl 2-(4-fluorophenyl)-2-(2-piperidinyl)acetate (other name: 4-fluoromethylphenidate), including its salts, isomers, and salts of isomers.

b. Isopropyl-2-phenyl-2-(2-piperidinyl)acetate (other name: Isopropylphenidate), including its salts, isomers, and salts of isomers.

The placement of drugs listed in this subsection shall remain in effect until August 21, 2019, unless enacted into law in the Drug Control Act.

B. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. 2,5-dimethoxy-4-chloroamphetamine (other name: DOC), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. Synthetic opioids:

a. N-(2-fluorophenyl)-2-methoxy-N-[1-(2-phenylethyl)-4-piperidinyl]-acetamide (other name: Ocfentanil), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. N-(4-methoxyphenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-butanamide (other name: 4-methoxybutyrylfentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

c. N-phenyl-2-methyl-N-[1-(2-phenylethyl)-4-piperidinyl]-propanamide (other name: Isobutyryl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

d. N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-cyclopentanecarboxamide (other name: Cyclopentyl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

e. N-phenyl-N-(1-methyl-4-piperidinyl)-propanamide (other name: N-methyl norfentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

3. Cannabimimetic agent: 1-(4-cyanobutyl)-N-(1-methyl-1-phenylethyl)-1H-indazole-3-carboxamide (other name: 4-cyano CUMYL-BUTINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

4. Benzodiazepine: Flualprazolam, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until March 4, 2019, unless enacted into law in the Drug Control Act.

18VAC110-20-323. Scheduling for conformity with federal law or rule.

Pursuant to subsection E of § 54.1-3443 of the Code of Virginia and in order to conform the Drug Control Act to recent scheduling changes enacted in federal law or rule, the board:

1. Adds MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine) to Schedule I;

2. Adds Dronabinol ((-)-delta-9-trans tetrahydrocannabinol) in an oral solution in a drug product approved for marketing by the U.S. Food and Drug Administration to Schedule II; and

3. Deletes naldemedine from Schedule II.

VA.R. Doc. No. R18-5484; Filed July 12, 2018, 4:49 p.m.

BOARD OF COUNSELING

Proposed Regulation

Title of Regulation: **18VAC115-20. Regulations Governing the Practice of Professional Counseling (amending 18VAC115-20-52).**

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

Public Hearing Information:

August 17, 2018 - 9 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Conference Center, 2nd Floor, Henrico, VA 23233

Public Comment Deadline: October 5, 2018.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system. The specific authority for regulation of the practice of professional counseling is found in §§ 54.1-3503 and 54.1-3506 of the Code of Virginia.

Purpose: The proposed regulatory action will allow persons who have obtained a doctoral degree in counseling to become licensed with a smaller number of postgraduate hours in a supervised residency. It will accelerate the licensure process for those candidates and will allow them to provide counseling services in independent practice more quickly. Since the practicum or internship hours are within a Council for Accreditation of Counseling and Related Educational Programs (CACREP) program and under the supervision of credentialed faculty, the board is assured of appropriate oversight to protect the health, safety, and welfare of the public.

Substance: The proposed amendments, requested per a petition for rulemaking, provide that supervised practicum and internship hours in a CACREP-accredited doctoral counseling program may be accepted for up to 900 direct or indirect hours and up to 100 supervision hours if the professor or supervisor has an active professional counselor license.

Issues: The primary advantage of the amendment to the public is the ability of a supervisee with a doctoral degree to qualify for licensure with fewer hours in a residency. There are no disadvantages to the public. There are no advantages or disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. In response to a 2017 petition for rulemaking,[1] the Board of Counseling (Board) proposes to accept supervised practicum and internship hours in a Council for Accreditation of Counseling and Related Educational Programs (CACREP) accredited doctoral program to count as required hours for a residency in counseling.

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

Estimated Economic Impact. An individual must complete a total of 3,400 hours in a supervised residency prior to becoming licensed as a professional counselor. The residency must include a minimum of 200 hours of in-person supervision between the supervisor and the resident in the consultation and a review of clinical counseling services provided by the resident.

The Board proposes to amend 18VAC115-20 to allow up to 900 hours of the residency requirement and up to 100 of the required hours of in-person supervision to be satisfied by supervised practicum and internship hours in a CACREP-accredited doctoral counseling program. Assuming a workweek is 40 hours, the Board's proposal to accept up to 900 hours for the residency requirement could allow the fulfillment of the residency requirement to be completed by up to 22.5 weeks sooner.[2] This would be beneficial for individuals who have obtained such supervised practicum and internship hours in a CACREP-accredited doctoral counseling program in that they may start practicing as a fully licensed professional counselor sooner and commensurately earn greater income. Given that the Board does not believe this proposal would permit unqualified individuals to become licensed, the proposal likely produces a net benefit.

Businesses and Entities Affected. The proposed amendments indirectly affect the nine CACREP-accredited doctoral counseling programs in the Commonwealth, as well as the four Virginia doctoral counseling programs currently in the process of obtaining CACREP accreditation. Students at these institutions are also affected.

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

Projected Impact on Employment. The proposed amendments do not significantly affect total employment. The proposals would allow some individuals to become employed as a fully licensed counselor sooner.

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

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

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its

affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

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

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

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[1]See http://townhall.virginia.gov/L/viewpetition.cfm?petitionid=254.

[2]900/40 = 22.5.

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

Summary:

In response to a petition for rulemaking, the proposed amendments allow acceptance of supervised practicum and internship hours completed in a doctoral program accredited by the Council for Accreditation of Counseling and Related Educational Programs as meeting a portion of the hours of supervised practice required for licensure.

18VAC115-20-52. Residency requirements.

A. Registration. Applicants who render counseling services shall:

1. With their supervisor, register their supervisory contract on the appropriate forms for board approval before starting to practice under supervision;

2. Have submitted an official transcript documenting a graduate degree as specified in 18VAC115-20-49 to include completion of the coursework and internship requirement specified in 18VAC115-20-51; and

3. Pay the registration fee.

B. Residency requirements.

1. The applicant for licensure shall have completed a 3,400-hour supervised residency in the role of a professional counselor working with various populations, clinical problems, and theoretical approaches in the following areas:

a. Assessment and diagnosis using psychotherapy techniques;

b. Appraisal, evaluation, and diagnostic procedures;

c. Treatment planning and implementation;

d. Case management and recordkeeping;

e. Professional counselor identity and function; and

f. Professional ethics and standards of practice.

2. The residency shall include a minimum of 200 hours of in-person supervision between supervisor and resident in the consultation and review of clinical counseling services provided by the resident. Supervision shall occur at a minimum of one hour and a maximum of four hours per 40 hours of work experience during the period of the residency. For the purpose of meeting the 200-hour supervision requirement, in-person may include the use of secured technology that maintains client confidentiality and provides real-time, visual contact between the supervisor and the resident. Up to 20 hours of the supervision received during the supervised internship may be counted towards the 200 hours of in-person supervision if the supervision was provided by a licensed professional counselor.

3. No more than half of the 200 hours may be satisfied with group supervision. One hour of group supervision will be deemed equivalent to one hour of individual supervision.

4. Supervision that is not concurrent with a residency will not be accepted, nor will residency hours be accrued in the absence of approved supervision.

5. The residency shall include at least 2,000 hours of face-to-face client contact in providing clinical counseling services. The remaining hours may be spent in the performance of ancillary counseling services.

6. A graduate-level internship in excess of 600 hours, which was completed in a program that meets the requirements set forth in 18VAC115-20-49, may count for up to an additional 300 hours towards the requirements of a residency.

7. Supervised practicum and internship hours in a CACREP-accredited doctoral counseling program may be accepted for up to 900 hours of the residency requirement and up to 100 of the required hours of supervision provided the supervisor holds a current, unrestricted license as a professional counselor.

8. The residency shall be completed in not less than 21 months or more than four years. Residents who began a residency before August 24, 2016, shall complete the residency by August 24, 2020. An individual who does not complete the residency after four years shall submit

evidence to the board showing why the supervised experience should be allowed to continue.

~~8.~~ 9. The board may consider special requests in the event that the regulations create an undue burden in regard to geography or disability that limits the resident's access to qualified supervision.

~~9.~~ 10. Residents may not call themselves professional counselors, directly bill for services rendered, or in any way represent themselves as independent, autonomous practitioners or professional counselors. During the residency, residents shall use their names and the initials of their degree, and the title "Resident in Counseling" in all written communications. Clients shall be informed in writing of the resident's status and the supervisor's name, professional address, and phone number.

~~10.~~ 11. Residents shall not engage in practice under supervision in any areas for which they have not had appropriate education.

~~11.~~ 12. Residency hours approved by the licensing board in another United States jurisdiction that meet the requirements of this section shall be accepted.

C. Supervisory qualifications. A person who provides supervision for a resident in professional counseling shall:

1. Document two years of post-licensure clinical experience;

2. Have received professional training in supervision, consisting of three credit hours or 4.0 quarter hours in graduate-level coursework in supervision or at least 20 hours of continuing education in supervision offered by a provider approved under 18VAC115-20-106; and

3. ~~Shall hold~~ Hold an active, unrestricted license as a professional counselor or a marriage and family therapist in the jurisdiction where the supervision is being provided. At least 100 hours of the supervision shall be rendered by a licensed professional counselor. Supervisors who are substance abuse treatment practitioners, school psychologists, clinical psychologists, clinical social workers, or psychiatrists and have been approved to provide supervision may continue to do so until August 24, 2017.

