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Virginia Code Commission

<http://register.dls.virginia.gov>

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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.

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **James A. "Jay" Leftwich**, Vice Chair; **Ryan T. McDougle**; **Nicole Cheuk**; **Rita Davis**; **Leslie L. Lilley**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Charles S. Sharp**; **Samuel T. Towell**; **Malfourd W. Trumbo**; **Mark J. Vucci**.

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

PUBLICATION SCHEDULE AND DEADLINES

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

October 2019 through December 2020

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
36:5	October 9, 2019	October 28, 2019
36:6	October 23, 2019	November 11, 2019
36:7	November 6, 2019	November 25, 2019
36:8	November 18, 2019 (Monday)	December 9, 2019
36:9	December 4, 2019	December 23, 2019
36:10	December 18, 2019	January 6, 2020
36:11	January 1, 2020	January 20, 2020
36:12	January 15, 2020	February 3, 2020
36:13	January 29, 2020	February 17, 2020
36:14	February 12, 2020	March 2, 2020
36:15	February 26, 2020	March 16, 2020
36:16	March 11, 2020	March 30, 2020
36:17	March 25, 2020	April 13, 2020
36:18	April 8, 2020	April 27, 2020
36:19	April 22, 2020	May 11, 2020
36:20	May 6, 2020	May 25, 2020
36:21	May 20, 2020	June 8, 2020
36:22	June 3, 2020	June 22, 2020
36:23	June 17, 2020	July 6, 2020
36:24	July 1, 2020	July 20, 2020
36:25	July 15, 2020	August 3, 2020
36:26	July 29, 2020	August 17, 2020
37:1	August 12, 2020	August 31, 2020
37:2	August 26, 2020	September 14, 2020
37:3	September 9, 2020	September 28, 2020
37:4	September 23, 2020	October 12, 2020
37:5	October 7, 2020	October 26, 2020
37:6	October 21, 2020	November 9, 2020
37:7	November 4, 2020	November 23, 2020
37:8	November 16, 2020 (Monday)	December 7, 2020
37:9	December 2, 2020	December 21, 2020

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

Initial Agency Notice

Title of Regulation: 18VAC115-20. Regulations Governing the Practice of Professional Counseling.

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

Name of Petitioner: Rev. Steven Giddens.

Nature of Petitioner's Request: To amend 18VAC115-20-52 to eliminate the restriction on residents' ability to directly bill for their services.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition will be filed with the Registrar of Regulations and published on September 30, 2019, with comment requested until October 25, 2019. It will also be placed on the Virginia Regulatory Town Hall and available for comments to be posted electronically. At its first meeting following the close of the comment period, which is scheduled for November 1, 2019, the board will consider the request to amend regulations and all comment received in support or opposition. The board will inform the petitioner of its response and any action it approves.

Public Comment Deadline: October 25, 2019.

Agency Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R20-07; Filed September 10, 2019, 9:50 a.m.

BOARD OF DENTISTRY

Agency Decision

Title of Regulation: 18VAC60-21. Regulations Governing the Practice of Dentistry.

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

Name of Petitioner: Dagoberto Zapatero.

Nature of Petitioner's Request: Amendments to clarify that a digital scan is the equivalent of a final impression if used to fabricate an appliance to be inserted into a patient's mouth and to specify that a patient-doctor relationship should be established in a face-to-face encounter.

Agency Decision: No action.

Statement of Reason for Decision: On August 28, 2019, the board received a request from the petitioner to withdraw his petition. Therefore, the board will not take action on this petition.

Agency Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R19-38; Filed September 4, 2019, 8:56 a.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF JUVENILE JUSTICE

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board of Juvenile Justice conducted a small business impact review of **6VAC35-71, Regulation Governing Juvenile Correctional Centers**, and determined that this regulation should be amended.

The proposed regulatory action to amend 6VAC35-71, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Kristen Peterson, Regulatory Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23219, telephone (804) 588-3902, FAX (804) 371-6490, or email kristen.peterson@djj.virginia.gov.

The department, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4019, or email cindy.berndt@deq.virginia.gov.

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Air Pollution Control Board is conducting a periodic review and small business impact review of **9VAC5-151, Regulation for Transportation Conformity**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 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.

Public comment period begins September 30, 2019, and ends October 21, 2019.

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 Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Contact Information: Gary E. Graham, Regulatory Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218,

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Air Pollution Control Board conducted a small business impact review of **9VAC5-10, General Definitions**, and determined that this regulation should be retained in its current form. The State Air Pollution Control Board is publishing its report of findings dated August 5, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation continues to be needed. It provides general definitions that support the consistent interpretation of regulations that provide sources with the most cost-effective means of fulfilling ongoing state and federal requirements that protect air quality. No comments were received that requested a change to the regulation. The regulation's level of complexity is appropriate to ensure that the regulated entity is able to meet its legal mandate as efficiently and cost-effectively as possible. This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

This regulation was last reviewed in 2001. Over time, it generally becomes less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This chapter continues to provide the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions.

Periodic Reviews and Small Business Impact Reviews

telephone (804) 689-4103, FAX (804) 698-4510, or email gary.graham@deq.virginia.gov.

STATE WATER CONTROL BOARD

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Water Control Board conducted a small business impact review of **9VAC25-31, Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation**, and determined that this regulation should be retained in its current form. The State Water Control Board is publishing its report of findings dated August 6, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation continues to be needed. The regulation establishes the requirements for VPDES permits. These permits regulate the discharges of pollutants to surface waters to protect water quality. No comments were received during the public comment period.

The regulation is judiciously complex in that it regulates a number of programs including VPDES point source discharges, concentrated animal feeding operations, land application of sewage sludge, and the pretreatment program.

The Clean Water Act established the National Pollutant Discharge Elimination System (NPDES) program to limit pollutant discharges into streams, rivers, and bays. The Clean Water Act authorizes the Environmental Protection Agency to authorize states to operate the NPDES permit program. In the Commonwealth of Virginia, the Department of Environmental Quality administers the program as VPDES. Virginia has modeled the state requirements after the federal NPDES regulation and has included state specific requirements as required by state law. Virginia's regulation does not conflict with federal law or regulation.

This regulation is periodically updated to maintain consistency with changes in the NPDES federal regulation. The last amendment to this regulation was in 2018 to incorporate updates made to the federal regulation. The regulation has been written to minimize the economic impact of the regulation on all businesses including small businesses while maintaining consistency with federal laws and regulations and state law.

Contact Information: Melissa Porterfield, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Common Interest Community Board is conducting a periodic review and small business impact review of each listed regulation. The review of each regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

18VAC48-10, Public Participation Guidelines

18VAC48-45, Time-Share Regulations

18VAC48-50, Common Interest Community Manager Regulations

18VAC48-60, Common Interest Community Board Management Information Fund Regulations

18VAC48-70, Common Interest Community Ombudsman Regulations

The purpose of this review is to determine whether each 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.

Public comment period begins September 30, 2019, and ends October 21, 2019.

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

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 the review 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.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

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 Medicine intends to consider amending **18VAC85-21, Regulations Governing Prescribing of Opioids and Buprenorphine**. The purpose of the proposed action is to add a section regarding electronic prescribing. Consistent with the Code of Virginia, beginning July 1, 2020, a prescription for a controlled substance that contains an opioid is required to be issued as an electronic prescription. The proposed regulation also provides a one-time waiver of this requirement for a maximum of one year if a practitioner can demonstrate economic hardship, technological limitations, or other exceptional circumstances beyond the practitioner's control.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2928.2 of the Code of Virginia.

Public Comment Deadline: October 30, 2019.

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.

V.A.R. Doc. No. R20-6085; Filed September 18, 2019, 1:43 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 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: **4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-20, 4VAC20-720-40 through 4VAC20-720-80, 4VAC20-720-90).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: October 1, 2019.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23651, telephone (757) 247-2248 or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments establish for 2019-2020 the (i) areas of public oyster harvest, (ii) duration of public oyster harvest seasons, and (iii) public oyster harvest management measures.

4VAC20-720-20. Definitions.

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

"Aid to navigation" means any public or private day beacon, lighted channel marker, channel buoy, lighted channel buoy, or lighthouse that may be at, or adjacent to, any latitude and longitude used in area descriptions.

"Clean culled oyster" means any oyster taken from natural public beds, rocks, or shoals that is three inches or greater in shell length.

"Coan River Area" means the Public Grounds within the Coan River excluding Public Grounds 77 and 78 of Northumberland County.

Public Ground 77 of Northumberland County is located near the mouth of the Coan River, beginning at a point

approximately 2,300 feet northeast of Honest Point and 1,300 feet southwest of Travis Point, said point being Corner 1, located at Latitude 37° 59.5257207' N., Longitude 76° 27.8810639' W.; thence southwesterly to Corner 2, Latitude 37° 59.3710259' N., Longitude 76° 27.9962148' W.; thence southwesterly to Corner 3, Latitude 37° 59.2953830' N., Longitude 76° 28.0468953' W.; thence northwesterly to Corner 4, Latitude 37° 59.3350863' N., Longitude 76° 28.0968837' W.; thence northeasterly to Corner 5, Latitude 37° 59.3965161' N., Longitude 76° 28.0287342' W.; thence northwesterly to Corner 6, Latitude 37° 59.4758507' N., Longitude 76° 28.1112280' W.; thence north-northwesterly to Corner 7, Latitude 37° 59.5079401' N., Longitude 76° 28.1230058' W.; thence northeasterly to Corner 8, Latitude 37° 59.5579153' N., Longitude 76° 27.9889429' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

Public Ground 78 of Northumberland County is located near the mouth of the Coan River, beginning at a point approximately 3,420 feet southeast of Travis Point and 3,260 feet northwest of Great Point, said point being Corner 1, located at Latitude 37° 59.4822275' N., Longitude 76° 27.1878637' W.; thence southeasterly to Corner 2, Latitude 37° 59.3824046' N., Longitude 76° 27.1088650' W.; thence southwesterly to Corner 3, Latitude 37° 59.2283287' N., Longitude 76° 27.8632901' W.; thence northeasterly to Corner 4, Latitude 37° 59.4368502' N., Longitude 76° 27.6868001' W.; thence continuing northeasterly to Corner 5, Latitude 37° 59.5949216' N., Longitude 76° 27.5399436' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

"Deep Rock Area" means all public grounds and unassigned grounds, in that area of the Chesapeake Bay near Gwynn Island, beginning at Cherry Point at the western-most point of the eastern headland of Kibble Pond located at Latitude 37° 30.9802148' N., Longitude 76° 17.6764393' W.; thence northeasterly to the Piankatank River, Flashing Green Channel Light "3", Latitude 37° 32.3671325' N., Longitude 76° 16.7038334' W.; thence east-southeasterly to the Rappahannock River Entrance Lighted Buoy G"1R", Latitude 37° 32.2712833' N., Longitude 76° 11.4813666' W.; thence southwesterly to the southern-most point of Sandy Point, the northern headland of "The Hole in the Wall", Latitude 37° 28.1475258' N., Longitude 76° 15.8185670' W.; thence northwesterly along the Chesapeake Bay mean low water line of the barrier islands of Milford Haven, connecting headland

Regulations

to headland at their eastern-most points, and of Gwynn Island to the western-most point of the eastern headland of Kibble Pond on Cherry Point, said point being the point of beginning.

"Deep Water Shoal State Replenishment Seed Area" or "DWS" means that area in the James River near Mulberry Island, beginning at a point approximately 530 feet west of Deep Water Shoal Light, said point being Corner 1, located at Latitude 37° 08.9433287' N., Longitude 76° 38.3213007' W.; thence southeasterly to Corner 2, Latitude 37° 09.5734380' N., Longitude 76° 37.8300582' W.; thence southwesterly to Corner 3, Latitude 37° 08.9265524' N., Longitude 76° 37.0574269' W.; thence westerly to Corner 4, Latitude 37° 08.4466039' N., Longitude 76° 37.4523346' W.; thence northwesterly to Corner 5, Latitude 37° 08.4491489' N., Longitude 76° 38.0215553' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

"Great Wicomico River Rotation Area 1" means all public grounds and unassigned grounds, in that area of the Great Wicomico River, Ingram Bay, and the Chesapeake Bay, beginning at a point on Sandy Point, Latitude 37° 49.3269652' N., Longitude 76° 18.3821766' W.; thence easterly to the southern-most point of Cockrell Point, Latitude 37° 49.2664838' N., Longitude 76° 17.3454434' W.; thence easterly following the mean low water line of Cockrell Point to a point on the boundary of Public Ground 115 at Cash Point, Latitude 37° 49.2695619' N., Longitude 76° 17.2804046' W.; thence southeasterly to the gazebo on the pier head at Fleeton Point, Latitude 37° 48.7855824' N., Longitude 76° 16.9609311' W.; thence southeasterly to the Great Wicomico River Light; Latitude 37° 48.2078167' N., Longitude 76° 15.9799333' W.; thence westerly to a point on the offshore end of the southern jetty at the entrance to Towles Creek, Latitude 37° 48.3743771' N., Longitude 76° 17.9600320' W.; thence northerly crossing the entrance to Towles Creek at the offshore ends of the jetties and continuing along the mean low water line to Bussel Point, Latitude 37° 48.6879208' N., Longitude 76° 18.4670860' W.; thence northwesterly to the northern headland of Cranes Creek, Latitude 37° 48.8329168' N., Longitude 76° 18.7308073' W.; thence following the mean low water line northerly to a point on Sandy Point, Latitude 37° 49.3269652' N., Longitude 76° 18.3821766' W., said point being the point of beginning.

"Great Wicomico River Rotation Area 2" means all public grounds and unassigned grounds, in that area of the Great Wicomico River, Ingram Bay, and the Chesapeake Bay, beginning at a point on Great Wicomico River Light, Latitude 37° 48.2078167' N., Longitude 76° 15.9799333' W.; thence due south to a point due east of the southern-most point of Dameron Marsh, Latitude 37° 46.6610003' N., Longitude 76° 16.0570007' W.; thence due west to the southern-most point of Dameron Marsh, Latitude 37° 46.6609070' N., Longitude 76° 17.2670707' W.; thence along the mean low water line of

Dameron Marsh, north and west to Garden Point, Latitude 37° 47.2519872' N., Longitude 76° 18.4028142' W.; thence northwesterly to Windmill Point, Latitude 37° 47.5194547' N., Longitude 76° 18.7132194' W.; thence northerly along the mean low water line to the western headland of Harveys Creek, Latitude 37° 47.7923573' N., Longitude 76° 18.6881450' W.; thence east-southeasterly to the eastern headland of Harveys Creek, Latitude 37° 47.7826936' N., Longitude 76° 18.5469879' W.; thence northerly along the mean low water line to a point on the offshore end of the southern jetty at the entrance to Towles Creek, Latitude 37° 48.3743771' N., Longitude 76° 17.9600320' W.; thence easterly to Great Wicomico River Light, Latitude 37° 48.2078167' N., Longitude 76° 15.9799333' W., said point being the point of beginning.

"Hand scrape" means any device or instrument with a catching bar having an inside measurement of no more than 22 inches, which is used or usable for the purpose of extracting or removing shellfish from a water bottom or the bed of a body of water.

"Hand tong" or "ordinary tong" means any pincers, nippers, tongs, or similar device used in catching oysters, which ~~consist~~ consists of two shafts or handles attached to opposable and complementary pincers, baskets, or containers operated entirely by hand, from the surface of the water and has no external or internal power source.

"James River ~~Hand Scrape~~ Area 1" means all public grounds and unassigned grounds, in that area of the James River, beginning at the Flashing Green Channel Light #5, located at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W.; thence southeasterly to the Flashing Green Channel Light #3, located at Latitude 37° 01.7124500' N., Longitude 76° 31.8210667' W.; thence southeasterly to the Flashing Green Channel Light #1, located at Latitude 37° 00.7666667' N., Longitude 76° 29.9083333' W.; thence southeasterly to the northeast corner of the western draw span pier of the James River Bridge (U.S. Route 17), Latitude 37° 00.1524824' N., Longitude 76° 28.1581984' W.; thence southwesterly along the upstream side of the James River Bridge to the mean low water line; thence northwesterly along the mean low water line, crossing Kings Creek at the headlands and continuing along the mean low water line to a point on the shore at Rainbow Farm Point in line with VMRC Markers "STH" and "SMT," located at Latitude 37° 00.1965862' N., Longitude 76° 34.0712010' W.; thence north-northeasterly to a VMRC Marker "STH," Latitude 37° 00.9815328' N., Longitude 76° 33.5955842' W.; thence to a VMRC Marker "SMT," at Latitude 37° 01.3228160' N., Longitude 76° 33.3887351' W.; thence to the Flashing Green Channel Light #5, at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W., said point being the point of beginning.

"James River ~~Hand Scrape~~ Area 2" means all public grounds and unassigned grounds, in that area of the James River,

beginning at the Flashing Green Channel Light #5, located at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W.; thence northeasterly to a VMRC Marker "NMT," Latitude 37° 02.7740540' N., Longitude 76° 32.0960864' W.; thence to a VMRC Marker "NTH" located at Latitude 37° 03.2030055' N., Longitude 76° 31.4231211' W.; thence to a point on the north shore of the river at Blunt (Blount) Point, said point being in line with VMRC Markers "NMT" and "NTH" and located at Latitude 37° 03.3805862' N., Longitude 76° 31.1444562' W.; thence southeasterly along the mean low water line to the upstream side of the James River Bridge (U.S. Route 17); thence westerly along the James River Bridge to the northeast corner of the western draw span pier, Latitude 37° 00.1524824' N., Longitude 76° 28.1581984' W.; thence northwesterly to the Flashing Green Channel Light #1, located at Latitude 37° 00.7666667' N., Longitude 76° 29.9083333' W.; thence northwesterly to the Flashing Green Channel Light #3, located at Latitude 37° 01.7124500' N., Longitude 76° 31.8210667' W.; thence northwesterly to the Flashing Green Channel Light #5, located at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W., said point being the point of beginning.

"James River ~~Hand-Scrape~~ Area 3" means those public grounds of Isle of Wight County and Nansemond County (City of Suffolk) located in the James River and Nansemond River west of the Monitor Merrimac Memorial Bridge Tunnel (Route I-664), northeast of the Mills E. Godwin, Jr. Bridge (U.S. Route 17) on the Nansemond River, and south of the James River Bridge (U.S. Route 17).

"James River Seed Area" means all public grounds and unassigned grounds in that area of the James River and its tributaries with a southeastern boundary beginning at a point on the shore on the south side of the river at Rainbow Farm Point in Isle of Wight County located at Latitude 37° 00.1965862' N., Longitude 76° 34.0712010' W.; thence north-northeasterly to a VMRC Marker "STH," Latitude 37° 00.9815328' N., Longitude 76° 33.5955842' W.; thence to a VMRC Marker "SMT," at Latitude 37° 01.3228160' N., Longitude 76° 33.3887351' W.; thence to the Flashing Green Channel Light #5, at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W.; thence northeasterly to a VMRC Marker "NMT," Latitude 37° 02.7740540' N., Longitude 76° 32.0960864' W.; thence to a VMRC Marker "NTH" located at Latitude 37° 03.2030055' N., Longitude 76° 31.4231211' W.; thence to a point on the north shore of the river at Blunt (Blount) Point, in the City of Newport News, located at Latitude 37° 03.3805862' N., Longitude 76° 31.1444562' W.; the northern boundary, being a straight line, beginning at a point on the shore on the east side of the river in the City of Newport News, at Latitude 37° 08.4458787' N., Longitude 76° 37.2855533' W.; thence westerly to the southeast corner of the Deep Water Shoal State Replenishment Seed Area, Latitude 37° 08.4466039' N., Longitude 76° 37.4523346' W.; thence westerly to the southwest corner of the Deep Water

Shoal State Replenishment Seed Area, Latitude 37° 08.4490472' N., Longitude 76° 38.0215554' W.; thence westerly to a point on the shore on the west side of the river at the mouth of Lawnes Creek in Isle of Wight County, Latitude 37° 08.4582990' N., Longitude 76° 40.2816023' W.