D. Supervisory responsibilities.

1. Supervision by any individual whose relationship to the resident compromises the objectivity of the supervisor is prohibited.

2. The supervisor of a resident shall assume full responsibility for the clinical activities of that resident specified within the supervisory contract for the duration of the residency.

3. The supervisor shall complete evaluation forms to be given to the resident at the end of each three-month period.

4. The supervisor shall report the total hours of residency and shall evaluate the applicant's competency in the six areas stated in subdivision B 1 of this section.

5. The supervisor shall provide supervision as defined in 18VAC115-20-10.

E. Applicants shall document successful completion of their residency on the Verification of Supervision Form at the time of application. Applicants must receive a satisfactory competency evaluation on each item on the evaluation sheet. Supervised experience obtained prior to April 12, 2000, may be accepted toward licensure if this supervised experience met the board's requirements ~~which~~ that were in effect at the time the supervision was rendered.

VA.R. Doc. No. R17-12; Filed July 17, 2018, 3:55 p.m.

BOARD OF SOCIAL WORK

Fast-Track Regulation

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-70).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 5, 2018.

Effective Date: September 20, 2018.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Social Work the authority to promulgate regulations to administer the regulatory system, and under a specific mandate in Chapter 82 of the 2016 Acts of Assembly.

Purpose: The purpose of the amended regulation is to make the process of licensure less burdensome for a few applicants who have difficulty in passing the examination, but the amended regulation will continue to protect the public by requiring oversight and supervised practice after repeated failures.

Rationale for Using Fast-Track Rulemaking Process: The regulation requiring an extra year or supervised practice after two failures of the examination is more burdensome than the board intended. An applicant could fail the examination twice in the first six months; the board intended that the additional year of supervision be required after failure to pass the

examination within two years. Therefore, the proposal is using the fast-track rulemaking process to more closely reflect the board's intent. The amended regulation will give a few applicants multiple chances to pass the licensure examination before they must register for supervision. The provision is permissive and not controversial.

Substance: The board has amended 18VAC140-20-70 to revise the requirement that an applicant who has failed the licensure examination twice must register for supervision and complete another year as a supervisee before approval to retake the examination is granted. The revised regulation will allow an applicant to retake the examination as many times as he wishes within two two-year periods before he has to complete an extra year of supervised practice. The examination may be taken up to four times in a year, so an applicant would potentially be able to take it 16 times before he is required to have an additional year of supervised practice.

Issues: There are no real advantages or disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Social Work (Board) proposes to allow an applicant to retake the social worker or clinical social worker licensing examination as many times as the applicant wishes within two two-year periods before he or she has to complete an extra year of supervised practice.

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

Estimated Economic Impact. Originally, an applicant for a social worker or clinical social worker license was allowed a two-year period in which to pass the licensing exam without being required to register for supervision for an additional year. In a recent action[1] the Board inadvertently reduced the two-year window by limiting the number of times an applicant can retake the exam to only two attempts. For example, under the recently amended language an applicant who fails the exam twice within the first six months of the two-year period is required to register for supervision. The board proposes to remove the two-exam limitation and allow an additional two-year period to pass the exam before the supervision requirement is triggered. Under the proposed change, applicants will be allowed to take the licensure exam as many times as they like over a four-year window. The exam is offered four times a year, or 16 times over four years.[2]

The proposed change is beneficial to the applicants. The applicants will have up to 14 more times to pass the exam prior to triggering the supervision requirement. More chances to retake the exam will reduce the likelihood of having to obtain one additional year of supervised experience. Obtaining supervised experience could be costly. Some workplaces such as government agencies, hospitals, or schools may be providing free supervision; but at workplaces that do not, the applicant must find a supervisor and must pay for it. Online research[3] indicates that supervisors usually charge about the same as their hourly therapy rate, which ranges from $100 to $150, but also provide group supervision to up to five supervisees at $35 to $50 per person. An applicant is required to obtain at least one hour of supervision for every 40 hours of experience, or 50 hours per year allowing for vacation. The cost of obtaining 50 hours of supervision at $35 per hour and $150 per hour would be $1,750 and $7,500 respectively. Thus, the proposed regulation will benefit those who pass the exam after the first two attempts.

In addition, according to the Department of Health Professions, passage of the examination, graduation from an accredited school of social work, and supervised experience all together would still demonstrate minimal competency. Thus, the proposed regulation should produce a net benefit.

Businesses and Entities Affected. Applicants for licensure as a social worker or a clinical social worker, and their potential supervisors, are potentially affected by the proposed amendment. Since the beginning of 2018, two candidates who failed the exam twice were required to obtain an additional year of supervision.

Last year, 367 individuals passed the exam and were consequently licensed in Virginia. Information from the Association of Social Work Boards indicates that in 2016 the passage rate for first time test takers was 78% nationally, and ranged among the three Virginia schools from 47% to 90%. The passage rate for repeat test takers was 36% and ranged from 14% to 41% among Virginia schools.

Localities Particularly Affected. The proposed amendment does not affect any particular locality more than others.

Projected Impact on Employment. The proposed change will increase the chances of an applicant obtaining a license without an additional year of supervision. Thus, this action will allow affected individuals to practice their social work profession sooner, but at the same time reduce demand for supervision. Given that only two people were affected since the beginning of 2018, no significant impact on employment is likely.

Effects on the Use and Value of Private Property. No significant effect 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 proposed amendment does not significantly affect small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendment does not have costs and other effects on small businesses.

Adverse Impacts:

Businesses. The proposed amendment does not have adverse impacts on businesses.

Localities. The proposed amendment will not adversely affect localities.

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

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[1]http://townhall.virginia.gov/l/ViewStage.cfm?stageid=7381.

[2]Source: Department of Health Professions.

[3]See for example https://socialworklicensure.org/articles/social-work-supervision, accessed on March 29, 2018.

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

Summary:

The amendments revise requirements so that an applicant may retake the licensure examination as many times as the applicant wishes within two two-year periods before the applicant has to complete an extra year of supervised practice. The examination may be taken up to four times in a year, so an applicant would potentially be able to take it 16 times before the applicant is required to have an additional year of supervised practice.

Part III
Examinations

18VAC140-20-70. Examination requirement.

A. An applicant for licensure by the board as a social worker or clinical social worker shall pass a written examination prescribed by the board.

1. The examination prescribed for licensure as a clinical social worker shall be the licensing examination of the Association of Social Work Boards at the clinical level.

2. The examination prescribed for licensure as a social worker shall minimally be the licensing examination of the Association of Social Work Boards at the bachelor's level.

B. ~~A candidate~~ An applicant approved by the board to sit for an examination shall take that examination within two years of the date of the initial board approval. If the ~~candidate~~ applicant has not passed the examination by the end of the two-year period here prescribed, the applicant shall reapply according to the requirements of the regulations in effect at that time in order to be approved for another two years in which to pass the examination. ~~After an applicant has failed the examination twice, he shall be required to register for supervision and complete one additional year as a supervisee before approval to re-take the examination is granted.~~

C. If an applicant for clinical social work licensure has not passed the examination within the second two-year approval period, the applicant shall be required to register for supervision and complete one additional year as a supervisee before approval for another two-year period in which to re-take the examination may be granted.

VA.R. Doc. No. R18-1110; Filed July 17, 2018, 4:10 p.m.

BOARD OF VETERINARY MEDICINE

Fast-Track Regulation

Title of Regulation: **18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (amending 18VAC150-20-185).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 5, 2018.

Effective Date: September 20, 2018.

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

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Veterinary Medicine the authority to promulgate regulations to administer the regulatory system, and under a specific mandate of Chapter 82 of the 2016 Acts of Assembly.

Purpose: The purpose of the amended regulation is to facilitate the reinstatement of a registration that a facility has allowed to lapse and become expired. An establishment should not be open and providing treatment to animals with an expired registration, so the sooner it can be reinstated, veterinary care is available to protect public health and safety.

Rationale for Using Fast-Track Rulemaking Process: The amended regulation is less restrictive and beneficial to establishments that inadvertently allow their registration to expire. The provision should not be controversial, and the board would like to have it effective as soon as possible to resolve a problem for some reinstatement applicants.

Substance: 18VAC150-20-185 is amended to clarify that renewal within 30 days of the expiration of an annual registration is a late renewal rather than a reinstatement. After 30 days, an establishment is required to reinstate its registration, and an inspection is required, but the amended regulation would allow the reinstatement to occur before the reinspection is accomplished.

Issues: The advantage to the public is the possibility to expedite the reinstatement of an establishment permit so veterinary care is not unduly disrupted. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Veterinary Medicine (Board) proposes to allow reinstatement of a facility license prior to the required reinspection for reinstatement.

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

Estimated Economic Impact. Current regulation requires reinspection of a veterinary facility whose license has expired for more than 30 days in order to reinstate its license. Without a reinstated license, the facility cannot legally operate, and if it does, it becomes subject to fines and disciplinary action. The required reinspection, however, may take weeks to schedule, effectively delaying reinstatement of the license and therefore restarting of the facility's operations.