"Latitude and longitude" means values that are based upon a geodetic reference system of the North American Datum of 1983 (NAD83). When latitude and longitude are used in any area description, in conjunction with any physical landmark, to include aids to navigation, the latitude and longitude value is the legal point defining the boundary.

"Little Wicomico River" means that area of the Little Wicomico River inside of Public Ground 43 of Northumberland County, located in the Little Wicomico River near Bridge Creek, beginning at a point approximately 150 feet north of Peachtree Point, said point being Corner 1, located at Latitude 37° 53.2910650' N., Longitude 76° 16.7312926' W.; thence southwesterly to Corner 2, Latitude 37° 53.2601877' N., Longitude 76° 16.8662408' W.; thence northwesterly to Corner 3, Latitude 37° 53.2678470' N., Longitude 76° 16.8902408' W.; thence northeasterly to Corner 4, Latitude 37° 53.3113148' N., Longitude 76° 16.8211543' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

"Milford Haven" means that area of Milford Haven inside of Public Ground 7 of Mathews County, beginning at a point approximately 1,380 feet east of Point Breeze, said point being Corner 1, located at Latitude 37° 28.3500000' N., Longitude 76° 16.5000000' W.; thence northeasterly to Corner 2, Latitude 37° 28.3700000' N., Longitude 76° 16.4700000' W.; thence southeasterly to Corner 3, Latitude 37° 28.3500000' N., Longitude 76° 16.4200000' W.; thence southwesterly to Corner 4, Latitude 37° 28.3200000' N., Longitude 76° 16.4500000' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

"Mobjack Bay Area" means that area of Mobjack Bay consisting of Public Ground 2 of Mathews County (Pultz Bar) and Public Ground 25 of Gloucester County (Tow Stake) described as:

Public Ground 2 of Mathews County, known as Pultz Bar, is located in Mobjack Bay, beginning at a point approximately 5,420 feet south of Minter Point, said point being Corner 1, located at Latitude 37° 21.2500000' N., Longitude 76° 21.3700000' W.; thence easterly to Corner 2, Latitude 37° 21.2700000' N., Longitude 76° 20.9600000' W.; thence southerly to Corner 3, Latitude 37° 21.0200000' N., Longitude 76° 20.9400000' W.; thence westerly to Corner 4, Latitude 37° 21.0500000' N., Longitude 76° 21.3300000' W.; thence northerly to Corner 1, said corner being the point of beginning.

Public Ground 25 of Gloucester County, known as Tow Stake, is located in Mobjack Bay, near the mouth of the

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Severn River, beginning at a point approximately 2,880 feet east-northeast of Tow Stake Point, said point being Corner 1, located at Latitude 37° 20.3883888' N., Longitude 76° 23.5883836' W.; thence northeasterly to Corner 2, Latitude 37° 30.5910482' N., Longitude 76° 23.2372184' W.; thence southeasterly to Corner 3, Latitude 37° 20.3786971' N., Longitude 76° 22.7241180' W.; thence southwesterly to Corner 4, Latitude 37° 19.8616759' N., Longitude 76° 23.5914937' W.; thence northwesterly to Corner 5, Latitude 37° 20.0284019' N., Longitude 76° 23.7717423' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

"Nomini Creek Area" means that area of Nomini Creek inside of Public Grounds 26 and 28 of Westmoreland County.

Public Ground 26 of Westmoreland County is located in Nomini Creek, north of Beales Wharf and east of Barnes Point, beginning at a point approximately 1,400 feet north of Barnes Point, said point being Corner 1, located at Latitude 38° 07.2690219' N., Longitude 76° 42.6784210' W.; thence southeasterly to Corner 2, Latitude 38° 07.0924060' N., Longitude 76° 42.4745767' W.; thence southwesterly to Corner 3, Latitude 38° 06.8394053' N., Longitude 76° 42.6704025' W.; thence northwesterly to Corner 4, Latitude 38° 06.8743004' N., Longitude 76° 42.7552151' W.; thence northeasterly to Corner 5, Latitude 38° 07.0569717' N., Longitude 76° 42.5603535' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 28 of Westmoreland County is located at the mouth of Nomini Creek, beginning at a point approximately 50 feet west of White Oak Point, said point being Corner 1, located at Latitude 38° 07.6429987' N., Longitude 76° 43.0337082' W.; thence south-southeasterly to Corner 2, Latitude 38° 07.2987193' N., Longitude 76° 43.1101420' W.; thence northwesterly to Corner 3, Latitude 38° 07.7029267' N., Longitude 76° 43.3337762' W.; thence west to the mean low water line, Latitude 38° 07.7031535' N., Longitude 76° 43.3378345' W.; thence northerly and westerly along the mean low water line of Nomini Creek to a point southwest of Cedar Island, Latitude 38° 07.8986449' N., Longitude 76° 43.6329097' W.; thence northeasterly to a point on the mean low water line at the southern-most point of Cedar Island, Latitude 38° 07.8986449' N., Longitude 76° 43.6329097' W.; thence following the mean low water line of the southern and eastern sides of Cedar Island to a point, Latitude 38° 08.0164430' N., Longitude 76° 43.4773169' W.; thence northeasterly to Corner 4, Latitude 38° 08.0712849' N., Longitude 76° 43.4416606' W.; thence northeasterly to a point on the northern headland of Nomini Creek at the mean low water line, said point being Corner 5, Latitude 38° 08.2729626' N., Longitude 76° 43.3105315' W.; thence following the mean low water line of White Point to a point northwest of Snake Island, Corner 6, Latitude 38°

08.4066960' N., Longitude 76° 42.9105565' W.; thence southeast, crossing the mouth of Buckner Creek, to a point on the mean low water line of Snake Island, Corner 7, Latitude 38° 08.3698254' N., Longitude 76° 42.8939656' W.; thence southeasterly following the mean low water line of Snake Island to Corner 8, Latitude 38° 08.2333798' N., Longitude 76° 42.7778877' W.; thence south-southwesterly, crossing the mouth of Buckner Creek, to Corner 9, Latitude 38° 08.2134371' N., Longitude 76° 42.7886409' W.; thence southeasterly to a point on the mean low water line of the southern headland of Buckner Creek, Corner 10, Latitude 38° 08.1956281' N., Longitude 76° 42.7679625' W.; thence southwesterly following the mean low water line of Nomini Creek, crossing the mouth of an ~~un-named~~ unnamed cove at the narrowest point between the headlands and continuing to follow the mean low water line to a point on White Oak Point, Latitude 38° 07.6428228' N., Longitude 76° 43.0233530' W.; thence west to Corner 1, said point being the point of beginning.

"Oyster" means any shellfish of the species *Crassostrea virginica*.

"Oyster dredge" means any device having a maximum weight of 150 pounds with attachments, maximum width of 50 inches, and maximum tooth length of four inches.

"Oyster patent tong" means any patent tong not exceeding 100 pounds in gross weight, including any attachment other than rope and with the teeth not to exceed four inches in length.

"Oyster resource user fee" means a fee that must be paid each calendar year by anyone who grows, harvests, shucks, packs, or ships oysters for commercial purposes.

"Pocomoke Sound Area" means that area of Pocomoke Sound inside of Public Ground 9 of Accomack County.

Public Ground 9 of Accomack County is located in the Pocomoke Sound, beginning at a corner on the Maryland-Virginia state line, located in the Pocomoke Sound approximately 1.06 nautical miles north-northeast of the northern-most point of North End Point, said point being Corner 1, located at Latitude 37° 57.2711566' N., Longitude 75° 42.2870790' W. (NAD83); thence east-northeasterly along the Maryland-Virginia state line to Corner 2, Latitude 37° 57.2896577' N., Longitude 75° 41.9790727' W.; thence southerly to Corner 3, Latitude 37° 57.2574850' N., Longitude 75° 41.9790730' W.; thence southwesterly to Corner 4, Latitude 37° 57.2288700' N., Longitude 75° 42.0077287' W.; thence west-southwesterly to Corner 5, Latitude 37° 57.2034533' N., Longitude 75° 42.1511250' W.; thence south-southwesterly to Corner 6, Latitude 37° 57.0940590' N., Longitude 75° 42.1935214' W.; thence south-southeasterly to Corner 7, Latitude 37° 57.0551726' N., Longitude 75° 42.1814457' W.; thence southwesterly to Corner 8, Latitude 37° 56.9408327' N.,

Longitude 75° 42.2957912' W.; thence south-southwesterly to Corner 9, Latitude 37° 56.6574947' N., Longitude 75° 42.3790819' W.; thence southwesterly to Corner 10, Latitude 37° 56.5790952' N., Longitude 75° 42.5228752' W.; thence west-southwesterly to Corner 11, Latitude 37° 56.5712564' N., Longitude 75° 42.5915437' W.; thence south-southeasterly to Corner 12, Latitude 37° 56.5441067' N., Longitude 75° 42.5869894' W.; thence southwesterly to Corner 13, Latitude 37° 56.4575045' N., Longitude 75° 42.7458050' W.; thence west-southwesterly to Corner 14, Latitude 37° 56.2575123' N., Longitude 75° 43.3791097' W.; thence southwesterly to Corner 15, Latitude 37° 55.7408688' N., Longitude 75° 43.7957804' W.; thence westerly to Corner 16, Latitude 37° 55.7575327' N., Longitude 75° 43.9458298' W.; thence northwesterly to Corner 17, Latitude 37° 55.8908661' N., Longitude 75° 44.1291309' W.; thence north-northeasterly to Corner 18, Latitude 37° 55.9908639' N., Longitude 75° 44.0791266' W.; thence northeasterly to Corner 19, Latitude 37° 56.1241858' N., Longitude 75° 43.8791328' W.; thence north-northeasterly to Corner 20, Latitude 37° 56.4075136' N., Longitude 75° 43.7291361' W.; thence northeasterly to Corner 21, Latitude 37° 56.8241664' N., Longitude 75° 43.2624601' W.; thence north-northeasterly to Corner 22, Latitude 37° 57.0706006' N., Longitude 75° 43.1480402' W.; thence east-northeasterly along the Maryland-Virginia state line to Corner 1, said corner being the point of beginning.

Public Ground 10 of Accomack County is located in the Pocomoke Sound, beginning at a corner on the Maryland-Virginia state line, located in the Pocomoke Sound approximately 2.3 nautical miles westerly of the northernmost point of North End Point, said point being Corner 1, located at Latitude 37° 56.4741881' N., Longitude 75° 45.7051676' W. (NAD83); thence east-northeasterly along the Maryland-Virginia state line to Corner 2, Latitude 37° 56.9261140' N., Longitude 75° 43.7679786' W.; thence south-southwesterly to Corner 3, Latitude 37° 56.1241948' N., Longitude 75° 44.3624962' W.; thence west-southwesterly to Corner 4, Latitude 37° 56.0820561' N., Longitude 75° 44.5826292' W.; thence northerly to Corner 5, Latitude 37° 56.1377309' N., Longitude 75° 44.5817745' W.; thence west-southwesterly to Corner 6, Latitude 37° 56.1259751' N., Longitude 75° 44.6226859' W.; thence southwesterly to Corner 7, Latitude 37° 56.1039335' N., Longitude 75° 44.6692334' W.; thence southerly to Corner 8, Latitude 37° 56.0643616' N., Longitude 75° 44.6750106' W.; thence west-southwesterly to Corner 9, Latitude 37° 55.9742005' N., Longitude 75° 45.1458109' W.; thence west-northwesterly to Corner 10, Latitude 37° 56.0741973' N., Longitude 75° 45.8958329' W.; thence north-northwesterly to Corner 11, Latitude 37° 56.2565760' N., Longitude 75° 46.0000557' W.; thence northeasterly along the Maryland-Virginia state line to Corner 1, said corner being the point of beginning.

"Pocomoke and Tangier Sounds Management Area" or "PTSMA" means the area as defined in § 28.2-524 of the Code of Virginia.

"Pocomoke and Tangier Sounds Rotation Area 1" means all public grounds and unassigned grounds, within an area of the PTSMA, in Pocomoke and Tangier Sounds, bounded by a line beginning at a point on the Maryland-Virginia state line, located at Latitude 37° 54.6136000' N., Longitude 75° 53.9739600' W.; thence south to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence westerly to a point, Latitude 37° 53.3633500' N., Longitude 75° 56.5589600' W.; thence south to a point, Latitude 37° 48.4429100' N., Longitude 75° 56.4883600' W.; thence easterly to the north end of Watts Island, Latitude 37° 48.7757800' N., Longitude 75° 53.5994100' W.; thence northerly to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence southeasterly to Pocomoke Sound Shoal Flashing Light Red "8", Latitude 37° 52.4583300' N., Longitude 75° 49.4000000' W.; thence southeasterly to Messongo Creek Entrance Buoy Green Can "1", Latitude 37° 52.1000000' N., Longitude 75° 47.8083300' W.; thence southeast to Guilford Flats Junction Light Flashing 2+1 Red "GF", Latitude 37° 50.9533300' N., Longitude 75° 46.6416700' W.; thence southerly to a point on a line from Guilford Flats Junction Light to the northernmost point of Russell Island, where said line intersects the PTSMA boundary, Latitude 37° 48.4715943' N., Longitude 75° 46.9955932' W.; thence clockwise following the PTSMA boundary to a point on the Maryland-Virginia state line, said point being the point of beginning.

"Pocomoke and Tangier Sounds Rotation Area 2" means all public grounds and unassigned grounds, within an area of the PTSMA, in Pocomoke and Tangier Sounds, bounded by a line beginning at the house on Great Fox Island, located at Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence southerly to the north end of Watts Island, Latitude 37° 48.7757800' N., Longitude 75° 53.5994100' W.; thence westerly to a point, Latitude 37° 48.4429100' N., Longitude 75° 56.4883600' W.; thence northerly to a point, Latitude 37° 53.3633500' N., Longitude 75° 56.5589600' W.; thence easterly to the house on Great Fox Island, said house being the point of beginning. Also, Pocomoke and Tangier Sounds Rotation Area 2 shall include all public grounds and unassigned grounds in the PTSMA in Pocomoke Sound bounded by a line beginning at a point on the Maryland-Virginia state line, Latitude 37° 54.6136000' N., Longitude 75° 53.9739600' W.; thence following the PTSMA boundary clockwise to a point on the line from the northernmost point of Russell Island to Guilford Flats Junction Light Flashing 2+1 Red "GF", where said line intersects the PTSMA boundary, Latitude 37° 48.4715943' N., Longitude 75° 46.9955932' W.; thence northerly to Guilford Flats Junction Light Flashing 2+1 Red "GF", Latitude 37° 50.9533300' N.,

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Longitude 75° 46.6416700' W.; thence northwesterly to Messongo Creek Entrance Buoy Green Can "1", Latitude 37° 52.1000000' N., Longitude 75° 47.8083300' W.; thence northwesterly to Pocomoke Sound Shoal Flashing Light Red "8", Latitude 37° 52.4583300' N., Longitude 75° 49.4000000' W.; thence northwesterly to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence northerly to a point on the Maryland-Virginia state line, said point being the point of beginning.

"Public oyster ground" means all those grounds defined in § 28.2-551 of the Code of Virginia or by any other acts of the General Assembly pertaining to those grounds, all those grounds set aside by court order, and all those grounds set aside by order of the Marine Resources Commission, and may be redefined by any of these legal authorities.

"Rappahannock River Area 7" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Rogue Point, located at Latitude 37° 40.0400000' N., Longitude 76° 32.2530000' W.; thence west-northwesterly to Flashing Red Buoy "8", Latitude 37° 40.1580000' N., Longitude 76° 32.9390000' W.; thence southwesterly to Balls Point, Latitude 37° 39.3550000' N., Longitude 76° 34.4440000' W.; and bounded upstream by a line from Punchbowl Point, Latitude 37° 44.6750000' N., Longitude 76° 37.3250000' W.; thence southeasterly to Monaskon Point, Latitude 37° 44.0630000' N., Longitude 76° 34.1080000' W.

"Rappahannock River Area 8" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Monaskon Point, located at Latitude 37° 44.0630000' N., Longitude 76° 34.1080000' W.; thence northwesterly to Punchbowl Point, Latitude 37° 44.6750000' N., Longitude 76° 37.3250000' W.; and bounded upstream by a line from Jones Point, Latitude 37° 46.7860000' N., Longitude 76° 40.8350000' W.; thence north-northwesterly to Sharps Point, Latitude 37° 49.3640000' N., Longitude 76° 42.0870000' W.

"Rappahannock River Area 9" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Sharps Point, located at Latitude 37° 49.3640000' N., Longitude 76° 42.0870000' W.; thence south-southeasterly to Jones Point, Latitude 37° 46.7860000' N., Longitude 76° 40.8350000' W.; and bounded upstream by the Thomas J. Downing Bridge (U.S. Route 360).

"Rappahannock River Rotation Area 1" means all public grounds, in that area of the Rappahannock River and Chesapeake Bay, bounded by a line offshore and across the mouth of the Rappahannock River from a point on the mean low water line of Windmill Point, located at Latitude 37° 36.8200000' N., Longitude 76° 16.9460000' W.; thence southeast to Windmill Point Light, Latitude 37° 35.7930000' N., Longitude 76° 14.1800000' W.; thence southwesterly to Stingray Point Light, Latitude 37° 33.6730000' N., Longitude

76° 16.3620000' W.; thence westerly to a point on the mean low water line of Stingray Point, Latitude 37° 33.6920000' N., Longitude 76° 17.9860000' W.; and bounded upstream by a line from the mean low water line west of Broad Creek, Latitude 37° 33.9520000' N., Longitude 76° 19.3090000' W.; thence northeasterly to a VMRC Buoy on the Baylor line, Latitude 37° 34.5310000' N., Longitude 76° 19.1430000' W.; thence northeasterly to a VMRC Buoy, Latitude 37° 34.6830000' N., Longitude 76° 19.1000000' W.; thence northwesterly to a VMRC Buoy, Latitude 37° 35.0170000' N., Longitude 76° 19.4500000' W.; thence northwesterly to Sturgeon Bar Light "7R", Latitude 37° 35.1500000' N., Longitude 76° 19.7330000' W.; thence continuing northwesterly to Mosquito Point Light "8R", Latitude 37° 36.1000000' N., Longitude 76° 21.3000000' W.; thence northwesterly to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.