The Board proposes to allow reinstatement of an expired veterinary facility license prior to the reinspection. The reinspection will still be required, but it will be conducted after the reinstatement. The main economic effect of the proposed change is avoidance of unnecessary facility closures or illegal facility operations in cases where the reinspection cannot be scheduled without delays. According to the Department of Health Professions, less than five facilities annually have to reinstate after more than 30 days past the expiration date of their licenses. There is no compliance cost associated with this proposed change. Thus, the change should produce net benefits.

Businesses and Entities Affected. There are 1,122 veterinary establishments registered by the Board. In a typical year, less than five are expected to apply for reinstatement of their license.[1]

Localities Particularly Affected. The proposed amendment does not affect any particular locality more than others.

Projected Impact on Employment. The proposed regulation should avoid unnecessary closures of veterinary facilities applying for reinstatement of their license. Thus, a potential negative impact on employment will be avoided.

Effects on the Use and Value of Private Property. The proposed regulation should avoid unnecessary closures of veterinary facilities applying for reinstatement of their license or fines or disciplinary action if operated without a reinstament. Thus, a potential negative impact on the use and values of less than five such facilities annually should be avoided by this change.

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 proposed amendment reduces costs for a small number of veterinary facilities, most of whom are considered small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendment does not have adverse effects on small businesses.

Adverse Impacts:

Businesses. The proposed amendment does not have adverse impacts on businesses.

Localities. The proposed amendment will not adversely affect localities.

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

[1]Source: Department of Health Professions.

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

Summary:

The amendments clarify that renewal within 30 days of the expiration of an annual registration is a late renewal rather than a reinstatement. After 30 days, an establishment is required to reinstate its registration, and an inspection is required. However, it typically takes time to schedule the inspection, so the board is deleting the rule

stating that the reinstatement is "contingent" on a reinspection to avoid delays in reinstating the establishment registration. A reinspection will still be required to determine whether the establishment has been open and operating with an expired registration.

18VAC150-20-185. Renewal of veterinary establishment registrations.

A. Every veterinary establishment shall be required to renew the registration by January 1 of each year and pay to the board a registration fee as prescribed in 18VAC150-20-100.

B. Failure to renew the establishment registration by January 1 of each year shall cause the registration to expire and become invalid. Practicing veterinary medicine in an establishment with an expired registration may subject a licensee or registration holder to disciplinary action by the board. The registration may be ~~reinstated~~ renewed without reinspection within 30 days of expiration, provided the board receives a properly executed renewal application, renewal fee, and a late fee as prescribed in 18VAC150-20-100.

C. Reinstatement of an expired registration after 30 days shall be at the discretion of the board and contingent upon a ~~reinspection~~ properly executed reinstatement application and payment of the late fee, the reinspection fee, the renewal fee and the veterinary establishment registration reinstatement fee. A reinspection is required when an establishment is reinstated.

VA.R. Doc. No. R18-5443; Filed July 17, 2018, 4:08 p.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Proposed Regulation

Title of Regulation: **22VAC30-20. Provision of Vocational Rehabilitation Services (amending 22VAC30-20-90).**

Statutory Authority: §§ 51.5-118 and 51.5-131 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 5, 2018.

Agency Contact: Leah Mills, Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7610, FAX (804) 662-7663, TTY (800) 464-9950, or email leah.mills@dars.virginia.gov.

Basis: Section 51.5-131 of the Code of Virginia gives power and duty to the Commissioner of the Department for Aging and Rehabilitative Services (DARS) to promulgate regulations necessary to carry out the provisions of laws administered by the department.

34 CFR 361.36 requires the department to develop and implement an order of selection if a lack of funds prevents it from providing the full range of vocational rehabilitation services to all eligible individuals.

Purpose: The intent of this amendment is to reduce the priority categories for order of selection from four to three. The Rehabilitation Services Administration (RSA), the federal agency that regulates the state-federal vocational rehabilitation program, is requiring that DARS reduce the number of its categories for the order of selection for persons determined to be eligible for services. The reason given is that there is not enough difference between current priority category two and current priority category three. Therefore, RSA is requiring that priority category two and priority category three be combined into one category. This action will protect the welfare of citizens because it more clearly stipulates the priority categories that are served by Virginia's vocational rehabilitation program. This regulatory action will ensure that the regulation content is clearly written. Clarity in regulation content is essential to ensuring that the individual's health and safety needs are most appropriately met.

Substance: When DARS does not have enough funds to serve all individuals eligible for the state-federal vocational rehabilitation program, it may elect to go on an order of selection. This requires that DARS establish an order of priority categories by which it will serve eligible individuals. Priority categories are based on the level of significance of the eligible person's disability and the functional limitations imposed by that disability. By combining two previous categories into one, this amendment is reducing the number of priority categories from four to three. Thus, individuals who would have been in priority category three will now be placed into priority category two.

Issues: The advantage to the public and to the Commonwealth is that this amendment will make the regulation simpler and easier to understand. There is no disadvantage to the public or the agency.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Provision of Vocational Rehabilitation Services regulation includes order of selection criteria for when the Department for Aging and Rehabilitative Services (DARS) cannot provide the full range of vocational rehabilitation services to all eligible individuals who apply because of insufficient resources. At the direction of the federal Rehabilitation Services Administration (RSA), DARS proposes to amend the order of selection criteria.

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

Estimated Economic Impact. Federal regulation 34 CFR 361.36[1] requires the department to develop and implement an order of selection if a lack of funds prevents it from providing the full range of vocational rehabilitation services to all eligible individuals. The current regulation has order of selection criteria as follows:

1. Persons eligible and presently receiving services under an individualized plan for employment;

2. Persons referred and needing diagnostic services to determine eligibility; and

3. Persons determined to be eligible for services, but not presently receiving services under an individualized plan for employment, shall be served according to the following order of priorities:

a. Priority I. An individual with a most significant disability in accordance with the definition in 22VAC30-20-10;[2]

b. Priority II. An individual with a significant disability that results in serious functional limitations in two functional capacities;

c. Priority III. An individual with a significant disability that results in a serious functional limitation in one functional capacity; and

d. Priority IV. Other persons determined to be disabled, in order of eligibility determination.

The RSA, the federal agency that regulates the state-federal vocational rehabilitation program, is requiring that DARS reduce the number of its categories for the order of selection for persons determined to be eligible for services. The reason given is that there is not enough difference between current priority category two and current priority category three. Therefore, RSA is requiring that priority category two and priority category three be combined into one category. To accomplish this, DARS proposes to: amend Priority II to "An individual with a significant disability that results in a serious functional limitation in at least one functional capacity," eliminate the current Priority III text, and relabel the current Priority IV as Priority III.

According to DARS, the proposed changes are not expected to significantly affect which applicants receive services. The ordering of people would be close to the same. Following RSA's direction helps ensure the continued receipt of federal funds for vocational rehabilitation services. Thus the proposed amendments would produce a net benefit.

Businesses and Entities Affected. The proposed amendments pertain to individuals who are qualified to receive vocational rehabilitation services. In fiscal year 2016, 29,399 individuals received vocational rehabilitation services through DARS' vocational rehabilitation program.[3]

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

Projected Impact on Employment. The proposed amendments do not significantly affect employment.

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

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

Small Businesses:

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

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

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

[1]See https://www.law.cornell.edu/cfr/text/34/361.36.

[2]The definition in 22VAC30-20-10 is "an individual with a significant disability who meets the department's criteria for an individual with a most significant disability." DARS reports the following criteria. The individual's disability shall be considered to be most significant when the counselor documents that the individual meets all three of the following criteria:

1. Is an individual with a significant disability, and

2. Has a physical or mental impairment that seriously limits three or more functional capacities in terms of an employment outcome, and

3. Whose vocational rehabilitation can be expected to require multiple core vocational rehabilitation services for six months or more.

[3]Source: Virginia State Rehabilitation Council 2016 Annual Report.

Agency's Response to Economic Impact Analysis: The Virginia Department for Aging and Rehabilitative Services concurs with the economic impact analysis performed by the Virginia Department of Planning and Budget.

Summary:

The proposed amendment reduces the number of categories for order of selection from four to three by combining priority categories II and III. In the event that the Department for Aging and Rehabilitative Services cannot provide the full range of vocational rehabilitation services to all eligible individuals who apply for these services because of insufficient resources, an order of selection may be implemented to determine those persons to be provided services.

22VAC30-20-90. Order of selection for services.

A. In the event that the full range of vocational rehabilitation services cannot be provided to all eligible individuals who apply for services because of insufficient resources, an order of selection system may be implemented by the commissioner following consultation with the State Rehabilitation Council. The order of selection shall determine those persons to be provided services. It shall be the policy of the department to encourage referrals and applications of all persons with disabilities and, to the extent resources permit, provide services to all eligible persons.

The following order of selection is implemented when services cannot be provided to all eligible persons:

1. Persons eligible and presently receiving services under an individualized plan for employment;

2. Persons referred and needing diagnostic services to determine eligibility; and

3. Persons determined to be eligible for services, but not presently receiving services under an individualized plan for employment, shall be served according to the following order of priorities:

a. Priority I. An individual with a most significant disability in accordance with the definition in 22VAC30-20-10;

b. Priority II. An individual with a significant disability that results in a serious functional ~~limitations~~ limitation in ~~two~~ at least one functional ~~capacities~~ capacity; and

c. Priority III. ~~An individual with a significant disability that results in a serious functional limitation in one functional capacity; and~~

~~d. Priority IV.~~ Other persons determined to be disabled, in order of eligibility determination.

B. An order of selection shall not be based on any other factors, including (i) any duration of residency requirement, provided the individual is present in the state; (ii) type of disability; (iii) age, gender, race, color, or national origin; (iv) source of referral; (v) type of expected employment outcome; (vi) the need for specific services or anticipated cost of services required by the individual; or (vii) the income level of an individual or an individual's family.

C. In administering the order of selection, the department shall (i) implement the order of selection on a statewide basis; (ii) notify all eligible individuals of the priority categories in the order of selection, their assignment to a particular category and their right to appeal their category assignment; (iii) continue to provide all needed services to any eligible individual who has begun to receive services under an individualized plan for employment prior to the effective date of the order of selection, irrespective of the severity of the individual's disability; and (iv) ensure that its funding arrangements for providing services under the state plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the department shall renegotiate these funding arrangements so that they are consistent with the order of selection.

D. Consultation with the State Rehabilitation Council shall include (i) the need to establish an order of selection, including any reevaluation of the need; (ii) priority categories of the particular order of selection; (iii) criteria for determining individuals with the most significant disabilities; and (iv) administration of the order of selection.

VA.R. Doc. No. R17-4951; Filed July 9, 2018, 12:25 p.m.

Proposed Regulation

Title of Regulation: **22VAC30-80. Auxiliary Grants Program (amending 22VAC30-80-10, 22VAC30-80-20, 22VAC30-80-30, 22VAC30-80-45 through 22VAC30-80-70; adding 22VAC30-80-35).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 5, 2018.

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

Basis: The legal basis for this regulatory action is § 51.5-160 of the Code of Virginia, which authorizes the Department for Aging and Rehabilitative Services (DARS) Commissioner to adopt regulations for the administration of the Auxiliary Grants (AG) Program. In addition, § 51.5-131 of the Code of Virginia authorizes the DARS Commissioner to promulgate regulations necessary to carry out the provisions of the laws of the Commonwealth administered by the department.

Purpose: The regulation needs to be amended to incorporate the changes in the emergency regulation, which provides guidance regarding the supportive housing (SH) setting. The regulation is essential to protecting the health, safety, or welfare of citizens. The proposed regulatory content outlines standards for providers who provide care to individuals with AG. Additionally, regulation content clarifies the range of person-centered housing options available to AG eligible individuals.

Substance: This regulatory action will (i) address definitions related to SH and clarify existing definitions that were part of the AG regulation, (ii) explain evaluation and assessment procedures, (iii) detail requirements for the SH provider agreement, (iv) address basic SH services, and (v) amend any outdated or obsolete language.

Issues: The primary advantages to the public will be that eligible individuals will have an additional choice in their living arrangement. Having SH as an option may also help address the shortages of AG beds in certain communities. There are no disadvantages to the public or the Commonwealth regarding the proposed regulatory action.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 567 of the 2016 Acts of Assembly,[1] the Department for Aging and Rehabilitative Services (DARS) proposes to add supportive housing as a third residential setting in which individuals may receive Auxiliary Grants (AG).

Result of Analysis. The benefits likely exceed the costs.

Estimated Economic Impact. An AG is an income supplement for individuals who receive Supplemental Security Income and certain other aged, blind, or disabled individuals who reside in a licensed assisted living facility (ALF) or an approved adult foster care home. AG is the primary state funding available for assisted living for low-income individuals in Virginia. In 2016, the General Assembly made supportive housing available to up to 60 AG recipients as a third residential setting. The legislative mandate required that supportive housing be available to ALF residents after 12 months from the initial assessment. DARS implemented the legislative mandate through an emergency regulation.[2] DARS now proposes a permanent regulation to replace the emergency regulation.

Supportive housing links decent, safe, affordable, community-based housing with flexible support services designed to help the individual stay housed and live a more productive life in the community. Even though the legislation provides supportive housing for up to 60 individuals, only 13 individuals have been placed in supportive housing so far.

The proposed regulation is beneficial to the AG recipients who would like to move into a supportive housing setting from an ALF setting. By opting in for supportive housing, they reveal that they receive a net benefit from that move. The proposed regulation also benefits supportive housing providers as they receive $100 monthly for the AG recipients they place in supportive housing.

The effect of a recipient's choice to move into supportive housing on the ALF provider does not appear to be significant. Because supportive housing is available only to ALF residents, it is essentially a substitute for ALF setting under the legislative design. However, because the AG rate is widely considered inadequate,[3] when a resident leaves an ALF that may not necessarily significantly hurt the ALF provider. In 2012, the Joint Legislative Audit and Review Commission (JLARC) reported that the AG rate was well below Virginia's market prices for assisted living, then averaging about $3,700 per month. JLARC also reported that the AG rate was so low that some ALFs have stopped accepting AG recipients, while others would only care for relatively high-functioning AG recipients or would struggle to meet standards unless the facility has some special circumstance or additional sources of funding.

Similarly, the supportive housing option would not necessarily cause an increase in AG expenditures. The fiscal impact would depend on whether the empty ALF bed after the move would be filled by another AG recipient or not. If new AG recipients replace those who left, then we would expect an increase in the AG recipient population and expenditures;[4] but if the empty beds are filled by private pay recipients, or remain empty, we would see no change in the AG recipient population or the expenditures. It is not clear which result is more likely.

Businesses and Entities Affected. The legislative mandate allows up to 60 ALF residents to move into a supportive housing setting. There are three supportive housing providers in the Commonwealth. Since January 2017, 13 individuals have been placed in a supportive housing setting. In fiscal year 2017, there were 4,047 individuals residing in fewer than 300 ALFs.

Localities Particularly Affected. The proposed changes apply statewide. However, there are currently only three supportive housing providers. These providers serve the Counties of Roanoke, Salem, Botetourt, Craig, Bland, Carroll, Grayson, Galax, Smyth, Wythe, Henrico, and Chesterfield and the Cities of Richmond and Roanoke. Under the proposed regulation, the local portion of the AG is funded by the locality where the individual is provided supportive housing. Thus, these localities may be disproportionately affected as supportive housing is not available in other localities at this time.

Projected Impact on Employment. Whether the supporting housing option will have a significant impact on demand for

ALF services or supportive housing services is not clear. Thus, the potential impact on employment is uncertain.

Effects on the Use and Value of Private Property. Whether the supportive housing option will have a significant impact on demand for ALF services or supportive housing services is not clear. Thus, the potential impact on the asset values of ALF providers and supportive housing providers is uncertain.

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

Small Businesses:

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

Costs and Other Effects. Most if not all of the ALF providers are small businesses. The costs and other effects of the proposed regulation on them is the same as above. There are only three supportive housing providers. The proposed regulation does not impose costs on them. The other effects on them are the same as discussed above.

Alternative Method that Minimizes Adverse Impact. It is not clear whether supportive housing adversely affects ALF providers.

Adverse Impacts:

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

Localities. Twenty percent of AG funding comes from localities. Notwithstanding the disproportional impact on certain localities discussed above, it is not clear whether supportive housing will cause an increase in AG recipient population and expenditures.

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

[1]http://lis.virginia.gov/cgi-bin/legp604.exe?161+ful+CHAP0567.

[2]http://townhall.virginia.gov/l/ViewStage.cfm?stageid=7701.

[3]http://jlarc.virginia.gov/pdfs/reports/Rpt426.pdf.

[4]A recipient typically receives $568 monthly from AG (of that $454 or 80% is state funded and $114 or 20% is locally funded), $735 from federal Supplemental Security Income, and $16 in food stamp benefits. From these amounts, $750 is paid for rent, $83 for utilities, $354 for personal expenses (e.g., transportation, food, phone, medical copays, personal care, etc.), and $132 fixed fee for the provider.

Agency's Response to Economic Impact Analysis: The Virginia Department for Aging and Rehabilitative Services raises no issues with the economic impact analysis performed by the Virginia Department of Planning and Budget.

Summary:

The proposed amendments (i) add supportive housing, which is a new living arrangement that individuals who receive auxiliary grant payments may choose, as a third setting in which individuals may receive the auxiliary grant; (ii) define requirements to participate in the supportive housing setting; (iii) clarify providers' responsibilities for each setting; and (iv) update terminology and guidelines for the Auxiliary Grant Program.

22VAC30-80-10. Definitions.

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

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

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

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

this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual. Assuming responsibility for the well-being of individuals residing in an ALF, either directly or through contracted agents, is considered "general supervision and oversight."

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

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

"Auxiliary Grants Program" or "AG Program" means a state and locally funded assistance program to supplement income of an individual receiving Supplemental Security Income (SSI) or adult who would be eligible for SSI except for excess income, who resides in an ALF ~~or in,~~ an AFC home, or a supportive housing setting with an established rate. The total number of individuals within the Commonwealth of Virginia eligible to receive AG in a supportive housing setting shall not exceed the number designated in the signed agreement between the department and the Social Security Administration.

"Certification" means an official approval as designated on the form provided by the department and prepared by ~~the~~ an ALF or a supportive housing provider. Each ALF shall annually ~~certifying~~ certify that ~~the ALF~~ it has properly managed the personal funds and personal needs allowances of individuals residing in the ALF and is in compliance with program regulations and appropriate licensing regulations. Each supportive housing provider shall annually certify that it is in compliance with this chapter.