"Rappahannock River Rotation Area 2" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from the southern-most corner of the house on Mosquito Point, located at Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.; thence southeast to Mosquito Point Light "8R", Latitude 37° 36.1000000' N., Longitude 76° 21.3000000' W.; thence continuing southeasterly to Sturgeon Bar Beacon "7R", Latitude 37° 35.1500000' N., Longitude 76° 19.7330000' W.; thence west-southwesterly to a VMRC Buoy, Latitude 37° 34.9330000' N., Longitude 76° 21.0500000' W.; thence southwesterly to a VMRC Buoy, Latitude 37° 34.8830000' N., Longitude 76° 21.1000000' W.; thence southwesterly to a pier west of Hunting Creek at Grinels, Latitude 37° 34.4360000' N., Longitude 76° 26.2880000' W.; and bounded on the upstream by a line from Mill Creek Channel Marker "4", Latitude 37° 35.0830000' N., Longitude 76° 26.9500000' W.; thence northeasterly to Mill Creek Channel Marker "2", Latitude 37° 35.4830000' N., Longitude 76° 24.5670000' W.; thence northeasterly to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.

"Rappahannock River Rotation Area 3" means all public grounds, in that area of the Rappahannock River, beginning from the north channel fender at the Robert O. Norris, Jr. Bridge, located at Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence southeast to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.; thence southwest to Mill Creek Channel Marker "2", Latitude 37° 35.4830000' N., Longitude 76° 24.5670000' W.; thence southwesterly to Mill Creek Channel Marker "4", Latitude 37° 35.0830000' N., Longitude 76° 24.9500000' W.; thence northeasterly to Parrotts Creek Channel Marker "1", Latitude 37° 36.0330000' N., Longitude 76° 25.4170000' W.; thence northerly to VMRC Buoy, Latitude 37° 36.3330000' N.,

Longitude 76° 25.2000000' W.; thence northerly to the north channel fender of the Robert O. Norris, Jr. Bridge, said point being the point of beginning.

"Rappahannock River Rotation Area 4" means all public grounds, in that area of the Rappahannock River, Corrotoman River and Carter Creek, beginning at the White Stone end of the Robert O. Norris, Jr. Bridge (State Route 3), located at Latitude 37° 38.1290000' N., Longitude 76° 24.7220000' W.; thence along said bridge to the north channel fender, Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence westerly to the VMRC Buoy "5-4", Latitude 37° 38.0050000' N., Longitude 76° 30.0280000' W.; thence northerly to Old House Point, Latitude 37° 39.1390000' N., Longitude 76° 29.6850000' W.; thence northeasterly to Ball Point, Latitude 37° 41.6600000' N., Longitude 76° 28.6320000' W.; thence southeasterly to VMRC reef marker "Ferry Bar – North", Latitude 37° 40.3000000' N., Longitude 76° 28.5000000' W.; thence southwesterly to VMRC reef marker "Ferry Bar – South", Latitude 37° 40.1670000' N., Longitude 76° 28.5830000' W.; thence southeasterly to a duck blind west of Corrotoman Point, Latitude 37° 39.8760000' N., Longitude 76° 28.4200000' W.; thence southerly to VMRC Buoy "543", Latitude 37° 39.2670000' N., Longitude 76° 27.8500000' W.; thence southerly to VMRC Buoy "Drumming-West", Latitude 37° 38.8830000' N., Longitude 76° 27.6830000' W.; thence southerly to VMRC Buoy "Drumming-East", Latitude 37° 38.8330000' N., Longitude 76° 27.5670000' W.; thence northeasterly to Orchard Point, Latitude 37° 38.9240000' N., Longitude 76° 27.1260000' W.

"Rappahannock River Rotation Area 5" means all public grounds, in that area of the Rappahannock River, beginning at the Greys Point end of the Robert O. Norris, Jr. Bridge (State Route 3), located at Latitude 37° 36.8330000' N., Longitude 76° 25.9990000' W.; thence northeasterly along the bridge to the north channel fender, Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence west-northwesterly to VMRC Buoy "5-4", Latitude 37° 38.0050000' N., Longitude 76° 30.0280000' W.; thence westerly to Buoy "R6", Latitude 37° 38.0330000' N., Longitude 76° 30.2830000' W.; thence south to the eastern headland of Whiting Creek, Latitude 37° 36.6580000' N., Longitude 76° 30.3120000' W.

"Rappahannock River Rotation Area 6" means all public grounds, in that area of the Rappahannock River, beginning on the eastern headland of Whiting Creek, located at Latitude 37° 36.6580000' N., Longitude 76° 30.3120000' W.; thence north to Buoy "R6", Latitude 37° 38.0330000' N., Longitude 76° 30.2830000' W.; thence northwesterly to VMRC White House Sanctuary Buoy, Latitude 37° 38.1500000' N., Longitude 76° 30.5330000' W.; thence northwesterly to VMRC Towles Point Area Buoy, Latitude 37° 38.8330000' N., Longitude 76° 31.5360000' W.; thence northwesterly to Flashing Red Buoy "8" off Rogue Point, Latitude 37° 40.1580000' N., Longitude 76° 32.9390000' W.; thence

southwesterly to Balls Point, Latitude 37° 39.3550000' N., Longitude 76° 34.4440000' W.

"Seed oyster" means any oyster taken by any person from natural beds, rocks, or shoals that is more than 30 days from harvest for human consumption.

"Unassigned ground" means all grounds not assigned pursuant to §§ 28.2-600 through 28.2-633 of the Code of Virginia, established pursuant to § 28.2-551 of the Code of Virginia, or set aside by court order, or those grounds set aside by declarations or regulation by the Marine Resources Commission, and may be redefined by any of these legal authorities.

"Upper Chesapeake Bay - Blackberry Hangs Area" means all public grounds and unassigned grounds, in that area of the Chesapeake Bay, bounded by a line, beginning at a point approximately 300 feet east of the mean low water line of the Chesapeake Bay and approximately 1,230 feet southwest of the end of the southern-most stone jetty at the mouth of the Little Wicomico River, said point being Corner 1, Latitude 37° 53.1811193' N., Longitude 76° 14.1740146' W.; thence east-southeasterly to Corner 2, Latitude 37° 52.9050025' N., Longitude 76° 11.9357257' W.; thence easterly to Corner 3, Latitude 37° 52.9076552' N., Longitude 76° 11.6098145' W.; thence southwesterly to Corner 4, Latitude 37° 52.8684955' N., Longitude 76° 11.6402444' W.; thence east-southeasterly to Corner 5, Latitude 37° 52.7924853' N., Longitude 76° 11.0253352' W.; thence southwesterly to Corner 6, Latitude 37° 49.4327736' N., Longitude 76° 13.2409959' W.; thence northwesterly to Corner 7, Latitude 37° 50.0560555' N., Longitude 76° 15.0023234' W.; thence north-northeasterly to Corner 8, Latitude 37° 50.5581183' N., Longitude 76° 14.8772805' W.; thence north-northeasterly to Corner 9, Latitude 37° 52.0260950' N., Longitude 76° 14.5768550' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

"Yeocomico River Area" means that area of the North West Yeocomico River, inside Public Ground 8 of Westmoreland County and those areas of the South Yeocomico River inside Public Grounds 100, ~~102, 104,~~ 107, and 112 of Northumberland County described as:

Public Ground 8 of Westmoreland County is located in the North West Yeocomico River, beginning at a point approximately 1,455 feet northeast of Crow Bar and 1,850 feet northwest of White Point, said point being Corner 1, located at Latitude 38° 02.7468214' N., Longitude 76° 33.0775726' W.; thence southeasterly to Corner 2, Latitude 38° 02.7397202' N., Longitude 76° 33.0186286' W.; thence southerly to Corner 3, Latitude 38° 02.6021644' N., Longitude 76° 33.0234175' W.; thence westerly to Corner 4, Latitude 38° 02.6006669' N., Longitude 76° 33.0824799' W.; thence northerly to Corner 1, said corner being the point of beginning.

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Public Ground 100 of Northumberland County is located in the South Yeocomico River, beginning at said point being Corner 1, located at Latitude 38° 00.2292779' N., Longitude 76° 32.2244222' W.; thence southwesterly to Corner 2, Latitude 38° 00.2183904' N., Longitude 76° 32.2488009' W.; thence westerly to Corner 3, Latitude 38° 00.2156893' N., Longitude 76° 32.3156220' W.; thence northwesterly to Corner 4, Latitude 38° 00.4024997' N., Longitude 76° 32.3338888' W.; thence continuing northeasterly to Corner 5, Latitude 38° 00.5806170' N., Longitude 76° 32.1957546' W.; thence continuing easterly to Corner 6, Latitude 38° 00.5798424' N., Longitude 76° 31.9506788' W., thence continuing southeasterly to Corner 7, Latitude 38° 00.5076459' N., Longitude 76° 31.9387425' W.; thence heading along the mean low water southwesterly to Corner 1, said corner being the point of beginning.

Public Ground 102 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 630 feet south of Mundy Point and 1,745 feet southwest of Tom Jones Point, said point being Corner 1, located at Latitude 38° 01.2138059' N., Longitude 76° 32.5577201' W.; thence east-northeasterly to Corner 2, Latitude 38° 01.2268644' N., Longitude 76° 32.4497849' W.; thence southwesterly to Corner 3, Latitude 38° 01.1091209' N., Longitude 76° 32.5591101' W.; thence northerly to Corner 1, said corner being the point of beginning.

Public Ground 104 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 670 feet north of Walker Point and 1,900 feet northwest of Palmer Point, said point being Corner 1, located at Latitude 38° 00.8841841' N., Longitude 76° 32.6106215' W.; thence southeasterly to Corner 2, Latitude 38° 00.8609163' N., Longitude 76° 32.5296302' W.; thence southeasterly to Corner 3, Latitude 38° 00.6693092' N., Longitude 76° 32.4161866' W.; thence southwesterly to Corner 4, Latitude 38° 00.6418466' N., Longitude 76° 32.5394849' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 107 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 1,000 feet southwest of Barn Point and 1,300 feet northwest of Tom Jones Point, said point being Corner 1, located at Longitude 38° 01.1389367' N., Latitude 76° 32.3425617' W.; thence east-southeasterly to Corner 2, Latitude 38° 01.4106421' N., Longitude 76° 32.1077962' W.; thence southwesterly to Corner 3, Latitude 38° 01.2717197' N., Longitude 76° 32.2917989' W.; thence north-northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 112 of Northumberland County is located in the Yeocomico River, beginning at said point being

Corner 1, located at Latitude 38° 01.8449428' N., Longitude 76° 32.2191877' W.; thence northeasterly to Corner 2, Latitude 38° 01.8783929' N., Longitude 76° 31.9970988' W.; thence southeasterly to Corner 3, Latitude 38° 01.7997003' N., 76° 31.9569302' W.; thence continuing southeasterly to Corner 4, Latitude 38° 01.6848729' N., Longitude 76° 31.5931801' W.; thence southerly to Corner 5, Latitude 38° 01.5760153' N., 76° 31.5931801' W.; thence westerly to Corner 6, Latitude 38° 01.6860521' N., Longitude 76° 32.2820100' W.; thence northerly to Corner 1, said corner being the point of beginning.

"York River Rotation Area 1" means all public grounds in the York River, within Gloucester County, between a line from Upper York River Flashing Red Channel Marker "8", Latitude 37° 17.8863666' N., Longitude 76° 34.6534166' W.; thence northeasterly to Red Day Marker "2" at the mouth of Cedar Bush Creek, Latitude 37° 18.6422166' N., Longitude 76° 33.8216000' W.; upstream to a line from the Flashing Yellow VIMS Data Buoy "CB", Latitude 37° 20.4670000' N., Longitude 76° 37.4830000' W.; thence northeasterly to the inshore end of the wharf at Clay Bank.

"York River Rotation Area 2" means all public grounds in the York River, within Gloucester County, from the George P. Coleman Memorial Bridge (U.S. Route 17), upstream to a line from Upper York River Flashing Red Channel Marker "8", Latitude 37° 17.8863666' N., Longitude 76° 34.6534166' W.; thence northeasterly to Red Day Marker "2" at the mouth of Cedar Bush Creek, Latitude 37° 18.6422166' N., Longitude 76° 33.8216000' W.

4VAC20-720-40. Open oyster harvest season and areas.

A. It shall be unlawful for any person to harvest oysters from public and unassigned grounds outside of the seasons and areas set forth in this section.

B. It shall be unlawful to harvest clean cull oysters from the public oyster grounds and unassigned grounds except during the lawful seasons and from the lawful areas as described in this subsection.

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, ~~2018~~ 2019, through April 30, ~~2019~~ 2020 (hand tong only).

2. Milford Haven: December 1, ~~2018~~ 2019, through February 28, ~~2019~~ 2020 (hand tong only).

3. Rappahannock River Area 9: November 1, ~~2018~~ 2019, through December 31, ~~2018~~ 2019 (hand tong only).

4. Rappahannock River Area 7: October 1, 2019, through October 31, 2019 (hand tong only).

5. Little Wicomico River: October 1, ~~2018~~ 2019, through December 31, ~~2018~~ 2019 (hand tong only).

- ~~5.~~ 6. Coan River Area: October 1, ~~2018~~ 2019, through December 31, ~~2018~~ 2019 (hand tong only).
- ~~6.~~ 7. Yeocomico River Area: October 1, ~~2018~~ 2019, through December 31, ~~2018~~ 2019 (hand tong only).
- ~~7.~~ 8. Nomini Creek Area: October 1, ~~2018~~ 2019, through December 31, ~~2018~~ 2019 (hand tong only).
- ~~8.~~ Mobjack Bay Area: February 1, 2019, through February 28, 2019.
9. York River Rotation Area 2: November 1, 2019, through November 30, 2019 (hand tong only).
10. James River Areas 1, 2, and 3: October 1, 2019, through October 31, 2019 (hand tong only).
11. York River Rotation Area 2: February 1, 2020, through February 28, 2020 (hand scrape only).
- ~~9.~~ 12. Rappahannock River Rotation Area ~~3~~ 2: November 1, ~~2018~~ 2019, through November ~~11, 2018~~ 30, 2019, and November ~~12, 2018~~ February 1, 2020, through ~~January 10, 2019~~ February 28, 2020 (hand scrape only).
- ~~10.~~ 13. Rappahannock River Rotation Area ~~5~~ 4: ~~October 1, 2018, through November 30, 2018~~ December 1, 2019, through January 31, 2020 (hand scrape only).
- ~~11.~~ 14. Great Wicomico River Rotation Area ~~2~~ 1: December 1, ~~2018~~ 2019, through December 31, ~~2018~~ 2019, and February 1, ~~2019~~ 2020, through February 28, ~~2019~~ 2020 (hand scrape only).
- ~~12.~~ Upper Chesapeake Bay — Blackberry Hangs Area: December 1, 2018, through December 31, 2018, and February 1, 2019, through February 28, 2019.
- ~~13.~~ 15. James River ~~Hand Scrape~~ Areas 1, 2, and 3: November 1, ~~2018~~ 2019, through January 31, ~~2019~~ 2020 (hand scrape only).
- ~~14.~~ James River Hand Scrape Area 2: October 1, 2018, through December 31, 2018.
- ~~15.~~ 16. Pocomoke Sound Rotation Area ~~2~~ 1: December 1, ~~2018~~ 2019, through ~~January 31, 2019~~ February 28, 2020 (dredge only).
- ~~16.~~ 17. Tangier Sound Rotation Area ~~2~~ 1: December 1, ~~2018~~ 2019, through February 28, ~~2019~~ 2020 (dredge only).
- ~~17.~~ Pocomoke Sound Area: November 1, 2018, through November 30, 2018.
- ~~18.~~ Rappahannock River Area 8: October 1, 2018, through October 31, 2018 (patent tong only), and December 1, 2018, through December 31, 2018 (hand scrape only).
- ~~19.~~ 18. Deep Rock Area: December 1, ~~2018~~ 2019, through February 28, ~~2019~~ 2020 (patent tong only).

19. Rappahannock River Rotation Area 2: October 1, 2019, through October 31, 2019 (patent tong only).
20. Rappahannock River Rotation Area 4: November 1, 2019, through November 30, 2019 (patent tong only).
21. Rappahannock River Rotation Area 1: February 1, 2020, through February 28, 2020 (patent tong only).
- ~~20.~~ 22. Seaside of the Eastern Shore (for clean cull oysters only): November 1, ~~2018~~ 2019, through March 31, ~~2019~~ 2020 (by hand and hand tong only).

C. It shall be unlawful to harvest seed oysters from the public oyster grounds or unassigned grounds, except during the lawful seasons. The harvest of seed oysters from the lawful areas is described in this subsection.

1. James River Seed Area: October 1, ~~2018~~ 2019, through May 31, ~~2019~~ 2020 (hand tong only).
2. Deep Water Shoal State Replenishment Seed Area: October 1, ~~2018~~ 2019, through May 31, ~~2019~~ 2020 (hand tong only).

4VAC20-720-60. Day and time limit.

A. It shall be unlawful to take, catch, or possess oysters on Saturday and Sunday from the public oyster grounds or unassigned grounds in the waters of the Commonwealth of Virginia; for commercial purposes, except that this provision shall not apply to any person harvesting no more than one bushel per day by hand or ordinary tong for household use only during the season when the public oyster grounds or unassigned grounds are legally open for harvest.

B. It shall be unlawful for any person to harvest or attempt to harvest oysters prior to sunrise or after 2 p.m. from the areas described in 4VAC20-720-40 B 1 through B ~~19~~ and 4VAC20-720-40 C 10, B 18 through B 21, and C. It shall be unlawful for any person to harvest or attempt to harvest oysters prior to sunrise or after 2 p.m. from the areas described in 4VAC20-720-40 B 11 through B 17 from December 1, 2019, through January 31, 2020. It shall be unlawful for any person to harvest or attempt to harvest oysters prior to sunrise or after 12 noon from the areas described in 4VAC20-720-40 B 11 through B 17 from November 1, 2019, through November 30, 2019, and February 1, 2020, through February 28, 2020. In addition, it shall be unlawful for any boat with an oyster dredge or hand scrape aboard to leave the dock until one hour before sunrise or return to the dock after sunset.

C. On the seaside of the Eastern Shore, it shall be unlawful for any person to harvest by hand or attempt to harvest oysters by hand prior to sunrise or after sunset. It shall be unlawful for any person to harvest oysters by hand tong or attempt to harvest oysters by hand tong prior to sunrise or after 2 p.m.

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4VAC20-720-70. Gear restrictions.

A. It shall be unlawful for any person to harvest oysters in the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, ~~the Rappahannock River Area 9, Milford Haven, Little Wicomico River, Coan River Area, Nomini Creek Area and Yeocomico River Area, and the areas described in 4VAC20-720-40 B 1 through B 10~~ except by hand tong. It shall be unlawful for any person to have a hand scrape on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand tong.

B. It shall be unlawful to harvest oysters by any gear from the seaside of the Eastern Shore except by hand or hand tong. It shall be unlawful to harvest oysters that are not submerged at mean low water by any gear other than by hand.