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

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

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

"Licensee" means any person, association, partnership, corporation, limited liability company, or governmental unit to whom a license to operate an ALF is issued in accordance with ~~22VAC40-72~~ 22VAC40-73.

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

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

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

"Program" means the ~~Auxiliary Grant~~ AG Program.

"Provider" means an ALF that is licensed by the Department of Social Services or an AFC provider that is approved by a local department of social services or a supportive housing provider as defined in § 37.2-421.1 of the Code of Virginia.

"Provider agreement" means a ~~document~~ written agreement that ~~the ALF~~ ALFs and supportive housing providers must complete and submit to the department when requesting ~~to be approved for admitting~~ approval to admit individuals receiving AG.

"Qualified assessor" means an individual who is authorized by 22VAC30-110 to perform an assessment, reassessment, or change in level of care for an individual applying for AG or residing in an ALF or a supportive housing setting. For individuals receiving services from a community services board or behavioral health authority, a qualified assessor is an employee or designee of the community services board or behavioral health authority.

"Rate" means the established rate.

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

"Supportive housing" or "SH" means a residential setting with access to supportive services for an AG recipient in which tenancy as described in § 37.2-421.1 of the Code of Virginia is provided or facilitated by a provider licensed to provide mental health community support services, intensive community treatment, programs of assertive community treatment, supportive in-home services, or supervised living residential services that has entered into an agreement with the DBHDS pursuant to § 37.2-421.1 of the Code of Virginia.

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

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

22VAC30-80-20. Assessment.

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

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

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

D. In order to receive payment from the AG program for care in the SH setting, an individual shall be evaluated by a qualified assessor in accordance with § 51.5-160 E of the Code of Virginia. Eligible individuals shall be notified of the SH setting option and the availability of approved SH providers at the time of their annual level of care assessment. The individual may select SH or ALF at any time after the first or any subsequent annual reassessment as long as the individual meets the criteria for residential or assisted living level of care and subject to the availability of the selected housing option.

22VAC30-80-30. Basic services in an assisted living facility or an adult foster care home.

A. The rate established under the program for the ALF setting shall cover the following services:

1. Room and board.

a. A furnished room in accordance with ~~22VAC40-72-730~~ 22VAC40-73-750;

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

c. Meals and snacks provided in accordance with ~~22VAC40-72~~ 22VAC40-73-590, including~~, but not limited to~~ food service, nutrition, number and timing of meals, observance of religious dietary practices, special diets, menus for meals and snacks, and emergency food and water. A minimum of three well-balanced meals shall be provided each day. When a diet is prescribed for an individual by his physician, it shall be prepared and served according to the physician's orders. Basic and bedtime snacks shall be made available for all individuals desiring them and shall be listed on the daily menu. Unless otherwise ordered in writing by the individual's physician, the daily menu, including snacks, for each individual shall meet the guidelines of the U.S. Department of Agriculture's Food ~~Guide Pyramid~~ guidance system or the dietary allowances of the Food and Nutritional Board of the National Academy of Sciences, taking into consideration the age, sex, and activity of the resident. Second servings shall be provided, if requested, at no additional charge. At least one meal each day shall include a hot main dish; and

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

2. Maintenance and care.

a. Minimal assistance as defined in ~~22VAC40-72-10~~ 22VAC40-73-10 with personal hygiene including bathing, dressing, oral hygiene, hair grooming and shampooing, care of clothing, shaving, care of toenails and fingernails or arranging for such assistance if the resident's medical condition precludes facility from providing the service, arranging for haircuts as needed, and care of needs associated with menstruation or occasional bladder or bowel incontinence that occurs less than weekly;

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

c. Provision of personal toiletries including toilet paper;

d. Minimal assistance with the following:

(1) Care of personal possessions;

(2) Care of the personal needs allowance and personal funds if requested by the individual and provider policy allows this practice, and in compliance with ~~22VAC40-72-140~~ 22VAC40-73-80 and ~~22VAC40-72-150, Standards for Licensed Assisted Living Facilities~~ 22VAC40-73-90;

(3) Use of the telephone;

(4) Arranging nonmedical transportation;

(5) Obtaining necessary personal items and clothing;

(6) Making and keeping appointments; and

(7) Correspondence;

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

f. Providing social and recreational activities in accordance with ~~22VAC40-72-520~~ 22VAC40-73-520; and

g. General supervision for safety.

B. The AFC provider shall adhere to the standards in 22VAC30-120-40.

22VAC30-80-35. Basic services in supportive housing settings.

A. The rate established under the program for SH, as defined in 22VAC30-80-10, shall cover a residential setting with access to SH services that include:

1. Development of individualized SH service plans;

2. Access to skills training;

3. Assistance with accessing available community-based services and supports;

4. Initial identification and ongoing review of the level of care needs; and

5. Ongoing monitoring of services described in the individual's individualized SH plan.

B. The residential setting covered under the program for SH, as defined in 22VAC30-80-10, shall be the least restrictive and most integrated setting practicable for the individual and shall:

1. Comply with federal habitability standards;

2. Provide cooking and bathroom facilities in each unit;

3. Afford dignity and privacy to the individual; and

4. Include rights of tenancy pursuant to the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq. of the Code of Virginia).

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

A. Provider agreement for ALF.

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

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

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

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

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

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

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

f. Account for the personal needs allowances in a separate bank account and apart from other facility funds and issue a statement to each individual regarding his account balance that includes any payments deposited or withdrawn during the previous calendar month;

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

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

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

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

C. Provider agreement for SH.

1. As a condition of participating in the AG program, the SH provider shall enter an agreement with DBHDS pursuant to § 37.2-421.1 of the Code of Virginia.

2. The SH provider shall submit a copy of the executed agreement and a copy of its current DBHDS license prior to the SH provider receiving payments from the AG program on behalf of qualified individuals.

3. The SH provider shall provide SH services for each individual in accordance with § 37.2-421.1 of the Code of Virginia and all other applicable laws, regulations, and policies and procedures.

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

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

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

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

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

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

~~F.~~ G. ALFs ~~and~~, AFC homes, and SH providers shall provide each AG recipient and his authorized representative with a written list of the goods and services that shall be covered by the AG as defined in this chapter, including a clear statement that the facility shall not charge an individual or the individual's family or authorized representative additional amounts for goods or services included on such list. This statement shall be signed by the AG recipient or authorized representative as acknowledgment of receipt and shall be made available to the department upon request.

22VAC30-80-50. Establishment of rate.

The established rate for individuals authorized to reside in an ALF ~~or in~~, an AFC, or a supportive housing setting is the established rate as set forth in the appropriation act or as set forth by changes in the federal maintenance of effort formula. The AG payment is determined by adding the rate plus the personal needs allowance minus the individual's countable income. The effective date is the date of the individual's approval for AG by the local department of social services.

22VAC30-80-60. Reimbursement.

A. Any payments contributed toward the cost of ~~care~~ basic services as defined in 22VAC30-80-30 and 22VAC30-80-35 pending AG eligibility determination shall be reimbursed to the individual or contributing party by the ALF ~~or~~, AFC, or SH provider once eligibility for AG is established and that payment received. The payment shall be made payable to the individual, who will then reimburse the ~~provider for care~~ appropriate providers for basic services. If the individual is not capable of managing his finances, his authorized representative or authorized payee is responsible for reimbursing the provider.

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

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

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

A. ~~ALFs~~ ALF and SH providers shall submit to the department an annual certification form by October 1 of each year for the preceding state fiscal year. The certification shall include the following: (i) identifying information about the ~~ALF~~ provider, (ii) census information including a list of individuals who resided in the facility or SH setting and received AG during the reporting period, and (iii) personal needs allowance accounting information if such personal

needs accounting information is required by the setting. If a provider fails to submit an annual certification form, the provider will not be authorized to accept additional individuals with AG.

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

C. All records maintained by an AFC provider, as required by 22VAC30-120, shall be made available to the department or the approving local department of social services upon request. All records are subject to audit by the department. Financial information that is not reconcilable to the provider's records could result in establishment of a liability to the provider. Records shall be retained for three years after the end of the reporting period or until audited by the department, whichever is first.

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 (22VAC30-80)

~~Auxiliary Grant Program Provider Agreement, 032-02-0747-02-eng (rev. 6/13)~~

~~Auxiliary Grant Certification, 032-02-0747-06-eng (rev. 5/13)~~

Auxiliary Grant Provider Agreement,032-02-0747-06-eng (rev. 7/2017)

Auxiliary Grant Certification,032-02-0745-10-eng (rev. 7/2017)

Statement of Virginia Residency and Intent to Remain in Virginia, 032-02-0749-00-eng (eff. 12/2012)

Auxiliary Grant Certification,032-15-0012-00-eng (eff. 2/2017)

VA.R. Doc. No. R17-4816; Filed July 9, 2018, 12:39 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act in accordance with the second enactment of Chapter 765 of the 2016 Acts of Assembly, which exempts the actions of the board relating to the adoption of regulations necessary to implement the provisions of the act.

Titles of Regulations: **24VAC30-100. Rules and Regulations for the Administration of Parking Lots and Environs (amending 24VAC30-100-10).**

24VAC30-151. Land Use Permit Regulations (amending 24VAC30-151-670, 24VAC30-151-710).

Statutory Authority: §§ 33.2-118 and 33.2-210 of the Code of Virginia.

Effective Date: September 5, 2018.

Agency Contact: Robert Hofrichter, Director, Office of Land Use, Department of Transportation, 1221 East Broad Street, Richmond, VA 23219, telephone (804) 786-0780, or email robert.hofrichter@vdot.virginia.gov.

Summary:

Pursuant to Chapter 765 of the 2016 Acts of Assembly, the amendments allow mobile food vending in Planning District 8 (Northern Virginia) commuter lots and include the following provisions: (i) set the fee for a two-month permit at $250 and a weekend-only vending fee at $110; (ii) require vendors to have local vending permits, which include background checks, Department of Health approval, insurance, cleanup of vending site and removal of litter, and provision of a surety to ensure cleanup and restoration of any damage to site; and (iii) prohibit vendors from interfering with safety and operation of the commuter lots and from vending in lots, or portions of lots, that are considered interstate system rights-of-way.

24VAC30-100-10. Parking lots and environs.

A. While in this area all persons shall be subject to such regulations as the commissioner may designate by posted signs or public notice posted within the area.

B. No vehicle shall be parked in such a manner as to occupy more than one parking space.

C. No person shall paste, attach or place on any vehicle parked in this lot any bill, advertisement or inscription whatsoever.

D. No bottles, broken glass, ashes, waste paper, or other rubbish shall be left within this area except in such receptacles as may be provided for the same.

E. No person shall pick any flowers, foliage, or fruit; or cut, break, dig up or in any way mutilate or injure any tree, shrub, plant, grass, turf, fence, structure, or anything within this area; or cut, carve, paint, mark, paste, or in any way attach on any tree, stone fence, wall, building, or other object therein, any bill, advertisement, or inscription whatsoever.

F. No person shall disturb or injure any bird, birds' nest or eggs, or any squirrel or other animal within this area.

G. No threatening, abusive, boisterous, insulting or indecent language, or gesture shall be used within this area; furthermore, no oration or other public demonstration be made, except by permit from the commissioner.

H. No person shall offer any article or thing for sale within this area except by permission of the commissioner.

I. ~~No~~ Mobile food vending.

1. Mobile food vending shall be allowed within commuter lots in Planning District 8 except lots that meet at least one of the following conditions:

a. Commuter lots or the portions thereof determined to be part of the interstate system.

b. Commuter lots that, as of last Virginia Department of Transportation (VDOT) survey, had occupancy rates of 98% or higher, except that mobile food vending may be permitted in such lots (i) if a paved area, the use of which does not include one or more parking spaces or block one or more parking spaces, is available within the lot; (ii) if vending is from a nonmotorized cart on sidewalks, provided that the vehicle used to transport the cart is not parked within the commuter lot; or (iii) on weekends.

c. Commuter lots that have been requested by the locality to not be made available for mobile food vending.

2. Permission for mobile food vending shall be granted through a land use permit issued to the mobile food vendor in accordance with the Land Use Permit Regulations (24VAC30-151).

3. In order for a mobile food vendor to be granted or to retain a land use permit for mobile food vending at commuter lots pursuant to this subsection, the vendor must comply with all of the following:

a. All relevant locality and Department of Health policies and requirements for mobile food vending.

b. All land use permit conditions and requirements set forth within or attached to the land use permit, which may include provisions relating to the location of the vending unit, the collection and disposal of litter, a limitation on vending times, a requirement for minimum insurance, and the provision of surety.

c. Posted signs or public notices setting out regulations or requirements for the use of commuter lots.

d. Mobile food vending shall be conducted with pedestrians only and shall not be conducted with occupants of vehicles.

e. Neither the mobile food vendor nor the vendor's operation shall interfere with the operation of the commuter lot and the safety of the lot's users, and the determination of whether the mobile food vendor or the vendor's operation is interfering with the operation of the commuter lot or the safety of the lot's users shall be solely within the discretion of VDOT.

f. The mobile food vendor shall post no advertising within or upon the grounds of the commuter lot. Advertising on the mobile food vending unit (vehicle, trailer, or pushcart), promoting the products or services offered by the mobile food vendor at that mobile food vending unit, is not considered a violation of this section.

Failure to comply with this subdivision 3 will result in the revocation of the permit.

J. Except as authorized by the terms of a land use permit issued to a mobile food vendor, no person shall light, kindle, or use any fire within this area.

~~J.~~ K. No person shall discharge or set off within this area, any firearms or fireworks, except by permit from the commissioner.

~~K.~~ L. Any person violating any of the preceding rules and regulations shall be guilty of a misdemeanor and, upon conviction, be fined not less than five dollars nor more than $100 for each offense.

24VAC30-151-670. Prohibited use of right-of-way.

No permit shall be issued for the following uses of the right-of-way:

1. Signs. Signs not otherwise allowed in this chapter shall not be placed on the highway right-of-way or overhang the right-of-way.

2. Vendors on right-of-way. Permits will not be issued to vendors for operation of business within state rights-of-way, except:

a. As may be allowed for waysides and rest areas under the Rules and Regulations for the Administration of Waysides and Rest Areas (see 24VAC30-50-10 and 24VAC30-151-760) and the Rules and Regulations for the Administration of Parking Lots and Environs (24VAC30-100-10).

b. Vendors of newspapers and written materials enjoy constitutional protection under the First Amendment to place or operate their services within rights-of-way, provided they neither impede traffic nor impact the safety of the traveling public. Newspaper vending machine size, placement, and location shall be as directed by the district administrator's designee for that area.

c. To localities to administer mobile food vending on nonlimited access highways, where the vending operations are regulated by local ordinances, operated consistent with such ordinances, and in accordance with the Commonwealth Transportation Board's regulations and policies.

3. Dwellings. No private dwellings, garages, or similar structures shall be placed or constructed within the right-of-way, except as may be allowed under 24VAC30-151-220 and 24VAC30-151-230.

24VAC30-151-710. Fees.

A. Single use permit. A nonrefundable application fee shall be charged to offset the cost of reviewing and processing the permit application and inspecting the project work, in accordance with the requirements ~~below~~ in this subsection:

1. The application fee for a single permit is $100.

2. Additive costs shall be applied as indicated ~~below~~ in this subdivision. The district administrator's designee will determine the total permit fees using the following schedule:

Activity	Fee
Private Entrances	none
Commercial Entrance	$150 for first entrance $50 for each additional entrance
Street Connection	$150 for first connection $50 for each additional connection
Temporary Logging Entrance	$10 for each entrance
Temporary Construction Entrance	$10 for each entrance
Turn Lane	$10 per 100 linear feet
Crossover	$500 per crossover
Traffic Signal	$1,000 per signal installation
Reconstruction of Roadway	$10 per 100 linear feet
Curb and Gutter	$10 per 100 linear feet
Sidewalk	$10 per 100 linear feet
Tree Trimming (for outdoor advertising)	in accordance with § 33.2-1221 of the Code of Virginia
Tree Trimming (all other activities)	$10 per acre or 100 feet of frontage
Landscaping	$10 per acre or 100 feet of frontage
Storm Sewer	$10 per 100 linear feet
Box Culvert or Bridge	$5 per linear foot of attachment
Drop Inlet	$10 per inlet
Paved Ditch	$10 per 100 linear feet
Under Drain or Cross Drain	$10 per crossing
Above-ground Structure (including poles, pedestals, fire hydrants, towers, etc.)	$10 per structure
Pole Attachment	$10 per structure
Span Guy	$10 per crossing
Additive Guy and Anchor	$10 per guy and anchor
Underground Utility - Parallel	$10 per 100 linear feet
Overhead or Underground Crossing	$10 per crossing
Excavation Charge (including Test Bores and Emergency Opening)	$10 per opening
Two Month Commuter Lot Mobile Food Vending (available in Planning District 8 only) (weekdays and weekends)	$150
Single Weekend Commuter Lot Mobile Food Vending (available in Planning District 8 only) (per weekend)	$10

3. Time extensions for active permits shall incur a monetary charge equal to one-half the application fee charged to the initial permit. Expired permits may be reinstated; however, fees for reinstatement of expired permits shall equal the application fee. Notwithstanding

24VAC30-151-80, commuter lot mobile food vending permits may not be extended or reinstated.

4. If a permit is cancelled prior to the beginning of ~~work~~ the permitted activity, the application fee and one-half of the additive fee will be retained as compensation for costs incurred by VDOT during plan review.

5. The district administrator's designee may establish an account to track plan review and inspection costs~~,~~ and may bill the permittee not more often than every 30 calendar days. If an account is established for these costs, the permittee shall be responsible for the nonrefundable application fee and the billed costs. When actual costs are billed, the district administrator's designee shall waive the additive fees ~~above~~ in subdivision 2 of this subsection.

B. Districtwide permits. Districtwide permits, as defined in 24VAC30-151-30, are valid for a period of two years. The biennial fee for a districtwide permit for utilities and logging operations is $750 per district. The biennial fee for a districtwide permit for surveying is $200 per district. The central office permit manager may exercise discretion in combining requests for multijurisdictional districtwide permits.