C. It shall be unlawful to harvest oysters ~~in the following areas by any gear except by hand scrape: Rappahannock River Rotation Area 3, from November 12, 2018, through January 10, 2019; Rappahannock River Area 5, from October 1, 2018, through November 30, 2018; James River Hand Scrape Areas 1 and 3, from November 1, 2018, through January 31, 2019; James River Hand Scrape Area 2, from October 1, 2018, through December 31, 2018; Upper Chesapeake Bay Blackberry Hangs Area, from December 1, 2018, through December 31, 2018, and February 1, 2019, through February 28, 2019; Mobjack Bay Area, from February 1, 2019, through February 28, 2019; Pocomoke Sound Area, from November 1, 2018, through November 30, 2018; and Great Wicomico River Areas, from December 1, 2018, through December 31, 2018 and February 1, 2019, through February 28, 2019~~ from the areas described in 4VAC20-720-40 B 11 through B 15 by any gear except hand scrape.

~~D. It shall be unlawful to harvest oysters from the following areas by any gear except an oyster patent tong: Rappahannock River Rotation Area 3, from November 1, 2018, through November 11, 2018, and Rappahannock River Rotation Area 8, from October 1, 2018, through October 31, 2018.~~

~~E. D.~~ It shall be unlawful for any person to have more than one hand scrape on board his vessel while he is harvesting oysters or attempting to harvest oysters from public grounds. It shall be unlawful for any person to have a hand tong on board his vessel while he is harvesting or attempting to harvest oysters from public grounds by hand scrape.

~~F. E.~~ It shall be unlawful to harvest oysters from the Pocomoke and Tangier Sounds Rotation Area ~~2~~ 1, except by an oyster dredge.

~~G. F.~~ It shall be unlawful to harvest oysters from the ~~Deep Rock Area, except by an oyster patent tong~~ areas described in 4VAC20-720-40 B 18 through B 21 except by patent tong.

4VAC20-720-75. Gear license.

A. It shall be unlawful for any person to harvest shellfish with a hand scrape from the public oyster grounds as described in 4VAC20-720-70 C unless that person has first obtained a valid hand scrape license.

B. It shall be unlawful for any person to harvest shellfish with an oyster dredge from the public oyster grounds in the Pocomoke and Tangier Sounds Rotation Area ~~2~~ 1, unless that person has first obtained a valid oyster dredge license.

C. It shall be unlawful for any person to harvest shellfish with a patent tong from the public oyster grounds, as described in 4VAC20-720-70 ~~D and G~~ F unless that person has first obtained a valid oyster patent tong license.

D. It shall be unlawful for any person to harvest shellfish with a hand tong from the public oyster grounds, as described in 4VAC20-720-70 A, unless that person has first obtained a valid hand tong license.

E. It shall be unlawful for any person to harvest shellfish by hand from the public oyster grounds on the seaside of the Eastern Shore, as described in 4VAC20-720-70 B, unless that person has first obtained a valid oyster by hand license. It shall be unlawful for any person to harvest shellfish from the public oyster grounds on the seaside of the Eastern Shore by hand tong, as described in 4VAC20-720-70 B, unless that person has first obtained a valid oyster hand tong license.

4VAC20-720-80. Quotas and harvest limits.

A. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and a valid gear license required for any harvest area, as described in 4VAC20-720-75 A and B, and has not paid the current year's oyster resource user fee to harvest or possess any oysters for commercial purposes. Any individual who possesses a valid hand scrape or dredge license and has paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of eight bushels per day. It shall be unlawful for any vessel to exceed a daily vessel limit of 16 bushels clean cull oysters ~~harvested from the areas described in 4VAC20-720-40 B 8 through 18~~ when the vessel is using the hand scrape or oyster dredge.

B. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and a valid gear license required for any harvest area, as described in 4VAC20-720-75, and has not paid the current year's oyster resource user fee to harvest or possess any oysters for commercial purposes. Any individual who possesses a valid hand or hand tong license and has paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of 12 bushels per day. It shall be unlawful for any vessel to exceed a daily vessel limit for clean cull oysters ~~harvested from the areas described in 4VAC20-720-40 B 2 through 7 and 20; when the vessel is using hand tongs~~

or harvesting by hand whereby that vessel limit shall equal the number of registered commercial fisherman licensees on board the vessel who hold a valid gear license and have paid the oyster resource user fee multiplied by 12.

~~C. It shall be unlawful for any vessel to exceed a daily vessel limit for clean cull oysters harvested from the areas described in 4VAC20-720-40 B 1, whereby that vessel limit shall equal the number of registered commercial fisherman licensees on board the vessel who hold a valid gear license and who have paid the oyster resource user fee multiplied by 12. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and hold a valid gear license required for any harvest area, as described in 4VAC20-720-75, and has not paid the current year's oyster resource user fee to harvest or possess any oysters for commercial purposes. Any individual who possesses the valid licenses and has paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of 12 bushels per day.~~

~~D. C.~~ It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and a valid gear license required for any harvest area as described in 4VAC20-720-75 and has not paid the current year's oyster resource user fee to harvest or possess any oysters for commercial purposes. Any individual who possesses a valid patent tong license and has paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of eight bushels per day. It shall be unlawful for any vessel to exceed a daily vessel limit of 16 bushels of clean cull oysters harvested from the areas described in 4VAC20-720-40 B when the vessel is using patent tongs.

~~E. D.~~ In the Pocomoke and Tangier Sounds Rotation Area ~~2~~ 1, no blue crab bycatch is allowed. It shall be unlawful to possess on board any vessel more than 250 hard clams.

4VAC20-720-90. Harvest permit required for the James River Hand Scrape Areas.

A permit is required for the James River ~~Hand Scrape~~ Areas 1, 2, and 3. It shall be unlawful for any person to harvest, or attempt to harvest, oysters from the James River ~~Hand Scrape~~ Areas without first obtaining a harvest permit from the Marine Resources Commission as required by § 28.2-518 of the Code of Virginia.

VA.R. Doc. No. R20-6146; Filed August 28, 2019, 2:53 p.m.



TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF JUVENILE JUSTICE

Proposed Regulation

Title of Regulation: **6VAC35-71. Regulation Governing Juvenile Correctional Centers (amending 6VAC35-71-10, 6VAC35-71-30 through 6VAC35-71-185, 6VAC35-71-220, 6VAC35-71-230, 6VAC35-71-240, 6VAC35-71-260 through 6VAC35-71-290, 6VAC35-71-310, 6VAC35-71-320, 6VAC35-71-330, 6VAC35-71-350, 6VAC35-71-360, 6VAC35-71-400 through 6VAC35-71-440, 6VAC35-71-460 through 6VAC35-71-510, 6VAC35-71-540, 6VAC35-71-550 through 6VAC35-71-590, 6VAC35-71-620, 6VAC35-71-630, 6VAC35-71-660, 6VAC35-71-670 through 6VAC35-71-720, 6VAC35-71-740 through 6VAC35-71-770, 6VAC35-71-790 through 6VAC35-71-860, 6VAC35-71-880, 6VAC35-71-890, 6VAC35-71-900, 6VAC35-71-930, 6VAC35-71-950, 6VAC35-71-960, 6VAC35-71-970, 6VAC35-71-990, 6VAC35-71-1000, 6VAC35-71-1020 through 6VAC35-71-1080, 6VAC35-71-1110 through 6VAC35-71-1140, 6VAC35-71-1180 through 6VAC35-71-1210, 6VAC35-71-1250, 6VAC35-71-1260, 6VAC35-71-1270; adding 6VAC35-71-215, 6VAC35-71-545, 6VAC35-71-735, 6VAC35-71-765; repealing 6VAC35-71-20, 6VAC35-71-1150, 6VAC35-71-1160, 6VAC35-71-1230).**

Statutory Authority: §§ 16.1-309.9 and 66-10 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 29, 2019.

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Basis: Section 66-13 of the Code of Virginia provides the department with the authority to "receive juveniles committed to it by the courts of the Commonwealth" and to "establish, staff, and maintain facilities for the rehabilitation, training, and confinement of such juveniles."

The Board of Juvenile Justice is entrusted with general, discretionary authority to promulgate regulations by § 66-10 of the Code of Virginia, which authorizes the board to "promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth."

The provisions governing privately-operated juvenile corrections centers (JCCs) and boot camps are mandated by the Juvenile Corrections Private Management Act (§ 66-25.3

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et seq. of the Code of Virginia) and § 66-13 of the Code of Virginia, respectively.

Purpose: Having clear, concise regulations is essential to protecting the health, safety, and welfare of the residents in, staff of, and visitors to JCCs and the citizens in the community. With clear expectations for the administrators running these facilities, the facilities will be able to run more smoothly and utilize any extra resources for supporting the needs of the residents, thus supporting the overall rehabilitation and community safety goals of the department.

In June 2016, the board initiated the regulatory process for a comprehensive review of 6VAC35-71 (Regulation Governing Juvenile Correctional Centers). To complete the comprehensive review and revisions to this regulation, the department convened a committee consisting of representatives from various divisions of the department. The committee recommended revisions to the regulation with the goal of streamlining the language, clarifying ambiguous provisions, and imposing new requirements that align with the following changes that have occurred since the department's last review of the regulation.

Community treatment model: The department has adopted and implemented a community treatment model in the JCCs similar to a successful program operated in Missouri. The model uses a relationship-oriented approach to help residents identify and resolve negative behaviors that contribute to their criminogenic risk and encourages (i) the assignment of residents to a permanent community with consistent staffing; (ii) highly structured, planned group activities that encourage constant interaction and engagement between staff and residents; and (iii) therapeutic structured activities that build interpersonal skills and promote positive behavior change.

Prison Rape Elimination Act: In 2003, Congress enacted the Prison Rape Elimination Act (PREA) (P.L. 108-79) to "provide for the analysis of the incidence and effects of prison rape in federal, state, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape." PREA created a commission charged with developing standards for the elimination of prison rape. The final federal rule for these standards became effective in 2012; however, correctional facilities were given until October 2017 to comply with the standards related to staffing requirements and staffing ratios. Although the department has adopted written procedures to incorporate PREA's mandates, a handful of existing regulatory provisions conflict with the PREA standards for juvenile facilities. The department is proposing amendments to these provisions to comply with the mandates in PREA.

Room confinement: Senate Bill 215, introduced during the 2016 Session of the General Assembly, required the department to promulgate regulations that specify the parameters for imposing room confinement in JCCs and juvenile detention centers. Although the legislation ultimately

failed, it prompted the department to make room confinement a focal point for examination during the comprehensive review of this chapter.

Substance: The department is recommending the following new provisions be added to the regulation:

- 6VAC35-71-215 prohibits employees and contractors from supervising residents if they pose a substantial risk to the health and safety of others in the JCC and enables the JCC to require evaluations before the individual may resume the role.
- 6VAC35-71-545 addresses the rules staff must follow if an emergency or other situation necessitates a facility or unit lockdown, including mandated periodic checks of locked down residents, required notification to or approval by the superintendent, and the provision of daily opportunities for interaction with the superintendent and for large muscle exercise.
- 6VAC35-71-735 requires JCC housing units to function as therapeutic communities with staff and resident consistency, daily therapeutic activities, and oversight by an interdisciplinary JCC team.
- 6VAC35-71-765 requires JCCs, where practicable, to increase family and natural support engagement opportunities through visitation, contacts, and other opportunities.

The department is recommending a number of substantive revisions to existing language in this regulation, including:

- Changing the frequency of and staff required to make periodic visits to housing units and allowing parameters to be determined through written procedures;
- Amending the initial and retraining requirements to (i) specify the required training hours for medical staff and (ii) allow medical staff and direct supervision employees to receive a portion of training prior to assuming their roles, with the remaining hours completed before the expiration of their first year of employment;
- Broadening the category of staff required to be trained and retrained in the implementation of a suicide prevention program to include direct supervision employees, security employees, and medical staff;
- Removing duplicative orientation requirements that are addressed as part of the required initial training and requiring that contractors be oriented rather than trained on expectations of working in a secure environment;
- Removing any explicit or implicit provision authorizing volunteers and interns to be alone with residents and adding language explicitly prohibiting them from assuming direct care or direct supervision responsibilities;

- Adding language requiring contractors who regularly serve residents to comply with the same tuberculosis mandates as other employees;
- Expanding the types of tobacco prohibited and the category of individuals precluded from using tobacco products on JCC premises;
- Expanding required documentation for JCC monthly evacuation drills to include the staff tasks completed and the staff members responsible for conducting and documenting the drill;
- Mandating that manual or instrumental body cavity searches be conducted at a local medical facility except in exigent circumstances of a threat to the health of a resident;
- Limiting the facility's current broad requirement to restrict diets or impose alternative dietary schedules for managing maladaptive behavior so as to require such diets or alternative schedules only when food or culinary equipment has been used inappropriately, in a manner that jeopardizes JCC security;
- Reducing the maximum time permitted between the JCC's evening meal and the following day's morning meal from 15 hours to 14 hours and removing the superintendent's existing authority to increase the time on holidays and weekends;
- Amending existing provisions requiring staff to furnish residents with copies of written information (e.g., rules of the facility and disciplinary reports) to allow staff the discretion to show residents displaying maladaptive behavior written information in lieu of providing a copy;
- Permitting direct supervision employees who meet certain requirements to be alone with residents without direct care employees conducting the required visual checks;
- Adjusting the required staff-to-resident ratio from one to ten to one to eight, consistent with PREA and authorizing security staff to transport residents for routine or emergency purposes;
- Amending the process for residents with formal charges for rule violations to mandate that disciplinary issues be handled within the therapeutic community, consistent with the behavior management program and considering the facility's safety and security and the rehabilitation rather than punishment of the resident;
- Placing a 60-minute cap on timeout periods, permitting timeout only when less restrictive alternatives have been employed unsuccessfully, and allowing a resident to be released from timeout upon demonstrating the ability to comply with facility expectations;
- Placing additional checks and restrictions on the use of room confinement in JCCs by (i) removing isolation as a permissible form of room confinement; (ii) requiring confined residents to be monitored visually at least every 15 minutes; (iii) imposing a graduated review and approval process for confinement beyond 24, 48, and 72 hours; (iv) setting out a case management review process for confinement periods that exceed five days; and (v) requiring additional staff interaction with confined residents. Also, delaying the implementation of these room confinement provisions to allow the department sufficient time to change its operations;
- Removing provisions related to the now terminated administrative segregation units in JCCs;
- Amending the regulatory provision addressing the use of mechanical restraints to (i) remove the requirement to notify the superintendent or the superintendent's designee immediately when mechanical restraints are used in emergencies; (ii) prohibit the use of mechanical restraints for routine, on-campus movement, except in limited circumstances; and (iii) allow use of a mobile restraint chair solely for transporting residents and require that the resident be released from the chair once the intended destination is reached;
- Reducing the maximum duration a resident may be mechanically restrained before requiring a consultation with a mental health professional from two cumulative hours to one consecutive hour, and specify that staff must take appropriate action to address a mechanically restrained resident who is exhibiting self-injurious behavior before consulting a mental health professional; and
- Mandating each staff member responsible for transporting residents maintain a valid driver's license and report to the facility administrator or the administrator's designee changes in the staff member's license status, and expanding the staff authorized to transport residents by vehicle.

Issues: The amendments are expected to be advantageous to the public in that, as a result of the proposed revisions mandating therapeutic communities, emphasizing family inclusion as a primary component of residents' rehabilitation, and reducing the use of mechanical restraints and the practice of room confinement, JCCs will focus more on the rehabilitation of residents. These changes are intended to reduce recidivism among released residents, thereby improving public safety. Additionally, safety will be enhanced among JCC staff and residents due to modified staff-to-resident ratios, compliance with PREA mandates, enhanced screenings for medical issues with contractors, expanded smoking prohibitions within the secure perimeter, gradual phase-out of room confinement as a disciplinary sanction in JCCs, increased frequency of visual room checks

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for residents placed in room confinement, and more stringent monitoring of residents demonstrating self-injurious behaviors.

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

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Juvenile Justice (Board) proposes to amend the Regulation Governing Juvenile Correctional Centers to reflect the Department of Juvenile Justice's (DJJ) continued efforts to transform its approach to juvenile justice, including implementing the community treatment model (CTM) in its housing units, abolishing the use of segregation as a disciplinary measure in any existing and future juvenile correctional centers (JCCs), requiring additional monitoring of confined residents, enhancing training for DJJ personnel and staff, and increasing required staff-to-resident ratios in order to comply with federal law.

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

Estimated Economic Impact. The Regulation Governing Juvenile Correctional Centers establishes the minimum standards to which staff in the JCCs must comply. The existing regulation addresses program operations, health care, personnel and staffing requirements, facility safety, residents' rights, and the physical environment. It contains additional provisions for boot camps and privately operated JCCs. The regulation seeks to promote the safety and security of residents, staff, volunteers, interns, and contractors, while protecting the rights of youth committed to DJJ and preparing them for successful reentry into the community following their commitment.

For the most part, the proposed amendments reflect current practice, conform regulatory language to federal or Virginia statutes, or are clarifications. Proposals that would have impact in practice include: 1) narrowing authority to apply physical restraints, 2) reducing the length of time a resident may be restrained mechanically before a consult with a QMHP is necessary, 3) expanding the tuberculosis screening requirement to contractors,¹ 4) adding "health-trained professionals" as individuals authorized to clear staff to return to work once they are suspected of having tuberculosis, 5) increasing the frequency of the required checks of residents under room confinement from every 30 minutes to every 15 minutes, 6) removing the requirement that animals be housed a reasonable distance from sleeping, living, and eating areas, 7) reducing restrictions on telephone calls, and 8) narrowing the category of individuals who must review and be prepared to implement the resident's behavior support contract.

Some of the proposals would require extra staff time. Examples of these are expanding the tuberculosis screening requirement to contractors and increasing the frequency of the required checks of residents under room confinement from every 30 minutes to every 15 minutes. Other proposals would reduce needed staff time. Adding "health-trained professionals" as individuals authorized to clear staff to return to work once they are suspected of having tuberculosis, and narrowing the category of individuals who must review and be prepared to implement the resident's behavior support contract fall into this category. Reducing restrictions on telephone calls and removing the requirement that animals be housed a distance from sleeping, living, and eating areas are both beneficial for residents without significantly affecting costs.

Businesses and Entities Affected. Currently, the regulation affects one state-operated JCC. Proposed revisions to this regulation will affect the facility's administration, staff, and any contract service providers, in addition to the residents in the facility.

Localities Particularly Affected. Currently, the regulation affects one state-operated JCC, which is located in Chesterfield County.

Projected Impact on Employment. The proposed regulation is unlikely to significantly affect total employment.

Effects on the Use and Value of Private Property. The proposed regulation is unlikely to significantly affect the use and value of private property.

Real Estate Development Costs. The proposed amendments do not adversely 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 regulation is unlikely to significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed regulation does not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed regulation does not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed regulation does not adversely affect other entities.

¹According to DJJ, the tuberculosis screening is handled by internal staff and would not increase cost beyond staff time.

Agency's Response to Economic Impact Analysis: The Virginia Board of Juvenile Justice has reviewed the Department of Planning and Budget's economic impact analysis and agrees with the analysis.

Summary:

The proposed regulatory action is a comprehensive revision of 6VAC35-71, Regulation Governing Juvenile Correctional Centers, to streamline language, clarify ambiguous provisions, and adopt new requirements that align with changes in the community treatment model, federal Prison Rape Elimination Act, and room confinement.

The proposed amendments include (i) implementing the community treatment model in the Department of Juvenile Justice housing units, (ii) abolishing the use of segregation as a disciplinary measure in any existing or future juvenile correction center, (iii) requiring additional monitoring of confined residents, (iv) enhancing training for department personnel and staff, and (v) increasing required staff-to-resident ratios to comply with federal law.

Part I
General Provisions

6VAC35-71-10. Definitions.

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

"Active supervision" or "actively supervise" means a method of resident supervision in which a direct care employee is (i) actively patrolling and frequently viewing the areas in which residents are present a minimum of once every 15 minutes and (ii) close enough in proximity to the resident to provide a quick response should an incident occur.

"Annual" means within 13 months of the previous event or occurrence.

"Assistant superintendent" means the individual who provides regular assistance and support to the superintendent in the management and operation of a juvenile correctional center.

"Aversive stimuli" means physical forces, such as sound, electricity, heat, cold, light, water, or noise, or substances, such as hot pepper, pepper sauce, or pepper spray, measurable in duration and intensity that when applied to a resident are noxious or painful to the resident.

"Behavior management" means the principles and methods employed to help a resident achieve positive behavior and to address and correct a resident's inappropriate behavior in a constructive and safe manner in accordance with written procedures governing program expectations, treatment goals, resident and staff safety and security, and the resident's individual service plan.

"Board" means the Board of Juvenile Justice.

"Boot camp" means a short-term secure or nonsecure juvenile residential program that includes aspects of basic military training and that utilizes a form of military-style discipline whereby employees are authorized to respond to minor institutional offenses by imposing immediate sanctions that may require the performance of some physical activity based on the program's written procedures.

"Case record" or "record" means written ~~or electronic~~ information regarding a resident and the resident's family, if applicable, maintained in accordance with written procedures.

"Community manager" means the individual who supervises, coordinates, and directs an assigned group of staff in multiple housing units and who oversees the schedules, programs, and services for assigned housing units within a juvenile correctional center.

"Contraband" means any item possessed by or accessible to a resident or found within a juvenile correctional center or on its premises that (i) is prohibited by statute, regulation, or department procedure; (ii) is not acquired through approved channels or in prescribed amounts; or (iii) may jeopardize the safety and security of the juvenile correctional center or individual residents.

"Contractor" means an individual who has entered into a legal agreement to provide services on a recurring basis to a juvenile correctional center.

"Department" means the Department of Juvenile Justice.

"Direct care" means the ~~time period~~ during which a resident who is committed to the department pursuant to § 16.1-272 or 16.1-285.1, or ~~subsection~~ subdivision A 14 or A 17 of § 16.1-278.8 of the Code of Virginia is under the supervision of staff in a juvenile correctional center operated by or under contract with the department.

"Direct care staff employee" means the staff employee whose primary job responsibilities are ~~for~~ (i) maintaining the safety, care, and well-being of residents; (ii) implementing the structured program of care and the behavior management program; and (iii) maintaining the security of the facility.

"Direct supervision" or "directly supervise" means ~~the act of working with residents who are not in the presence of direct care staff. Staff members who provide direct supervision are responsible for maintaining the safety, care, and well-being of the residents in addition to providing services or performing the primary responsibilities of that position a method of resident supervision in which a direct supervision employee is authorized to provide services to a resident while direct care staff are not within close proximity and do not have direct and continuous visual observation of or the ability to hear any sounds or words spoken by the resident.~~

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"Direct supervision employee" means a staff member who is responsible for maintaining the safety, care, and well-being of the residents in addition to providing services or performing the primary responsibilities of that position and who is authorized to directly supervise residents.

"Director" means the Director of the Department of Juvenile Justice.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action such as a fire, chemical release, loss of utilities, natural disaster, taking of hostages hostage situation, major disturbances disturbance, escape, and or bomb threats threat. Emergency For purposes of this definition, "emergency" does not include regularly scheduled employee time off or other situations that reasonably could be reasonably anticipated.

"Gender identity" means a person's internal sense of being male or female, regardless of the person's sex assigned at birth.

"Grievance" means a written communication by a resident on a department-approved form that reports a condition or situation that presents a risk of hardship or harm to a resident and relates to department procedure.

"Health care record" means the complete record of medical screening and examination information and ongoing records of medical and ancillary service delivery, including but not limited to all findings, diagnoses, treatments, dispositions, prescriptions, and their administration.

"Health care services" means those actions, preventative and therapeutic, taken for the physical and mental well-being of a resident. Health care services include medical, dental, orthodontic, mental health, family planning, obstetrical, gynecological, health education, and other ancillary services.

"Health trained personnel" means an individual who is trained by a licensed health care provider to perform specific duties, such as administering health care screenings, reviewing screening forms for necessary follow up care, preparing residents and records for sick call, and assisting in the implementation of certain medical orders and appropriately supervised to carry out specific duties with regard to the administration of health care.

"Housing unit" means the space in a juvenile correctional center in which a particular group of residents resides, which comprises sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the residents. Depending upon its design, a building may contain one or several separate housing units.

"Human research" means any systematic investigation, including research development, testing, and evaluation utilizing human subjects that is designed to develop or contribute to generalized knowledge. Human research shall

not be deemed to include research exempt from federal research regulation pursuant to 45 CFR 46.101(b).

"Immediate family member" means a resident's parent or legal guardian, step-parent, grandparent, spouse, child, sibling, and step-sibling.

"Individual service plan" or "service plan" means a written plan of action developed, revised as necessary, and reviewed at specified intervals; to meet the needs of a resident. ~~The individual service plan specifies (i) measurable short term and long term goals; (ii) the objectives, strategies, and time frames for reaching the goals; and (iii) the individuals responsible for carrying out the plan.~~

"Juvenile correctional center," "JCC," or "facility" means a public or private facility, operated by or under contract with the Department of Juvenile Justice department, where 24-hour per day care is provided to residents under the direct care of the department 24 hours a day, seven days a week. For purposes of this chapter, "juvenile correctional center" does not include any facility at which a direct care alternative placement program is operated.

"Living unit" means the space in a juvenile correctional center in which a particular group of residents resides that contains sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the residents. Depending upon its design, a building may contain one living unit or several separate living units.

"Legal mail" means a written communication that is sent to or received from a designated class of correspondents, as defined in written procedures, which shall include any court, legal counsel, administrator of the grievance system, the department, or the regulatory authority.

"Lockdown" means the restriction of all or a group of residents to their housing unit, an area within their housing unit, or another area within a JCC for the purpose of (i) relieving temporary tensions within the facility; (ii) conducting a facility search for missing tools or other security contraband; (iii) responding to an imminent threat to the security and control of the facility or to the safety of staff, residents, or the public; or (iv) responding to other unexpected circumstances that threaten the safe operation of the facility, such as a loss of electricity, a critical shortage of staff, or an emergency.

"Mechanical restraint" means the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or portion of an individual's body as a means of controlling his physical activities when the individual being restricted does not have the ability to remove the device. For purposes of this definition, mechanical restraints are limited to handcuffs, handcuff covers, leather restraints, flex-cuffs, waist chains, leg irons, restraining belts and straps, helmets, spit guards, anti-mutilation gloves, and restraint chairs.

"Medical record" means the complete record of medical screening and examination information and ongoing records of medical and ancillary service delivery, including all findings, diagnoses, treatments, dispositions, prescriptions, and their administration.

"Medication incident" means any one of the following errors made in administering a medication to a resident: (i) a resident is given incorrect medication; (ii) medication is administered to the incorrect resident; (iii) an incorrect dosage is administered; (iv) medication is administered at the wrong time or not at all; or (v) the medication is administered through an improper method. For purposes of this regulation, a medication incident does not include a resident's refusal of appropriately offered medication.

"Natural support" means an extended family member, person serving as a mentor, representative from a community organization, or other person in the community with whom a resident has developed a relationship that enhances the resident's quality and security of life and who is expected to provide post-release support.

"On duty" means the period of time, during an employee's scheduled work hours, during which the employee is responsible for the ~~direct~~ supervision of one or more residents in the performance of that employee's position's duties.

"Parent" or "legal guardian" means (i) a biological or adoptive parent who has legal custody of a resident, including either parent if custody is shared under a joint decree or agreement; (ii) a biological or adoptive parent with whom a resident regularly resides; (iii) a person judicially appointed as a legal guardian of a resident; or (iv) a person who exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption, or otherwise by operation of law.

"Physical restraint" means the application of behavior intervention techniques involving a physical intervention to prevent an individual from moving all or part of his body.

"Premises" means the tracts of land within the secure perimeter on which any part of a juvenile correctional center is located ~~and any buildings on such tracts of land.~~

~~"Reception and Diagnostic Center" or "RDC" means the juvenile correctional center that serves as the central intake facility for all individuals committed to the department. The Reception and Diagnostic Center's primary function is to orient, evaluate, and classify each resident before being assigned to a juvenile correctional center or alternative placement.~~

"Regulatory authority" means the board, or the department if designated by the board.

"Resident" means an individual, either a minor or an adult, who is committed to the department and resides in a juvenile correctional center.

"Rest day" means a period of not less than 24 consecutive hours during which the direct care staff person has no responsibility to perform duties related to employment at the JCC or with the department.

"Room confinement" means the involuntary placement of an individual resident in the resident's room or other designated room, except during normal sleeping hours, and the imposition of additional restrictions for the purpose of (i) ensuring the safety of the resident, staff, or others within the facility; (ii) ensuring the security of the facility; or (iii) protecting property within the facility. For purposes of this regulation, room confinement shall not include any timeout period or any confinement resulting from a lockdown.

"Rules of conduct" means a ~~listing~~ list of a juvenile correctional center's rules or regulations that is maintained to inform residents and others of the behavioral expectations of the behavior management program, ~~about~~ behaviors that are not permitted, and ~~about~~ the sanctions consequences that may be applied when impermissible behaviors occur.

"Security staff" means staff who are responsible for maintaining the safety, care, and well-being of residents and the safety and security of the facility.

"Sick call" means the evaluation and treatment of a resident in a clinical setting, either onsite or offsite, by a qualified health care professional.

"Superintendent" means the individual who has the responsibility for the ~~on-site~~ onsite management and operation of a juvenile correctional center on a regular basis.

"Timeout" means a systematic behavior management technique program component designed to reduce or eliminate inappropriate or problematic behavior by having staff require a resident to move to a specific location that is away from a source of reinforcement for the earlier of a period not to exceed 60 minutes or until the problem behavior has subsided.

"Volunteer" or "intern" means any individual or group under the direction and authority of the juvenile correctional center who ~~of their own free will~~ voluntarily provides goods and services without competitive compensation.

"Vulnerable population" means a resident or group of residents who has been determined by designated JCC staff to be reasonably likely to be exposed to the possibility of being attacked or harmed, either physically or emotionally, due to factors such as the resident's age, height, size, English proficiency, sexual orientation, gender nonconformity, history of being bullied, or history of self-injurious behavior.

"Written" means the required information is communicated in writing. ~~Such writing may be available~~ in either hard copy or in electronic form.

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6VAC35-71-20. ~~Previous regulations terminated. (Repealed.)~~

~~This chapter replaces the Standards for the Interim Regulation of Children's Residential Facilities, (6VAC35-51), and the Standards for Juvenile Residential Facilities, (6VAC35-140), for the regulation of all JCCs as defined herein. The Standards for the Interim Regulation of Children's Residential Facilities and the Standards for Juvenile Residential Facilities remain in effect for secure detention facilities and group homes, regulated by the board, until such time as the board adopts new regulations related thereto.~~

6VAC35-71-30. Certification.

A. The JCC shall maintain a current certification demonstrating compliance with the provisions of the ~~Regulations~~ Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities (6VAC35-20).

B. The JCC shall demonstrate compliance with this chapter, other applicable regulations issued by the board, and applicable statutes and regulations as interpreted by the assessment and compliance measures approved in accordance with board regulations or department procedures.

C. Documentation necessary to demonstrate compliance with this chapter shall be maintained for a minimum of three years.

D. The current certificate shall be posted at all times in a place conspicuous to the public.

6VAC35-71-40. Relationship to the regulatory authority.

All reports and information as the regulatory authority may require to establish compliance with this chapter and other applicable regulations and statutes shall be submitted to or made available to the ~~regulatory authority~~ audit team leader.

6VAC35-71-50. Variances and waivers.

A. Board action may be requested by the ~~superintendent~~ director or the director's designee to relieve a JCC from having to meet or develop a plan of action for the requirements of a specific section or subsection of this regulation, provided the section or subsection is a noncritical regulatory requirement. The variance request may be granted either permanently or for a determined period of time, as provided in the ~~Regulations~~ Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities (6VAC35-20) and in accordance with written procedures.

B. A variance may not be implemented prior to approval of the board.

C. If the superintendent has submitted a variance request to the director or the director's designee concerning a noncritical regulatory requirement and board action has been requested

formally by the director or the director's designee, the director may but is not required to grant a waiver temporarily excusing the facility from meeting the requirements of a specific section or subsection of this regulation. The waiver shall be subject to the requirements in 6VAC35-20-93.

6VAC35-71-55. Operational procedures.

Current operational procedures shall be readily accessible to all staff.

6VAC35-71-60. ~~Serious incident~~ Incident reports.

A. The following events shall be reported to the director or the director's designee as soon as practicable, but no later than 24 hours after the incident, and in accordance with written department procedures ~~to the director or his designee~~:

1. ~~Any~~ A serious illness, incident, injury, or accident involving the serious injury of a resident;
2. ~~Any~~ A resident's absence from the facility without permission; and
3. All other situations required by written procedures.

B. As appropriate and applicable, the facility shall, as soon as practicable, but no later than 24 hours after the incident, and in accordance with written procedures, report the incidents listed in subsection A of this section to (i) the parent or legal guardian and (ii) the supervising court service unit or agency.

C. Any incident involving the death of a resident shall be reported to the individuals specified in subsections A and B of this section without undue delay.

D. The facility shall prepare and maintain a written report of the events listed in subsections A and C of this section ~~which~~ that shall contain the following information:

1. The date and time the incident occurred;
2. A brief description of the incident;
3. The action taken as a result of the incident;
4. The name of the person who completed the report;
5. The name or identifying information of the person who made the report to the supervising agency and to the parent or legal guardian; and
6. ~~The name or identifying information of the person of any law-enforcement agency or local department of social services to whom which the report was made, including any law enforcement or child protective service personnel.~~

E. The resident's record shall contain a written reference (i) that an incident occurred and (ii) of all applicable reporting.

F. In addition to the requirements of this section, any suspected child abuse and neglect shall be governed by 6VAC35-71-70 (~~suspected child abuse or neglect~~).

6VAC35-71-70. Suspected child abuse or neglect.

A. When there is reason to suspect that a resident is an abused or neglected child, the matter shall be reported immediately to the local department of social services or to the Virginia Department of Social Services toll-free child abuse and neglect hotline as required by § 63.2-1509 of the Code of Virginia and in accordance with written procedures.

B. Any case of suspected child abuse or neglect occurring at ~~the a~~ JCC, occurring ~~on~~ during a ~~JCC-sponsored~~ JCC-sponsored event or excursion, or involving JCC staff shall be reported within 24 hours, in accordance with written procedures, to (i) the director or ~~his~~ the director's designee, (ii) the supervising court services service unit, and (iii) the resident's parent or legal guardian, as appropriate and applicable.

C. When a case of suspected child abuse or neglect is reported ~~to child protective services~~ in accordance with subsection A of this section, a record shall be maintained at the facility that contains the following information:

1. The date and time the suspected abuse or neglect occurred;
2. A brief description of the suspected abuse or neglect;
3. ~~Action~~ The action taken as a result of the suspected abuse or neglect; and
4. The name or identifying information of the person to whom the report was made at the local ~~child protective services unit~~ department of social services.

D. The resident's record shall contain a written reference that a report was made.

E. Written procedures shall be accessible to staff regarding the following:

1. Handling accusations of child abuse or neglect, including those made against staff;
2. Reporting, consistent with requirements of the Code of Virginia, and documenting suspected cases of child abuse or neglect to the local child protective services unit;
3. Cooperating during any investigation; and
4. Measures to be taken to ensure the safety of the resident and the staff.

6VAC35-71-75. Reporting criminal activity.

A. Staff shall be required to report to the superintendent or the superintendent's designee all known criminal activity alleged to have been committed by residents or staff, including ~~but not limited to any~~ physical abuse, sexual abuse, or sexual harassment of residents, ~~to the superintendent or designee~~.

B. ~~The~~ In accordance with written procedures, the superintendent, ~~in accordance with written procedures~~, shall notify the appropriate persons or agencies, including law enforcement and the local department of social services division of child protective services, if applicable and appropriate, of suspected criminal violations by residents or staff.

C. The JCC superintendent and applicable staff shall assist and cooperate with the investigation of ~~any such~~ these complaints and allegations ~~as necessary~~ subject to restrictions in federal or state law.

6VAC35-71-80. Grievance procedure.

A. The superintendent or the superintendent's designee shall ensure the facility's compliance with the department's grievance procedure. The grievance procedure shall provide for the following:

1. Resident participation in the grievance process, with assistance from staff upon request;
2. Investigation of the grievance by an impartial and objective ~~person~~ employee who is not the subject of the grievance;
3. Documented, ~~timely~~ responses to all grievances with the supporting reasons for the decision;
4. At least one level of appeal;
5. Administrative review of grievances;
6. Protection of residents from retaliation or the threat of retaliation for filing a grievance; and
7. Immediate review of emergency grievances with resolution as soon as practicable but no later than eight hours after the initial review.

B. Residents shall be oriented to the grievance procedure in an age ~~or~~ and developmentally appropriate manner.

C. The grievance procedure shall be (i) written in clear and simple language, (ii) posted in an area accessible to residents, and (iii) ~~posted~~ available in an area easily accessible to parents and legal guardians.

D. Staff shall assist and work cooperatively with other employees in facilitating the grievance process.

6VAC35-71-90. ~~Resident advisory committee~~ Student government association.

~~Each~~ A. A JCC, ~~except RDC~~, shall ~~have a resident advisory committee~~ maintain a student government association that (i) is representative of the facility's population and (ii) ~~shall meet monthly with the superintendent or designees during which time the residents shall be given the opportunity to raise matters of concern to the residents and the opportunity to have input into planning, problem solving, and decision-making in areas of the residential program that affect their~~

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lives that is organized to (i) provide leadership, development opportunities, and opportunities for civic participation and engagement for residents and (ii) allow for resident communication with facility and agency leadership.

B. The student government association shall develop a constitution and bylaws that shall govern the operation of the organization and provide for an election process for student government association officers and representatives.

C. Representatives from the student government association shall meet with the superintendent or the superintendent's designee at least once per month, during which time the representatives shall be given the opportunity to raise matters that concern the residents and to have input into planning, problem-solving, and decision-making in areas of the residential program that affect their lives.

D. In addition to the monthly meetings with the superintendent or the superintendent's designee, the JCC shall provide regular opportunities for the student government association to meet as a body and with the residents they represent.

E. The facility shall maintain a current copy of the constitution and bylaws required in subsection B of this section that shall be posted in each housing unit. During orientation, the residents shall receive an overview of the student government association, the constitution, and the bylaws.

Part II

Administrative and Personnel

6VAC35-71-100. Administration and organization.

Each JCC shall have an organizational chart that includes functions, services, and activities in administrative subunits, ~~which.~~ The organizational chart shall be reviewed and updated as needed, as determined by the JCC superintendent or the superintendent's designee.