C. Miscellaneous permit fees. To connect the facility to the transmission grid pipeline, the operator of a nonutility renewable energy facility that produces not more than two megawatts of electricity from a renewable energy source, not more than 5,000 mmBtus/hour of steam from a renewable energy source, or landfill gas from a solid waste management facility, shall remit to VDOT a one-time permit fee of $1,500 per mile as full compensation for the use of the right-of-way in accordance with § 67-1103 of the Code of Virginia.

D. No-fee permits. The following permits shall be issued at no cost to the applicant:

1. In-place permits as defined in 24VAC30-151-30 and 24VAC30-151-390.

2. Prior-rights permits as defined in 24VAC30-151-30 and 24VAC30-151-390.

3. As-built permits as defined in 24VAC30-151-30.

4. Springs and wells as defined in 24VAC30-151-280.

5. Crest stage gauges and water level recorders as defined in 24VAC30-151-500.

6. Filming for movies as defined in 24VAC30-151-520.

7. Roadside memorials as defined in 24VAC30-151-550.

8. No loitering signs as defined in 24VAC30-151-570.

VA.R. Doc. No. R18-4830; Filed July 9, 2018, 3:29 p.m.

STATE AIR POLLUTION CONTROL BOARD

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality on behalf of the State Air Pollution Control Board is conducting a periodic review and small business impact review of **9VAC5-540, Emergency Generator General Permit**. The review of this regulation will be guided by the principles in Executive Order 14 (2018).

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 regulations may be viewed on the DEQ air regulation webpage at http://www.deq.virginia.gov/Programs/Air/Laws,Regulations,Guidance.aspx.

The comment period begins August 6, 2018, and ends August 27, 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 Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4319, or email gary.graham@deq.virginia.gov.

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

BOARD OF COUNSELING

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Counseling is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 14 (2018).

18VAC115-15, Delegation of Informal Fact-Finding to an Agency Subordinate

18VAC115-20, Regulations Governing the Practice of Professional Counseling

18VAC115-50, Regulations Governing the Practice of Marriage and Family Therapy

18VAC115-60, Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners

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 each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins August 6, 2018, and ends September 5, 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 Elaine J. Yeatts, Senior Policy Analyst, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233.

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

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Counseling is conducting a periodic review and small business impact review of **18VAC115-40, Regulations Governing the Certification of Rehabilitation Providers**. The review of this regulation will be guided by the principles in Executive Order 14 (2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health,

safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins August 6, 2018, and ends September 5, 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 Elaine J. Yeatts, Senior Policy Analyst, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233.

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

Waverly Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Sussex County

Waverly Solar LLC has provided the Department of Environmental Quality with a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Sussex County. The project is located on approximately 2,000 acres southwest of U.S. Route 460 approximately one to three miles southwest and west of Waverly. The project conceptually consists of approximately 340,056 440-watt alternating current modules across 120.6 megawatt alternating current arrays, providing a facility new capacity of 118 megawatts alternating current.

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.

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on July 18, 2018. The orders may be viewed at the Virginia Lottery, 600 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia.

Director's Order Number Eighty (18)

Virginia's Computer-Generated Lottery Game Cash4Life® Final Rules for Game Operation (this Director's Order becomes effective on July 24, 2018, fully replaces any and all prior Virginia Lottery Cash4Life® Virginia-specific game rules, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number Eighty-One (18)

Final Rules for Operation: "Subscription Program" for Certain Virginia Lottery Computer-Generated Games (this Director's Order becomes effective on July 24, 2018, fully replaces any and all Virginia Lottery "Subscription Program" Rules, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number Eighty-Two (18)

Virginia Lottery's Computer-Generated Game "Print 'n Play Ultimate 7s Bingo" Final Rules for Game Operation (effective August 5, 2018)

Director's Order Number Eighty-Three (18)

Virginia Lottery's Computer-Generated Game "Print 'n Play Super 7s Bingo" Final Rules for Game Operation (effective August 5, 2018)

Director's Order Number Eighty-Six (18)

Virginia Lottery's Computer-Generated Game "Print 'n Play Blackjack Classic" Final Rules for Game Operation (effective August 5, 2018)

Director's Order Number Eighty-Seven (18)

Virginia Lottery's Computer-Generated Game "Print 'n Play Extreme Crossword" Final Rules for Game Operation (effective August 5, 2018)

Director's Order Number Eighty-Eight (18)

Virginia Lottery's Computer-Generated Game "Print 'n Play High Stakes Blackjack" Final Rules for Game Operation (effective August 5, 2018)

Director's Order Number Eighty-Nine (18)

Virginia Lottery's Computer-Generated Game "Print 'n Play Horoscope Crossword" Final Rules for Game Operation (effective August 5, 2018)

Director's Order Number Ninety (18)

Virginia Lottery's Computer-Generated Game "Print 'n Play Money Bag Crossword" Final Rules for Game Operation (effective August 5, 2018)

Director's Order Number Ninety-One (18)

Virginia Lottery's Computer-Generated Game "Print 'n Play Platinum Crossword" Final Rules for Game Operation (effective August 5, 2018)

Director's Order Number Ninety-Four (18)

Virginia Lottery's Scratch Game 1904 "Creepy Cash" Final Rules for Game Operation (effective June 18, 2018)

Director's Order Number Ninety-Eight (18)

Virginia Lottery's Scratch Game 1899 "Win Either $100 or $200" Final Rules for Game Operation (effective July 5, 2018)

Director's Order Number One Hundred Five (18)

Certain Virginia Instant Game Lotteries: End of Games.

In accordance with the authority granted by §§ 2.2-4002 B 15 and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery scratch games will officially end at midnight on July 16, 2018.

Game 1883	Red Hot 7s (TOP)
Game 1882	Hot 7s
Game 1844	Casino Cheer
Game 1831	Tic Tac Toe
Game 1830	Loose Change
Game 1824	Win Either $50 or $100
Game 1818	5X The Money (TOP)
Game 1810	$5,000,000 Cash Payout
Game 1807	2X The Money (TOP)
Game 1789	$
Game 1781	20X The Money
Game 1776	$50,000 Crossword Tripler
Game 1768	Game Of Riches
Game 1696	In The Money
Game 1664	$1,000,000 Instant Cashout
Game 1602	Money Bag Doubler
Game 1478	$5,000,000 Cash Blowout
Game 1466	$52 Million Cash Spectaular

The last day for Lottery retailers to return for credit unsold tickets from any of these games will be August 27, 2018. The last day to redeem winning tickets for any of these games will be January 12, 2019, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation of January 12, 2019, or earlier, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of lottery games.

This order is available for inspection and copying during normal business hours at the Virginia Lottery headquarters, 600 East Main Street, Richmond, Virginia and at any Virginia Lottery office. A copy may be requested by mail by writing to: Director's Office, Virginia Lottery, 600 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on July 5, 2018, and shall remain in full force and effect unless amended or rescinded by further Director's Order.

Director's Order Number One Hundred Seven (18)

Virginia Lottery's "FY19 eXTRA Chances Promotion" Final Rules for Game Operation (this Director's Order is effective nunc pro tunc to June 25, 2018. It fully replaces Director's Order 79(2018) in order to correct certain typographical errors and provide clarifying language. This Director's Order shall remain in full force and effect through the end Promotion date unless amended or rescinded by further Director's Order)

Director's Order Number One Hundred Eight (18)

Virginia's Computer-Generated Lottery Game "Bank A Million" Final Rules for Game Operation (this Director's Order becomes effective on July 17, 2018, fully replaces any and all Virginia Lottery "Bank A Million" Game Rules, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number One Hundred Nine (18)

Virginia Lottery's Computer-Generated Game "Cash 5" Final Rules for Game Operation (this Director's Order becomes effective on July 17, 2018, fully replaces any and all prior Virginia Lottery "Cash 5" game rules, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number One Hundred Ten (18)

Virginia's Computer-Generated Lottery Game "Pick 3" Final Rules for Game Operation (this Director's Order becomes effective on July 17, 2018, fully replaces any and all prior Virginia Lottery "Pick 3" game rules, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number One Hundred Eleven (18)

Virginia's Computer-Generated Lottery Game "Pick 4" Final Rules for Game Operation (this Director's Order becomes effective on July 17, 2018, fully replaces any and all prior Virginia Lottery "Pick 4" game rules, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number One Hundred Twelve (18)

Virginia Lottery's Scratch Game 1903 "Bingo Multiplier" Final Rules for Game Operation (effective July 17, 2018)

Director's Order Number One Hundred Fourteen (18)

Virginia Lottery's "Game Guy Player Experience Promotion" Final Rules for Game Operation (effective July 25, 2018)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intent to Amend Virginia State Plan for Medical Assistance - Supplemental Payments Pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13))

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

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 396a(a)(13). A copy of this notice is available for public review from Karen Cameron, Provider Reimbursement Division, Department of Medical Assistance Services, 600 Broad Street, Suite 1300, Richmond, VA 23219, or via email at karen.cameron@dmas.virginia.gov.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted in writing within 30 days of this notice publication to Ms. Cameron, and such comments are available for review at the same address. Comments may also be submitted in writing on the Virginia Regulatory Town Hall public comment forum. This notice is available for public review on the Town Hall on the General Notices page found at https://townhall.virginia.gov/L/generalnotice.cfm.