6VAC35-71-110. Organizational communications.

A. The superintendent or the superintendent's designee shall meet, at least monthly, with all facility department heads and key staff members.

~~B. The superintendent or the assistant superintendent, chief of security, treatment program supervisor, or counseling supervisor, if designated by the superintendent, shall visit the living units and activity areas at least weekly. In order to encourage informal contact with employees and residents, and to observe informally the facility's living and working conditions, and enhance the efficacy and success of the therapeutic community within each housing unit, the JCC shall ensure that the assistant superintendent and the community manager assigned to each specific housing unit shall make regular, consistent, and frequent visits to each housing unit under their jurisdiction, in accordance with~~

written procedures established pursuant to subsection D of this section.

~~C. The superintendent shall make such visits, at a minimum, one time visit every housing unit and activity area at least once per month.~~

D. The JCC shall establish written procedures governing the visits required in subsection B of this section that shall specify the required duration of each visit, the information and activities that should be observed, and the manner in which the visits shall be documented.

6VAC35-71-120. Community relationships.

Each JCC shall designate a community liaison and, if appropriate, a community advisory committee ~~that serves to~~ serve as a link between the facility and the community, ~~which.~~ The community advisory committee may include facility neighbors, local law enforcement, and local government officials.

6VAC35-71-130. Participation of residents in human research.

~~A. Residents shall not be used as subjects of human research except as provided in 6VAC35-170 and in accordance with Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia.~~

~~B. For the purpose of this section, human research means any systematic investigation using human subjects as defined by § 32.1-162.16 of the Code of Virginia and 6VAC35-170. Human research shall not include research prohibited by state or federal statutes or regulations or research exempt from federal regulations or mandated by any applicable statutes or regulations. The Additionally, the testing of medicines or drugs for experimentation or research is prohibited.~~

6VAC35-71-140. Background checks.

A. Except as provided in subsection B of this section, all persons who (i) accept a position of employment or (ii) provide contractual services directly to a resident on a regular basis and will be alone with a resident in the performance of their duties in a JCC shall undergo the following background checks, in accordance with § 63.2-1726 of the Code of Virginia, to ~~ascertain~~ determine whether there are criminal acts or other circumstances that would be detrimental to the safety of residents in the JCC:

1. A reference check;
2. A criminal history record check;
3. Fingerprint checks with the Virginia State Police and Federal Bureau of Investigation (FBI);
4. A central registry check with Child Protective Services; and

5. A driving record check, if applicable to the individual's job duties.

B. ~~To~~ In order to minimize vacancy time, when the fingerprint checks required by subdivision A 3 of this section have been requested, employees may be hired, pending the results of the fingerprint checks, provided:

1. All of the other applicable components of this ~~subsection~~ section have been completed;
2. The JCC provides the applicant is given with written notice that continued employment is contingent on the fingerprint check results as required by subdivision A 3 of this section; and
3. Employees hired under this exception shall not be allowed to be alone with residents and may work with residents only when the residents are under the direct or active supervision of staff whose background checks have been completed until ~~such time as~~ all the requirements of this section are completed satisfied.

C. ~~Documentation~~ The JCC shall retain documentation of compliance with this section ~~shall be retained.~~

D. Written procedures shall provide for the supervision of nonemployee persons, who are not subject to the provisions of this section who have contact with residents.

6VAC35-71-150. Required initial orientation.

A. Before the expiration of the employee's seventh work day at the facility, each employee shall ~~be provided with~~ receive a basic orientation on the following:

1. The facility;
2. The population served;
3. The basic tenets and objectives of the facility's behavior management program;
4. The facility's organizational structure;
5. Security, population control, emergency preparedness, and evacuation procedures in accordance with 6VAC35-71-460 (~~emergency and evacuation procedures~~);
6. The practices of confidentiality;
7. The residents' rights; and
8. The basic requirements of and competencies necessary to perform in ~~their~~ the positions.

~~B. Prior to working with residents while not under the direct supervision of staff who have completed all applicable orientations and training, each direct care staff shall receive a basic orientation on the following:~~

- ~~1. The facility's program philosophy and services;~~
- ~~2. The facility's behavior management program;~~

~~3. The facility's behavior intervention procedures and techniques, including the use of least restrictive interventions and physical restraint;~~

~~4. The residents' rules of conduct and responsibilities;~~

~~5. The residents' disciplinary and grievance procedures;~~

~~6. Child abuse and neglect and mandatory reporting;~~

~~7. Standard precautions; and~~

~~8. Documentation requirements as applicable to their duties.~~

~~C. B. Volunteers and interns~~ shall be oriented in accordance with 6VAC35-71-240 (~~volunteer and intern orientation and training~~).

C. Contractors shall receive an orientation regarding the expectations of working within a secure environment.

6VAC35-71-160. Required initial training.

~~A. Each employee JCC employees~~ shall complete initial, ~~comprehensive agency-approved~~ training that is specific to the individual's occupational class, ~~is based on the needs of the population served, and ensures that the individual has the competencies to perform the position responsibilities.~~ ~~Contractors shall receive training required to perform their position responsibilities in a correctional environment.~~

B. Direct care staff and employees ~~responsible for the direct supervision of residents shall and security employees,~~ before ~~that employee is being~~ responsible for the direct supervision of supervising a resident, shall complete at least 120 hours of training, which shall include training in the following areas:

~~1. Emergency preparedness and response;~~

~~2. 1. First aid and cardiopulmonary resuscitation, unless the individual is currently certified, with certification required as applicable to their duties;~~

2. Recognition of signs and symptoms and knowledge of actions required in a medical emergency;

3. The facility's department's behavior management program, as provided in 6VAC35-71-745, including the requirements for sustaining a therapeutic community environment, as required in 6VAC35-71-735. At a minimum, this training shall address (i) the components and basic principles of the behavior management program; (ii) the principles, definitions, and expectations governing a therapeutic community environment; (iii) the main tenets of the department's graduated incentive system; and (iv) the tools available to address noncompliance;

~~4. The residents' rules of conduct and the rationale for the rules;~~

~~5. The facility's department's behavior interventions, with restraint training required as including, if applicable to~~

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~~their~~ the individual's duties, training in the use of physical and mechanical restraints, as provided in 6VAC35-71-1130 and 6VAC35-71-1180;

6. Emergency preparedness and response, as provided in 6VAC35-71-460;

7. Standard precautions, as provided in 6VAC35-71-1000;

~~6.~~ 8. Child abuse and neglect;

~~7.~~ 9. Mandatory reporting;

10. Residents' rights, including the prohibited actions provided for in 6VAC35-71-550;

8. ~~11.~~ Maintaining appropriate professional relationships;

9. ~~12.~~ Appropriate interaction among staff and residents;

~~10.~~ 13. Suicide prevention, as provided in 6VAC35-71-805;

~~11. Residents' rights, including but not limited to the prohibited actions provided for in 6VAC35-71-550 (prohibited actions);~~

~~12. Standard precautions;~~

~~13. Recognition of signs and symptoms and knowledge of actions required in medical emergencies;~~

14. Adolescent development;

15. Procedures applicable to the employees' ~~position~~ positions and consistent with their work profiles; and

16. Other topics as required by the department and any applicable state or federal statutes or regulations.

~~C. Administrative and managerial staff shall receive at least 40 hours of training during their first year of employment. Clerical and support staff shall receive at least 16 hours of training.~~

~~D. Employees who administer medication shall, prior to such administration, successfully complete a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medication.~~

~~E. Employees providing medical services shall be trained in tuberculosis control practices.~~

C. Direct supervision employees shall complete an initial 80 hours of agency-approved training inclusive of the topics enumerated in subsection B of this section before being responsible for the direct supervision of a resident and an additional 40 hours of agency-approved training before the completion of their first year of employment.

D. Employees providing medical services shall complete the following training:

1. An initial 40 hours of agency-approved training, inclusive of (i) tuberculosis control practices and (ii) the topics enumerated in subdivisions B 5 through B 16 of this section before they may work directly with a resident; and

2. An additional 80 hours of agency-approved training before the expiration of their first year of employment.

E. Employees who administer medication shall, prior to administration and in accordance with the provisions of § 54.1-3408 of the Code of Virginia, successfully complete a medication management training program approved by the Board of Nursing or be certified by the Commonwealth of Virginia to administer medication.

F. Administrative and managerial staff shall receive at least 40 hours of training during their first year of employment. Clerical and support staff shall receive at least 16 hours of training.

~~F.~~ G. If an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of current licensure shall constitute compliance with this section.

~~G.~~ H. Volunteers and interns shall be trained in accordance with 6VAC35-71-240 (~~volunteer and intern orientation and training~~).

I. The department shall develop written procedures that clearly delineate the positions falling under each category identified in this section.

6VAC35-71-170. Retraining.

A. Each employee shall complete retraining that is specific to the individual's occupational class and the position's job description, and addresses any professional development needs.

1. ~~Direct care staff and employees who provide security employees, direct supervision of the residents employees, and employees providing medical services~~ shall complete 40 hours of training annually, inclusive of the requirements of this section.

2. Administrative and managerial staff shall receive at least 40 hours of training annually.

3. Clerical and support staff shall receive at least 16 hours of training annually.

~~4. Contractors shall receive retraining as required to perform their position responsibilities in the correctional environment.~~

B. All staff shall complete an annual training refresher on the facility's emergency preparedness and response plan and procedures.

C. All direct care ~~staff and employees who provide, security employees, and direct supervision of the residents~~ employees shall complete annual retraining in the following areas:

1. The department's behavior management program and the requirements for sustaining a therapeutic community environment, as required in accordance with 6VAC35-71-160 B 3;
- ~~2.~~ 3. Suicide prevention;
- ~~3.~~ 4. Maintaining appropriate professional relationships;
- ~~4.~~ 5. Appropriate interaction among staff and residents;
- ~~5.~~ 6. Child abuse and neglect;
- ~~6.~~ 7. Mandatory reporting;
- ~~7.~~ 8. Resident rights, including ~~but not limited to~~ the prohibited actions provided for in 6VAC35-71-550 (~~prohibited actions~~);
- ~~8.~~ 9. Standard precautions; and
- ~~9.~~ 10. Behavior management techniques; and
9. Other topics as required by the department and any applicable state or federal statutes or regulations.

D. All employees providing medical services shall complete annual retraining in the topics enumerated in subdivisions C 2 through C 9 of this section.

~~D.~~ E. All direct care ~~staff~~ employees, security employees, and direct supervision employees shall receive training sufficient to maintain a current certification in first aid and cardiopulmonary resuscitation.

~~E.~~ F. Employees who administer medication shall complete annual refresher training on the administration of medication, which shall, at a minimum, include a review of the components required in 6VAC35-71-1070.

~~F.~~ G. ~~When~~ If an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of the individual's current licensure shall constitute compliance with this section.

~~G.~~ H. All staff approved to apply physical restraints as provided for in 6VAC35-71-1130 (~~physical restraint~~) shall be trained as needed to maintain the applicable current certification.

~~H.~~ I. All staff approved to apply mechanical restraints shall be retrained annually as required by 6VAC35-71-1180 (~~mechanical restraints~~).

~~I.~~ J. Staff who have not timely completed required retraining shall not be allowed to have direct care or direct supervision responsibilities pending completion of the retraining requirements.

6VAC35-71-180. Code of ethics.

A The facility shall make available to all employees a written set of rules describing acceptable standards of conduct for all employees ~~shall be available to all employees.~~

6VAC35-71-185. Employee tuberculosis screening and follow-up.

A. On or before the ~~employee's individual's~~ start date at the facility and at least annually thereafter each (i) employee and (ii) contractor who provides services directly to residents on a regular basis shall submit the results of a tuberculosis screening assessment that is no older than 30 days. The documentation shall indicate the screening results as to whether there is an absence of tuberculosis in a communicable form.

B. Each (i) employee, and (ii) contractor who provides services directly to residents on a regular basis shall submit evidence of an annual evaluation of freedom from tuberculosis in a communicable form.

C. ~~Employees~~ Each (i) employee and (ii) contractor who provides services directly to residents on a regular basis shall undergo a subsequent tuberculosis screening or evaluation, as applicable, in the following circumstances:

1. The employee or contractor comes into contact with a known case of infectious tuberculosis; or
2. The employee or contractor develops chronic respiratory symptoms of three ~~weeks~~ weeks' duration.

D. Employees and contractors providing services directly to residents on a regular basis, who are suspected of having tuberculosis in a communicable form shall not be permitted to return to work or have contact with staff or residents until a physician or health trained personnel has determined that the individual does not have tuberculosis in a communicable form.

E. Any active case of tuberculosis developed by an employee or a resident shall be reported to the local health department in accordance with the requirements of the ~~Virginia~~ State Board of Health Regulations for Disease Reporting and Control (12VAC5-90).

F. Documentation of any screening results shall be retained in a manner that maintains the confidentiality of information.

G. The detection, diagnosis, prophylaxis, and treatment of pulmonary tuberculosis shall be performed ~~consistent in~~ accordance with the current ~~requirements~~ recommendations of the Virginia Department of Health's Division of Tuberculosis Prevention and Control and the federal Department of Health and Human Services Centers for Disease Control and Prevention.

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6VAC35-71-215. Physical or mental health of personnel.

If an employee or contractor poses a significant risk of substantial harm to the health and safety of a resident, others at the facility, or the public or is unable to perform essential job-related functions, that individual shall be removed immediately from all duties involved in the supervision of residents. The facility may require a medical or mental health evaluation to determine the individual's fitness for duty prior to returning to duties involving the supervision of residents.

6VAC35-71-220. Selection and duties of volunteers and interns.

~~Any~~ A JCC that uses volunteers or interns shall implement written procedures governing their selection and use. ~~Such~~ The procedures shall provide for the evaluation of persons and organizations in the community who wish to associate with the residents.

B. Volunteers and interns shall have qualifications appropriate for the services provided.

C. The responsibilities of interns and individuals who volunteer on a regular basis shall be ~~clearly~~ clearly defined clearly in writing.

D. Volunteers and interns may not be responsible for the duties of direct care or direct supervision staff. In no event may a volunteer or intern be authorized to be alone with residents.

6VAC35-71-230. ~~Volunteer and intern background~~ Background checks for volunteers and interns.

A. Any individual who ~~(i)~~ (i) volunteers or is an intern on a regular basis in a JCC ~~and (ii) will be alone with a resident in the performance of the position's duties~~ shall be subject to the background check requirements provided for in ~~of~~ 6VAC35-71-140 ~~A (background checks).~~

B. Documentation of compliance with the background check requirements shall be maintained for each volunteer or intern for whom a background check is required.

C. A JCC that uses volunteers or interns shall implement written procedures for supervising volunteers or interns, on whom background checks are not required or whose background checks have not been completed, who have contact with residents.

6VAC35-71-240. Volunteer and intern orientation and training.

A. Any individual who (i) volunteers on a regular basis; (ii) volunteers and has contact with residents or is an intern in a JCC ~~and will be alone with the resident;~~ or ~~(ii)~~ (iii) is the designated leader for a group of volunteers shall be provided with a basic orientation on the following:

1. The facility;

2. The population served;

3. The basic objectives of the department;

4. The department and facility organizational structure;

5. Security, population control, emergency preparedness, and evacuation procedures;

6. The practices of confidentiality;

7. ~~The residents'~~ Resident rights, including ~~but not limited to~~ the prohibited actions provided for in 6VAC35-71-550 ~~(prohibited actions);~~ and

8. The basic requirements of and competencies necessary to perform their duties and responsibilities.

B. Volunteers and interns shall be trained within 30 days from their start date at the facility in the following:

~~1. Any procedures that are applicable to their duties and responsibilities; and~~

~~2. 1. Their duties and responsibilities in the event of a facility evacuation as provided in 6VAC35-71-460 (emergency and evacuation procedures); and~~

~~2. All other procedures that are applicable to their duties and responsibilities.~~

6VAC35-71-260. Maintenance of records.

A. A separate written ~~or automated~~ case record shall be maintained for each resident, which shall include all correspondence and documents received by the JCC relating to the care of that resident and documentation of all case management services provided.

B. Separate ~~health care~~ medical records, including behavioral health records, as applicable, ~~and medical records,~~ shall be kept on each resident. ~~Health care~~ Medical records shall be maintained in accordance with 6VAC35-71-1020 ~~(residents' health records)~~ and applicable statutes and regulations. Behavioral ~~health care~~ medical records may be kept separately from other medical records.

C. ~~Each case record~~ Case records and ~~health care record~~ medical records shall be kept up to date and in a uniform manner in accordance with written procedures. Case records shall be released only in accordance with §§ 16.1-300 and 16.1-309.1 of the Code of Virginia and applicable state and federal laws and regulations.

D. The procedures for ~~management of residents'~~ managing resident written records, ~~written and automated,~~ shall ~~describe~~ address confidentiality, accessibility, security, and retention of records pertaining to residents, including:

1. Access, duplication, dissemination, and ~~acquiring~~ acquisition of information only to persons legally authorized according to federal and state laws;

2. Security measures to protect records from loss, unauthorized alteration, inadvertent or unauthorized access, disclosure of information, and transportation of records between service sites; and

3. Designation of the person responsible for records management.

E. Active and closed records shall be kept in secure locations or compartments that are accessible only to authorized employees and ~~are~~ shall be protected from unauthorized access, fire, and flood.

F. Each resident's written case and ~~health-care~~ medical records shall be stored separately subsequent to the resident's discharge in accordance with applicable statutes and regulations.

G. Residents' inactive records shall be retained as required by The Library of Virginia.

6VAC35-71-270. Face sheet.

A. At the time of admission, each resident's record shall include, at a minimum, a completed face sheet that contains the following: (i) the resident's full name, last known residence, birth date, birthplace, sex, gender identity, race, social security number or other unique identifier, religious preference, and admission date; and (ii) the names, addresses, and telephone numbers of the resident's legal guardians, supervising agency, emergency contacts, and parents, if appropriate.

B. The face sheet shall be updated when changes occur and maintained in accordance with written procedures.

Part III
Physical Environment

6VAC35-71-280. Buildings and inspections.

A. All newly constructed buildings, major renovations to buildings, and temporary structures shall be inspected and approved by the appropriate building officials. There shall be a valid, current certificate of occupancy available at each JCC that documents this approval.

B. A current copy of the facility's annual inspection by fire prevention authorities indicating that all buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51) shall be maintained. If the fire prevention authorities have failed to ~~timely~~ inspect the facility's buildings and equipment, the facility shall maintain documentation of its request to schedule the annual inspection, as well as documentation of any necessary follow-up. ~~For this subsection, the definition of annual shall be defined by the Virginia Department of Fire Programs, State Fire Marshal's Office.~~

C. The facility shall maintain a current copy of its compliance with annual inspection and approval by an

independent, outside source in accordance with state and local inspection laws, regulations, and ordinances, of the following:

1. General sanitation;
2. The sewage disposal system, if applicable;
3. The water supply, if applicable;
4. Food service operations; and
5. Swimming pools, if applicable.

6VAC35-71-290. Equipment and systems inspections and maintenance.

A. All safety, emergency, and communications equipment and systems shall be inspected, tested, and maintained by designated staff in accordance with the manufacturer's recommendations or instruction manuals or, absent ~~such~~ these requirements, in accordance with a schedule that is approved by the superintendent.

1. The facility shall maintain a listing of all safety, emergency, and communications equipment and systems and the schedule established for inspections and testing.
2. Testing of ~~such~~ equipment and systems shall, ~~at a minimum~~, be conducted, at a minimum, quarterly.

B. Whenever safety, emergency, ~~and~~ or communications equipment or ~~a system is found to be~~ systems are determined defective, immediate steps shall be taken to rectify the situation and to repair, remove, or replace the defective equipment or systems.

6VAC35-71-310. Heating and cooling systems and ventilation.

A. Heat shall be distributed in all rooms occupied by the residents so that a temperature no less than 68°F is maintained, unless otherwise mandated by state or federal authorities.

B. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by residents when the temperature in those rooms exceeds 80°F, unless otherwise mandated by state or federal authorities.

6VAC35-71-320. Lighting.

- A. Sleeping and activity areas shall provide natural lighting.
- B. All areas within buildings shall be lighted for safety, and the lighting shall be sufficient for the activities being performed.
- C. Night lighting shall be sufficient to observe residents.
- D. Operable flashlights or battery-powered lanterns shall be accessible to each security staff and direct care staff on duty.
- E. Outside entrances and parking areas shall be lighted.

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6VAC35-71-330. Plumbing and water supply; temperature.

A. Plumbing shall be maintained in operational condition, as designed.

B. An adequate supply of hot and cold running water shall be available at all times.

C. Precautions shall be taken to prevent scalding from running water. Hot water temperatures ~~should~~ shall be maintained at 100°F to 120°F.

6VAC35-71-350. Toilet facilities.

A. There shall be toilet facilities available for resident use in all sleeping areas for each JCC constructed after January 1, 1998.

B. There shall be at least one toilet, one hand basin, and one shower or tub for every eight residents for facilities certified on or before December 27, 2007. There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified on or after December 28, 2007.

C. There shall be at least one bathtub in each facility.

D. The maximum number of employees on duty in the living housing unit shall be counted in determining the required number of toilets and hand basins when a separate bathroom is not provided for staff.

6VAC35-71-360. Sleeping areas.

A. ~~Male~~ Generally, male and female residents shall have separate sleeping areas; however, nothing in this chapter shall preclude a facility from making a placement decision based upon a case-by-case analysis, as required in 6VAC35-71-555, of whether a placement would ensure a resident's health and safety or present management or security problems.

B. Beds in all facilities or sleeping areas established, constructed, or structurally modified after July 1, 1981, shall be at least three feet apart at the head, foot, and sides; and double-decker beds in such facilities shall be at least five feet apart at the head, foot, and sides. Facilities or sleeping areas established, constructed, or structurally modified before July 1, 1981, shall have a bed placement plan approved by the director or the director's designee.

C. Mattresses shall be fire retardant as evidenced by documentation from the manufacturer, except in buildings equipped with an automated sprinkler system as required by the Virginia Uniform Statewide Building Code (13VAC5-63).

D. Sleeping quarters established, constructed, or structurally modified after July 1, 1981, shall have:

1. At least 80 square feet of floor area in a bedroom accommodating one person;

2. At least 60 square feet of floor area per person in rooms accommodating two or more persons; and

3. Ceilings with a primary height at least 7-1/2 feet in height exclusive of protrusions, duct work, or dormers.

6VAC35-71-400. Smoking prohibition.

Residents shall be prohibited from using, possessing, purchasing, or distributing ~~any~~ tobacco or nicotine vapor products. Tobacco products, including cigarettes, cigars, pipes, and bidis, smokeless tobacco, such as chewing tobacco or snuff, shall and vapor products, such as electronic cigarettes, electronic cigars, electronic cigarillo, electronic pipes, or similar products or devices, may not be used by staff, contractors, interns, or visitors in any areas of the facility or its area on the premises where residents may see or smell the tobacco product.

6VAC35-71-410. Space utilization.

A. Each JCC shall provide for the following:

1. An indoor recreation area with appropriate recreation materials;
2. An outdoor recreation area with appropriate recreation materials;
3. Kitchen facilities and equipment for the preparation and service of meals;
4. A dining area equipped with tables and seating;
5. Space and equipment for laundry, if laundry is done on site;
6. ~~Space~~ Storage space for the storage of items such as first aid equipment, household supplies, recreational equipment, and other materials;
7. A designated visiting area that permits informal communication and opportunities for physical contact between residents and visitors, ~~including opportunity for physical contact~~ in accordance with written procedures;
8. Space for administrative activities, including, ~~as appropriate to the program,~~ confidential conversations and the storage of records and materials; and
9. A central medical ~~room~~ area with medical examination facilities rooms or other spaces designated to ensure privacy of care and equipped in consultation with the health authority.

B. If a school program is operated at the facility, school classrooms shall be designed in consultation with appropriate education authorities to comply with applicable state and local requirements.

C. Spaces or areas may be ~~interchangeably~~ interchangeably utilized but shall be in functional condition for the designated purpose.

6VAC35-71-420. Kitchen operation and safety.

A. Each facility shall have a food service operation maintenance plan that addresses the following: (i) food sanitation and safety procedures; (ii) the inspection of ~~all~~ food service, preparation, and dining areas and equipment; (iii) a requirement for sanitary and temperature-controlled storage facilities for food; and (iv) the monitoring of refrigerator and water temperatures.

B. The facility shall follow written procedures governing access to all areas where food or utensils are stored and the inventory and control of culinary equipment to which residents reasonably may be expected to have access.

C. Walk-in refrigerators and freezers shall be equipped to permit emergency exits.

D. Bleach or another sanitizing agent approved by the ~~federal~~ U.S. Environmental Protection Agency to destroy bacteria shall be used in laundering table and kitchen linens.

6VAC35-71-430. Maintenance of the buildings and grounds.

A. The interior and exterior of all buildings and grounds shall be safe, maintained, and reasonably free of clutter and rubbish. This ~~includes but is not limited to~~ requirement applies to all areas of the facility and to items within the facility, including (i) required locks, mechanical devices, indoor and outdoor equipment, and furnishings; and (ii) all areas where residents, staff, and visitors may reasonably be expected to have access.

B. All buildings shall be reasonably free of stale, musty, or foul odors.

C. Each facility shall have a written plan to control pests and vermin. Buildings shall be kept reasonably free of flies, roaches, rats, and other vermin. ~~Any condition~~ Conditions conducive to harboring or breeding insects, rodents, or other vermin shall be eliminated immediately. Each facility shall document efforts to eliminate ~~such~~ these conditions, as applicable.

6VAC35-71-440. Animals on the premises.

A. Animals maintained on the premises shall be ~~housed~~;

1. Housed at a reasonable distance from ~~sleeping, living, eating, and~~ food preparation areas as well as a safe distance from water supplies.;

~~B. Animals maintained on the premises shall be tested~~ 2. Tested, inoculated, and licensed as required by law; and

3. Provided with clean sleeping areas and adequate food and water.

~~C. B.~~ The premises shall be kept reasonably free of stray domestic animals.

~~D. Pets shall be provided with clean sleeping areas and adequate food and water.~~

6VAC35-71-460. Emergency and evacuation procedures.

A. Each JCC shall have a written emergency preparedness and response plan. ~~The plan,~~ which shall address:

1. Documentation of contact with the local emergency coordinator to determine (i) local disaster risks; (ii) communitywide plans to address different disasters and emergency situations; and (iii) assistance, if any, that the local emergency management office will provide to the facility in an emergency;

2. Analysis of the facility's capabilities and potential hazards, including natural disasters, severe weather, fire, flooding, workplace violence or terrorism, missing persons, severe injuries, or other emergencies that would disrupt the normal course of service delivery;

3. Written emergency management procedures outlining specific responsibilities for (i) provision of administrative direction and management of response activities; (ii) coordination of logistics during the emergency; (iii) communications; (iv) life safety of employees, contractors, interns, volunteers, visitors, and residents; (v) property protection; (vi) community outreach; and (vii) recovery and restoration;

4. Written emergency response procedures for (i) assessing the situation; (ii) protecting residents, employees, contractors, interns, volunteers, visitors, equipment, and vital records; and (iii) restoring services shall address:

a. Communicating with employees, contractors, and community responders;

b. Warning and ~~notification of~~ notifying residents;

c. Providing emergency access to secure areas and opening locked doors;

d. Requiring fire and emergency keys that are instantly identifiable by sight and touch;

e. Conducting evacuations to emergency shelters or alternative sites and accounting for all residents;

f. Relocating residents, if necessary;

g. Notifying parents and legal guardians, as applicable and appropriate;

h. Alerting emergency personnel and sounding alarms;

i. Locating and shutting off utilities when necessary; and

j. Providing for a planned, personalized means of effective egress evacuation for residents individuals who use wheelchairs, crutches, canes, or ~~other mechanical devices for assistance in walking~~ require other special accommodations.

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5. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated ~~escape~~ evacuation routes, and ~~list~~ lists of major resources such as local emergency shelters; and

6. Schedule for testing the implementation of the plan and conducting emergency preparedness drills.

B. All employees shall be trained to ensure they are prepared to implement the emergency preparedness plan in the event of an emergency. ~~Such~~ The training shall ~~include~~ be conducted in accordance with 6VAC35-71-160 and 6VAC35-71-170 and shall outline the employees' responsibilities for:

1. Alerting emergency personnel and sounding alarms;
2. Implementing evacuation procedures, including evacuation of ~~residents with~~ individuals who require special needs (i.e., deaf, blind, nonambulatory) accommodations;
3. Using, maintaining, and operating emergency equipment;
4. Accessing emergency information for residents including medical information; and
5. Utilizing community support services.

C. Contractors ~~and~~, volunteers, and interns shall be oriented in their responsibilities in implementing the evacuation plan in the event of an emergency. ~~Such orientation~~ Orientation shall be in accordance with the requirements of 6VAC35-71-150 (~~required initial orientation~~), 6VAC35-71-160 (~~required initial training~~), and 6VAC35-71-240 (~~volunteer and intern orientation and training~~).

D. ~~The~~ A JCC shall document the review of the emergency preparedness plan annually and make necessary revisions. ~~Such~~ The revisions shall be communicated to employees, contractors, volunteers, ~~and~~ interns, and residents and shall be incorporated into (i) training for employees, contractors, interns, and volunteers; and (ii) orientation of residents to services.

E. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety and welfare of residents, the facility shall take appropriate action to protect the health, safety and welfare of the residents and to remedy the conditions as soon as possible.

F. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, and welfare of residents, the facility ~~should~~ first shall respond and stabilize the disaster or emergency. ~~After~~ Once the disaster or emergency is stabilized, the facility shall (i) report the disaster or emergency and the conditions at the facility to (a) the parent or legal guardian and (b) the director or ~~his~~ the director's designee ~~of the conditions at the facility~~ and (ii) report the disaster or emergency to the regulatory authority.

~~Such~~ The reporting shall be made as soon as possible but no later than 72 hours after the incident is stabilized.

G. Floor plans showing primary and secondary means of emergency exiting shall be posted on each floor in locations where they ~~can~~ are easily ~~be seen by~~ visible to employees and residents.

H. The responsibilities of the residents in implementing the emergency and evacuation procedures shall be communicated to all residents within seven days following admission or a substantive change in the procedures.

I. ~~At~~ The facility shall conduct at least one evacuation drill (the simulation of the facility's emergency procedures) shall be conducted to simulate its evacuation procedures each month in each building occupied by residents. During any three consecutive calendar months, at least one evacuation drill shall be conducted during each shift.

J. A record shall be maintained for each evacuation drill and shall include the following:

1. ~~Buildings~~ The buildings in which the drill was conducted;
2. ~~Date~~ The date and time of the drill;
3. ~~Amount~~ The amount of time taken to evacuate the buildings; ~~and~~
4. ~~Specific~~ The specific problems encountered, if applicable;
5. The staff tasks completed, including head counts and practice in notifying emergency authorities; and
6. The name of the staff members responsible for conducting and documenting the drill and preparing the record.

K. ~~Each~~ A JCC shall ~~assign~~ designate at least one employee who shall ensure that all requirements regarding the emergency preparedness and response plan and the evacuation drill program are met.

6VAC35-71-470. Security procedures.

~~Each~~ A JCC shall follow written security procedures related to the following:

1. Post orders or shift duties for each direct care and security post;
2. Population count;
3. A control center that integrates all external and internal security functions and communications, is secured from residents' access, and is staffed 24 hours a day;
4. Control of the perimeter;
5. Actions to be taken regarding any escapes or absences without permission;

- 6. Searches of the buildings, premises, and persons; and
- 7. The control, detection, and disposition of contraband.

6VAC35-71-480. Searches of residents.

A. A JCC may conduct a search of a resident only for the purposes of maintaining facility security and controlling contraband and only in a manner that, to the greatest extent possible, protects the dignity of the resident.

B. Written procedures shall govern searches of residents, including patdowns and frisk searches, strip searches, and body cavity searches, and shall include the following:

- ~~1. Searches of residents' persons shall be conducted only for the purposes of maintaining facility security and controlling contraband while protecting the dignity of the resident.~~
- ~~2.~~ 1. Searches ~~are~~ shall be conducted only by personnel who have received the required training and are authorized to conduct ~~such~~ searches.
- ~~3.~~ 2. The resident shall not be touched any more than is necessary to conduct the search.
- 3. The facility shall not search or physically examine a transgender or intersex resident solely for the purpose of determining the resident's genital status.

~~B.~~ C. Patdown and frisk searches shall be conducted by ~~personnel of the same sex as the resident being searched, except in emergencies~~ in accordance with written procedures.

~~C.~~ D. Strip searches and visual inspections of the vagina and anal cavity areas shall be ~~subject to the following:~~ conducted with a staff witness and in an area that ensures privacy in accordance with written procedures.

- ~~1. The search shall be performed by personnel of the same sex as the resident being searched;~~
- ~~2. The search shall be conducted in an area that ensures privacy; and~~
- ~~3. Any witness to the search shall be of the same sex as the resident.~~

~~D. Manual and~~ E. Except in exigent circumstances creating a potential threat to the health of a resident, if it is determined that a manual or instrumental ~~searches~~ search of the anal cavity or vagina is necessary, the resident shall be transported to a local medical facility in accordance with written procedures, ~~not including medical examinations or procedures conducted by medical personnel for medical purposes, shall be:~~

- ~~1. Performed only with the written authorization of the facility administrator or by a court order;~~
- ~~2. Conducted by a qualified medical professional;~~

~~3. Witnessed by personnel of the same sex as the resident; and~~

~~4. Fully documented in the resident's medical file.~~

6VAC35-71-490. Communications systems.

A. There shall be at least one continuously operable, nonpay telephone accessible to staff in each building in which residents sleep or participate in programs.

B. There shall be a means for communicating between the control center and ~~living~~ housing units.

C. The facility shall be able to provide communications in an emergency.

6VAC35-71-500. Emergency telephone numbers.

~~A.~~ A. There shall be an emergency telephone number where a staff person may be contacted 24 hours per day and seven days per week.

B. The emergency telephone number shall be provided to residents and the adults responsible for their care when a resident is away from the facility and not under the supervision of direct care staff, security staff, or law-enforcement officials.

6VAC35-71-510. Weapons.

No firearms or other weapons shall be permitted on the JCC's premises ~~and or~~ during JCC-related activities except as provided authorized in written procedures or authorized by the director or the director's designee. Written procedures shall govern any possession, use, and storage of authorized firearms and other weapons on the JCC's premises and during JCC-related activities.

6VAC35-71-540. Transportation.

A. Each JCC shall have transportation available or make the necessary arrangements for routine and emergency transportation of residents.

~~B. There shall be~~ A JCC shall follow written safety ~~rules for~~ and security procedures governing transportation of residents and ~~for~~ the use and maintenance of vehicles.

C. Written ~~procedure~~ procedures shall ~~provide for~~ require the verification of appropriate licensure for staff whose duties involve transporting residents. At a minimum, the procedures shall direct this staff to (i) maintain a valid driver's license and (ii) report to the superintendent or the superintendent's designee any change in their driver's license statuses, including any suspensions, restrictions, or revocations.

D. Residents shall be supervised by security staff or direct care staff during routine and emergency vehicle transportation.

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6VAC35-71-545. Lockdowns.

A JCC may impose a lockdown within a facility in accordance with written procedures that require the following:

1. With the exception of a lockdown to respond to an emergency, as defined in 6VAC35-71-10, a lockdown may not be imposed until the superintendent or the superintendent's designee provides approval;
2. In the event of an emergency necessitating a lockdown, the superintendent shall be notified as soon as practicable;
3. The superintendent's supervisor and the administrator at the next level in the department's reporting chain-of-command shall be notified of all lockdowns except lockdowns for routine facility searches;
4. In the event that the lockdown extends beyond 72 hours, the lockdown and the steps being planned or taken to resolve the situation shall be reported immediately to the administrator who is two levels above the superintendent in the department's reporting chain-of-command;
5. Whenever residents are confined to a locked room as a result of a lockdown, the staff shall:
 - a. Check each locked down resident visually at least every 15 minutes, and more frequently if necessitated by the circumstances;
 - b. Ensure that each resident has a means of immediate communication with staff, either verbally or electronically, throughout the duration of the confinement period;
 - c. Ensure that each resident is afforded the opportunity for at least one hour of large muscle exercise outside of the locked room every calendar day unless the resident displays behavior that is threatening or presents an imminent danger to himself or others, or unless the circumstances that required the lockdown justify an exception.
 - d. Ensure that the superintendent or the superintendent's designee makes personal contact with each resident who is confined every calendar day; and
 - e. In response to a resident who exhibits self-injurious behavior after being in room confinement, (i) take appropriate action in response to the behavior, (ii) consult with a qualified mental health professional immediately thereafter and document the consultation, and (iii) monitor the resident in accordance with established protocols, including constant supervision, if appropriate.

Part V Residents' Rights

6VAC35-71-550. Prohibited actions.

A. Residents shall not be subjected to the following actions:

1. Discrimination in violation of the Constitution of the United States, the Constitution of the Commonwealth of Virginia, executive orders, and state and federal statutes and regulations;
2. Deprivation of drinking water or food necessary to meet a resident's daily nutritional needs, except as ordered by a licensed physician or health trained personnel for a legitimate medical or dental purpose and documented in the resident's medical record;
3. Denial of contacts and visits with the resident's attorney, a probation or parole officer, the JCC staff assigned to conduct the resident's due process hearings or resolve the resident's grievance or complaint, the regulatory authority, a supervising agency representative, or representatives of other agencies or groups as required by applicable statutes or regulations;
4. Any action that is humiliating, degrading, abusive, or unreasonably impinges upon the ~~residents'~~ resident's rights, including ~~but not limited to any form of~~ physical abuse, sexual abuse, or sexual harassment, nor shall the residents be subject to retaliation for reporting these actions;
5. Corporal punishment, which is administered through the intentional ~~inflicting~~ infliction of pain or discomfort to the body through actions such as, ~~but not limited to~~ (i) striking or hitting with any part of the body or with an implement; (ii) pinching, pulling, or shaking; or (iii) ~~any similar action~~ actions that normally ~~inflicts~~ inflict pain or discomfort;
6. Subjection to unsanitary living conditions;
7. Deprivation of opportunities for bathing or access to toilet facilities, except as ordered by a licensed ~~physician~~ health care professional for a legitimate medical purpose and documented in the resident's medical record;
8. Denial of health care;
9. Denial of appropriate services, programs, activities, and treatment;
10. Application of aversive stimuli, except as ~~provided in this chapter or~~ permitted pursuant to other applicable state regulations. Aversive stimuli means any physical forces (e.g., sound, electricity, heat, cold, light, water, or noise) or substances (e.g., hot pepper, pepper sauce, or pepper spray) measurable in duration and intensity that when applied to a resident are noxious or painful to the individual resident;
11. Administration of laxatives, enemas, or emetics, except as ordered by a licensed ~~physician~~ health care professional

or poison control center for a legitimate medical purpose and documented in the resident's medical record;

12. Deprivation of opportunities for sleep or rest, except as ordered by a licensed ~~physician~~ health care professional for a legitimate medical or dental purpose and documented in the resident's medical record;

13. Use of pharmacological restraints; and

14. Other constitutionally prohibited actions.

B. Employees shall be trained on the prohibited actions as provided in 6VAC35-71-160 and 6VAC35-71-170.

6VAC35-71-555. Vulnerable population.