1. Inpatient supplemental payments for private acute care hospitals. The 2018 Acts of Assembly directs DMAS to provide supplemental inpatient hospital payments to qualifying hospitals up to the private hospital upper payment limit for private hospitals. Qualifying hospitals include all private acute care hospitals and exclude public hospitals, freestanding psychiatric and rehabilitation hospitals, children's hospitals, long stay hospitals, long-term acute care hospitals, and critical access hospitals. The total supplemental payment shall be based on the difference between the private hospital inpatient upper payment limit in 42 CFR 447.272 as approved by the Centers for Medicare and Medicaid Services (CMS) and all other Medicaid payments subject to such limit. Effective October 1, 2018, the department is amending the State Plan to make supplemental payments to all qualifying hospitals. The department shall also, effective October 1, 2018, include in its contracts with managed care organizations a directed payment for qualifying hospitals consistent with the State Plan amendment.

The expected increase in annual aggregate expenditures including managed care is $211,476,474 for state fiscal year 2019 and $604,218,496 for state fiscal year 2020.

2. Outpatient supplemental payments for private acute care hospitals. The 2018 Acts of Assembly directs DMAS to provide supplemental outpatient hospital payments to qualifying hospitals up to the private hospital upper payment limit for private hospitals. Qualifying hospitals include all private acute care hospitals and exclude public hospitals, freestanding psychiatric and rehabilitation hospitals, children's hospitals, long stay hospitals, long-term acute care hospitals, and critical access hospitals. The total supplemental payment shall be based on the difference between the private hospital outpatient upper payment limit in 42 CFR 447.321 as approved by CMS and all other Medicaid payments subject to such limit. Effective October 1, 2018, the department is amending the State Plan to make supplemental payments to all qualifying hospitals. The department shall also, effective October 1, 2018, include in its contracts with managed care organizations a directed payment for qualifying hospitals consistent with the State Plan amendment.

The expected increase in annual aggregate expenditures including managed care is $37,319,378 for state fiscal year 2019 and $106,626,794 for state fiscal year 2020.

3. Sunsetting of other supplemental payments for private acute care hospitals. In order to avoid overlapping supplemental payments, the following supplemental payments to a limited group of private hospitals are being terminated on the date these new supplemental payments are effective for a broader group of private hospitals, which includes the hospitals eligible for the existing supplemental payments:

Supplemental inpatient and outpatient payments for private hospital partners of Type One hospitals (Culpeper, Haymarket, and Prince William).

Supplemental inpatient payments for certain teaching hospitals (Sentara Norfolk General and Carilion Medical Center) – Item 303 XX 6 c of the Budget Bill authorizes this action.

The expected decrease in annual aggregate expenditures is $25 million for state fiscal year 2019 and $100 million for state fiscal year 2020.

Contact Information: Karen Cameron, Senior Project Manager, Department of Medical Assistance Services, 600

East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 298-3868, FAX (804) 786-1680, TDD (800) 343-0634, or email karen.cameron@dmas.virginia.gov.

STATE BOARD OF SOCIAL SERVICES

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services is conducting a periodic review and small business impact review of **22VAC40-730, Investigation of Child Abuse and Neglect in Out of Family Complaints**. The review of this regulation will be guided by the principles in Executive Order 14 (2018).

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

The comment period begins August 6, 2018, and ends August 27, 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 Nicole Shipp, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7545, FAX (804) 726-7499, or email e.shipp@dss.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.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Crop Production Services Inc.

An enforcement action has been proposed for Crop Production Services Inc. (CPS) regarding violations of State Water Control Law and regulations at the CPS facility in Cloverdale, Virginia. The proposed enforcement action includes a civil charge and injunctive relief. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Robert Steele will accept comments by email at robert.steele@deq.virginia.gov, FAX at (540) 562-6725, or postal mail at Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA 24019, from August 6, 2018, to September 5, 2018.

Proposed Consent Order for Holtzman Corporation

An enforcement action is proposed for Holtzman Corporation for violations of the State Water Control Law and regulations at 39258 East Colonial Highway, Hamilton, Loudoun County, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with a Holtzman Corporation tanker truck accident. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Mark Miller will accept comments by email at mark.miller@deq.virginia.gov or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from August 7, 2018, through September 6, 2018.

Proposed Consent Special Order for the King George County Service Authority

An enforcement action has been proposed for the King George County Service Authority for violations at the Hopyard Farm Wastewater Treatment Plant, Fairview Beach Wastewater Treatment Plant, Dahlgren Wastewater Treatment Plant, Oakland Park Wastewater Treatment Plant, and the Purkins Corner Wastewater Treatment Plant in King George County, Virginia. The State Water Control Board proposes to issue a special order by consent to the King George County Service Authority 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. Kristen Sadtler will accept comments by email at 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 August 6, 2018, to September 5, 2018.

Proposed Enforcement Action for Quik Stop Co.

An enforcement action has been proposed for Quik Stop Co. for violations of State Water Control Law, specifically involving the Underground Storage Tanks: Technical Standards and Corrective Action Requirements that occurred in Richmond, Virginia. A description of the proposed actions is available online at www.deq.virginia.gov/Programs/Enforcement/PublicNotices.aspx. Lee Crowell will accept comments by email at lee.crowell@deq.virginia.gov or postal mail at Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23219, from August 6, 2018, through September 5, 2018.

Proposed Consent Special Order for the Town of Victoria

An enforcement action has been proposed for the Town of Victoria for violations at the Victoria East Sewage Treatment Plant in the Town of Victoria, Virginia. The State Water Control Board proposes to issue a special order by consent to the Town of Victoria 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. Kristen Sadtler will accept comments by email at 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 August 6, 2018, to September 5, 2018.

Cancellation of Public Meeting for Total Maximum Daily Load Study for Barbours Creek, Craig Creek, Catawba Creek, Little Patterson Creek, Sinking Creek, Lapsley Run, and Part of the James River

The community meeting scheduled for Tuesday, August 7, 2018, from 6 p.m. until 7 p.m. at the Eagle Rock Public Library, 55 Eagles Nest Drive, Eagle Rock, VA 24085 has been canceled.

The purpose of the meeting was to discuss the final results of a water quality study, known as a total maximum daily load (TMDL) for Barbours Creek, Craig Creek, Catawba Creek, Little Patterson Creek, Sinking Creek, Lapsely Run, and a section on the James River in Craig and Botetourt Counties.

The meeting announcement was published in 34:24 VA.R. 2481-2483 July 23, 2018.

Contact Information: Lucy Baker, Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6718, FAX (540) 562-6725, or email lucy.baker@deq.virginia.gov.

Public Comment Opportunity - Proposed Ammonia Criteria Phased Implementation Program

Title of Regulation: 9VAC25-260, Water Quality Standards (amending 9VAC25-260-155).

Statutory Authority: § 62.1-44.15 of the Code of Virginia; Clean Water Act (33 USC § 1251 et seq.); 40 CFR Part 131.

Public Hearing Information:

September 11, 2018 – 2 p.m. - Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019.

September 13, 2018 – 2 p.m. - Department of Environmental Quality, Piedmont Regional Office, 4949 A Cox Road, Glen Allen, VA 23060.

Public Comment Period: August 6, 2018, through October 5, 2018.

Substance: Ammonia Criteria - 9VAC25-260-155. The purpose of this notice is to solicit comment regarding additional proposed language developed to address the directives of Chapter 510 of the 2018 Acts of Assembly. Language has been developed for the proposal to amend 9VAC25-260-155. The amendment includes new nationally recommended aquatic life criteria, issued by the U.S. Environmental Protection Agency (EPA) in 2013, for ammonia in freshwater. Like the current criteria, the proposed criteria are calculated as a function of temperature and pH and account for the presence or absence of trout and early life stages of fish. The recalculated ammonia criteria now incorporate toxicity data for freshwater mussels in the family Unionidae, which are the most sensitive organisms in the recalculation data base. The new criteria are about twice as stringent as the existing criteria primarily because more recent toxicity data show that mussels and snails (including endangered species) are very sensitive to ammonia, and the current ammonia criteria do not provide sufficient protection for these species. Site-specific options to calculate criteria omitting mussel toxicity data are proposed to be used in waters where a demonstration has been made that mussels are absent; however, consultation with U.S. Fish and Wildlife Service and the Virginia Department of Game and Inland Fisheries indicate freshwater mussels should be considered ubiquitous in Virginia and likely to be present in any perennial waterbody.

This is a continuation of a proposal to amend the water quality standards, which was the subject of a proposed regulatory action and opportunity for public comment published in the Virginia Register of Regulations (34:2 VA.R. 192-236 September 18, 2017). The proposed regulation includes several amendments to the water quality standards, but the agency decided to delay the adoption of the amendments for freshwater ammonia criteria (9VAC25-260-155) due to Chapter 510 of the 2018 Acts of Assembly. The legislation directs the State Water Control Board (the board) not to adopt the most recent ammonia criteria recommended by EPA unless the board includes in such adoption a phased implementation program consistent with the federal Clean Water Act with certain funding and timing considerations.

Full text of the regulatory language will be available on the Department of Environmental Quality's website at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs /WaterQualityStandards.aspx on August 6, 2018.

Contact Information: David Whitehurst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4121, FAX (804) 698-4032, or email david.whitehurst@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at https://commonwealthcalendar.virginia.gov.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations.* The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.