A. The facility shall implement a procedure for assessing whether a resident is a member of a vulnerable population. The resident's views with respect to his safety shall be given serious consideration.

B. If the assessment determines a resident is a vulnerable population, the facility shall implement any identified additional precautions such as heightened need for supervision, additional safety precautions, or separation from certain other residents. The facility shall consider on a case-by-case basis whether a placement would ensure the resident's health and safety and whether the placement would present management or security problems.

~~C. For the purposes of this section, vulnerable population means a resident or group of residents who have been assessed to be reasonably likely to be exposed to the possibility of being attacked or harmed, either physically or emotionally (e.g., very young residents; residents who are small in stature; residents who have limited English proficiency; residents who are gay, lesbian, bi sexual, transgender, or intersex; residents with a history of being bullied or of self injurious behavior).~~

C. Lesbian, gay, bisexual, transgender, or intersex residents shall not be placed in particular housing, bed, or other assignments solely on the basis of this identification or status, nor shall any facility consider lesbian, gay, bisexual, transgender, or intersex identification or status as an indicator of a likelihood of being sexually abusive.

6VAC35-71-560. Residents' Resident mail.

A. A resident's incoming or outgoing mail may be delayed or withheld only in accordance with this section, as permitted by other applicable regulations, or by order of a court.

B. Staff may open and inspect residents' incoming and outgoing nonlegal mail for contraband. When based on legitimate ~~facility~~ interests of facility order and security, nonlegal mail may be read, censored, or rejected in accordance with written procedures and subject to the restrictions in subsection D of this action. The resident shall

be notified when incoming or outgoing letters are withheld ~~in part or in full~~ or redacted, as appropriate.

~~C. In the presence of the resident recipient and in accordance with written procedures, staff may open to inspect for contraband; but shall not read, incoming legal mail. For the purpose of this section, legal mail means a communication sent to or received from a designated class of correspondents, as defined in written procedures, including but not limited to the court, an attorney, and the grievance system or department administrators.~~

~~D. Staff shall may not read outgoing mail addressed to parents, immediate family members, legal guardian, guardian ad litem, counsel, courts, officials of the committing authority, public officials, or grievance administrators unless (i) permission has been obtained from a court or (ii) the director or his the director's designee has determined that there is a reasonable belief that the security of a facility is threatened. When so authorized staff may read such this mail, in accordance with written procedures.~~

E. Except as otherwise provided, incoming and outgoing letters shall be held for no more than 24 hours and packages shall be held for no more than 48 hours, excluding weekends and holidays.

F. Upon request, each resident shall be given postage and writing materials for all legal correspondence and for at least two other letters per week.

G. Residents shall be permitted to correspond at their own expense with any person or organization provided ~~such~~ this correspondence does not pose a threat to facility order and security and is not being used to violate or to conspire to violate the law.

H. First class letters and packages received for residents who have been transferred or released shall be forwarded to the resident's last known address.

I. Written procedure governing correspondence of residents shall be made available to all employees and residents and updated as needed.

6VAC35-71-570. Telephone calls.

Telephone Residents shall be permitted to make telephone calls shall be permitted in accordance with written procedures ~~that take into account the need for facility security and order, the resident's behavior, and program objectives.~~

6VAC35-71-580. Visitation.

A. A resident's contacts and visits with immediate family members ~~or legal guardians shall~~ and natural supports may not be restricted solely for punitive purposes, nor may they be subject to unreasonable limitations, and any. Any limitation shall be implemented only as permitted by ~~written procedures, other~~ applicable regulations, ~~or by~~ order of a court, or written visitation procedures that balance (i) the

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need for facility security and order, (ii) the behavior of individual residents and the visitors, and (iii) the importance of helping the resident maintain strong family and community relationships.

~~B. Residents shall be permitted to have visitors, consistent with written procedures that take into account (i) the need for facility security and order, (ii) the behavior of individual residents and the visitors, and (iii) the importance of helping the resident maintain strong family and community relationships. Written procedures shall provide for the accommodation of special circumstances.~~

B. A JCC shall provide visitors with occasional opportunities to view the resident's housing unit or room and to interact with staff members unless this access is impracticable or would threaten the safety or security of residents, staff, or other visitors. Written visitation procedures shall outline the parameters governing this access and provide for the accommodation of special circumstances.

C. Copies of the visitation procedures shall be mailed, either electronically or via first class mail, to the ~~residents'~~ resident's parents or legal guardians, as applicable and appropriate, ~~and other applicable persons~~ no later than the close of the next business day after ~~arrival~~ the resident arrives at the JCC, unless a copy has already been provided to the individual.

D. Resident visitation at ~~an employee's~~ the home ~~is of an employee, volunteer, intern, or contractor~~ shall be prohibited.

6VAC35-71-590. Contact with attorneys, courts, and law enforcement.

A. Residents shall have uncensored, confidential contact with their legal representative in writing, as ~~provided for in required by~~ 6VAC35-71-560 (~~residents' mail~~), by telephone, ~~or~~ and in person. Reasonable limits may be placed on ~~such~~ these contacts as necessary to protect the security and order of the facility.

B. Residents shall not be denied access to the courts.

C. Residents shall not be required to submit to questioning by law enforcement, though they may do so voluntarily.

1. A resident must provide written consent prior to any contact with law enforcement. Written procedures shall be implemented for obtaining the resident's consent ~~prior to any contact with law enforcement.~~

2. No employee may coerce a resident's decision to consent to have contact with law enforcement.

6VAC35-71-620. Residents' modesty Resident privacy.

Residents shall be provided a level of ~~modesty~~ privacy from routine sight supervision by staff members of the opposite sex while bathing, dressing, or conducting toileting activities except (i) in exceptional security circumstances or (ii) ~~when~~ if constant supervision is necessary to protect the resident due

to mental health issues. This section does not apply to medical personnel performing medical procedures or to staff providing assistance to residents whose physical or mental disabilities dictate the need for assistance with these activities as justified in the resident's medical record.

6VAC35-71-630. Nutrition.

A. Each resident, except as provided in subsection B of this section, shall be provided a daily diet that (i) consists of at least three nutritionally balanced meals, of which two are hot meals (except in emergency situations), and an evening snack; (ii) includes an adequate variety and quantity of food for the age of the resident; and (iii) meets the nutritional requirements of all applicable federal dietary requirements, such as U.S. Department of Agriculture (USDA).

B. Special diets or alternative dietary schedules, ~~as applicable,~~ shall be provided in the following circumstances: (i) when prescribed by a ~~physician~~ licensed health care professional; (ii) when necessary to observe the established religious dietary practices of the resident; or (iii) when ~~necessary for the special management of maladaptive behavior or to maintain facility security if food or culinary equipment has been used inappropriately, resulting in a threat to facility security and the special diet or alternative dietary schedule~~ is approved by the superintendent ~~or,~~ the superintendent's designee, or a mental health professional. ~~In such circumstances~~ If a facility provides special diets or alternative dietary schedules, the meals shall meet the minimum nutritional requirements of all applicable federal dietary requirements, such as USDA, and any required approval shall be documented.

C. Menus of actual meals served shall be kept on file ~~for at least six months~~ in accordance with all applicable federal requirements.

D. Staff who eat in the presence of the residents shall be served the same meals as the residents unless a licensed health care professional has prescribed a special diet ~~has been prescribed by a physician~~ for the staff or residents or unless the staff or residents are observing established religious dietary practices.

E. ~~There~~ A JCC shall not be allow more than ~~45~~ 14 hours to pass between the evening meal and breakfast the following day, ~~except when the superintendent approves an extension of time between meals on weekends and holidays. When an extension is granted on a weekend or holiday, there shall never be more than 17 hours between the evening meal and breakfast.~~

F. ~~Each~~ A JCC shall assure ensure that food is available to residents who for documented medical or religious reasons need to eat breakfast before the ~~45~~ 14 hours have expired.

6VAC35-71-660. Recreation.

A. Each JCC shall implement a recreational program plan ~~that includes developed and supervised by a person trained in recreation or a related field. The plan shall include:~~

1. Opportunities for individual and group activities;
2. Opportunity for large muscle exercise daily;
3. Scheduling so that activities do not conflict with meals, religious services, or educational programs, ~~or other regular events;~~ and
4. Regularly scheduled indoor and outdoor recreational activities that are structured to develop skills. Outdoor recreation ~~will~~ shall be available whenever practicable in accordance with the facility's recreation plan. Staff shall document any adverse weather conditions, threat to facility security, or other circumstances preventing outdoor recreation.

B. Each recreational program plan shall (i) address the means by which residents will be medically assessed for any physical limitations or necessary restrictions on physical activities and (ii) provide for the supervision of and safeguards for residents, including when participating in water related and swimming activities.

6VAC35-71-670. Residents' Resident funds.

~~Residents'~~ A resident's personal funds, including any per diem or earnings, shall be used only for the following: (i) ~~for their activities, services, or goods for the resident's benefit;~~ (ii) ~~for~~ payment of any fines, restitution, costs, or support ordered by a court or administrative judge; or (iii) ~~to pay~~ payment of any restitution for damaged property or personal injury as determined by disciplinary procedures.

Part VI
Program Operation

6VAC35-71-680. Admission and orientation.

A. Written procedure governing the admission and orientation of residents to the JCC shall provide for:

1. Verification of legal authority for placement;
2. Search of the resident and the resident's possessions, including inventory and storage or disposition of property, as appropriate and ~~provided for in~~ required by 6VAC35-71-690 ~~(residents' personal possessions);~~
3. Health screening of the resident as ~~provided for in~~ required by 6VAC35-71-940 ~~(health screening at admission);~~
4. ~~Notification of~~ Notice to the parent or legal guardian of the resident's admission;

5. Provision to the parent or legal guardian of information on (i) visitation, (ii) how to request information, and (iii) how to register concerns and complaints with the facility;

6. Interview with the resident to answer questions and obtain information;

7. Explanation to the resident of program services and schedules; and

8. Assignment of the resident to a living housing unit; and sleeping area; or room.

B. The resident shall receive an orientation to the following:

1. The behavior management program as required by 6VAC35-71-745 ~~(behavior management)~~. ~~a.~~ During the orientation, residents shall be given written information describing rules of conduct, the sanctions for rule violations, and the disciplinary process. ~~These~~ Staff shall have the discretion to provide residents who are noncompliant or are displaying maladaptive behavior one or more opportunities to view the written information instead of providing the resident with a copy. The written information shall be explained to the resident and documented by the dated signature of the resident and staff. In the event that staff exercises the discretion not to provide the resident with a written copy, staff must provide the resident with a copy of the written information once the resident demonstrates the ability to comply with the rules of the facility.

~~b. Where a language or literacy problem exists that can lead to a resident misunderstanding the rules of conduct and related regulations, staff or a qualified person under the supervision of staff shall assist the resident.~~

2. The grievance procedure as required by 6VAC35-71-80 ~~(grievance procedure)~~.

3. The disciplinary process as required by 6VAC35-71-1110 ~~(disciplinary process)~~.

4. The resident's responsibilities in implementing the emergency procedures as required by 6VAC35-71-460 ~~(emergency and evacuation procedures)~~.

5. The resident's rights, including ~~but not limited to~~ the prohibited actions provided for in 6VAC35-71-550 ~~(prohibited actions)~~.

6. The resident's rights relating to religious participation as required by 6VAC35-71-650 ~~(religion)~~.

C. The facility shall ensure that all the information provided to the resident pursuant to this section is explained in an age-appropriate or developmentally-appropriate manner and is available in a format that is accessible to all residents, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, or who have limited reading skills.

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D. The facility shall maintain documentation that the requirements of this section have been satisfied.

6VAC35-71-690. Residents' Resident personal possessions.

A. ~~Each~~ A JCC shall inventory ~~residents'~~ each resident's personal possessions upon admission and document the information in ~~residents'~~ the resident's case records. When a resident arrives at a JCC with items that the resident is not permitted to possess in the facility, staff shall:

1. Dispose of contraband items in accordance with written procedures;
2. If the items are nonperishable property that the resident may otherwise legally possess, (i) securely store the property and return it to the resident upon release; or ~~3. Make~~ (ii) make reasonable, documented efforts to return the property to the ~~resident,~~ resident's parent or legal guardian.

B. Personal property that remains unclaimed six months after a documented attempt to return the property may be disposed of in accordance with § 66-17 of the Code of Virginia and written procedures governing unclaimed personal property.

6VAC35-71-700. Classification plan.

A. A JCC shall utilize an objective classification system for determining ~~appropriate security levels~~ the a resident's level of risk, needs, and ~~the~~ most appropriate services ~~of the residents~~ and for assigning ~~them~~ the resident to living units ~~according to their~~ a housing unit based on the resident's needs and existing resources.

B. Residents shall be placed according to their classification levels. ~~Such classification~~ These classifications shall be reviewed as necessary in light of (i) the facility's safety and security and (ii) the resident's needs and progress.

6VAC35-71-710. Resident transfer between and within JCCs.

A. When a resident is transferred between JCCs, the following shall occur:

1. The resident's case records, ~~including~~ medical records, and behavioral health records, shall accompany the resident to the receiving facility; and
2. The resident's parents or legal guardian, if applicable and appropriate, and the court service unit or supervising agency shall be notified within 24 hours of the transfer.

B. ~~When~~ If a resident is transferred to a more restrictive unit, ~~or program, or facility~~ within a JCC or between JCCs, the JCC shall provide due process safeguards for ~~residents~~ the resident prior to ~~their~~ transfer.

C. In the case of emergency transfers, ~~such~~ the safeguards and notifications shall be instituted as soon as practicable after transfer.

6VAC35-71-720. Release Discharge.

A. Residents shall be ~~released~~ discharged from a JCC in accordance with written procedure.

B. The case record of each resident serving an indeterminate commitment, who is not ~~released~~ discharged pursuant to a court order, shall contain the following:

1. A discharge plan developed in accordance with written procedures;
2. Documentation that the ~~release~~ discharge was discussed with the parent or legal guardian, if applicable and appropriate, the court ~~services~~ service unit, and the resident; and
3. As soon as possible, but no later than 30 days after ~~release~~ discharge, a comprehensive ~~release~~ discharge summary ~~placed in the resident's record and, which also shall be~~ sent to the persons or agency that made the placement. The ~~release~~ discharge summary shall review:
 - a. Services provided to the resident;
 - b. The resident's progress toward meeting individual service plan objectives;
 - c. The resident's continuing needs and recommendations, if any, for further services and care;
 - d. The names of persons to whom the resident was ~~released~~ discharged;
 - e. Dates of admission and ~~release~~ discharge; and
 - f. Date the ~~release~~ discharge summary was prepared and the identification of the person preparing it.

C. The case record of each resident serving a determinate commitment or ~~released~~ discharged pursuant to an order of a court shall contain a copy of the court order.

D. As appropriate and applicable, information concerning current medications, need for continuing therapeutic interventions, educational status, and other items important to the resident's continuing care shall be provided to the legal guardian or legally authorized representative, ~~as appropriate and applicable~~.

E. Upon discharge, the (i) date of discharge and (ii) the name of the person to whom the resident was discharged, if applicable, shall be documented in the case record.

6VAC35-71-735. Therapeutic communities in housing units.

A. A JCC shall ensure that each housing unit functions as a therapeutic community that, at a minimum, includes the following components:

1. Designated staff assigned to one housing unit and, to the extent practicable, continued assignment to that unit for the therapeutic benefit of residents;

2. Continued resident assignment to the same housing unit throughout the duration of commitment, unless the continued assignment would threaten facility safety or security or the resident's needs or progress;

3. Daily, structured therapeutic activities provided in accordance with 6VAC35-71-740; and

4. Direction, guidance, and monitoring provided by an interdisciplinary team consisting of designated JCC staff and representatives from the department's mental health, education, and medical units.

B. The department shall establish written procedures governing therapeutic communities in housing units that include these components.

6VAC35-71-740. Structured programming.

A. Each facility shall implement a comprehensive, planned, and structured daily routine, ~~including appropriate supervision,~~ designed to:

1. Meet the residents' physical and emotional needs;
2. Provide protection, guidance, and supervision;
3. Ensure the delivery of program services; and
4. Meet the objectives of ~~any~~ the resident's individual service plan.

B. Residents shall be provided the opportunity to participate in programming, as applicable, upon admission to the facility.

6VAC35-71-745. Behavior management.

A. ~~Each~~ A JCC shall implement a behavior management program approved by the director or the director's designee. ~~Behavior management shall mean those principles and methods employed to help a resident achieve positive behavior and to address and correct a resident's inappropriate behavior in a constructive and safe manner in accordance with written procedures governing program expectations, treatment goals, resident and staff safety and security, and the resident's individual service plan. and shall adhere to written procedures governing the behavior management program.~~

B. Written procedures governing this program shall ~~provide the following:~~

1. List the behavioral expectations for the resident;
2. ~~Define and list~~ List and explain techniques that are available or used and available for use to manage behavior, including incidents of noncompliance;
3. ~~Specify the staff members who may authorize the use of each technique;~~

~~4. 3.~~ Specify the processes for implementing the program; and

~~5. Means~~ 4. Identify the means of documenting and monitoring ~~of~~ the program's implementation.

C. ~~When~~ If substantive revisions are made to the behavior management program, ~~written information concerning the revisions shall be provided to the residents and direct care staff~~ residents and direct care staff shall be notified of these revisions in writing prior to implementation.

6VAC35-71-747. Behavior support contract.

A. ~~When~~ If a resident exhibits a pattern of behavior indicating a need for behavioral support ~~in addition to that beyond the support provided in the facility's department's behavior management program,~~ a written behavior support contract shall be developed, ~~in accordance with written procedures, with the intent of assisting to assist the resident to self-manage in self-managing these behaviors. The support contract shall be developed in accordance with written procedures, which~~ Procedures governing behavior support contracts shall address (i) the circumstances under which such the contracts will be utilized and (ii) the means of documenting and monitoring the contract's implementation.

B. ~~Prior to working alone with an~~ Staff regularly assigned to work with a resident, each staff member in a housing unit shall review and be prepared to implement the resident's behavior support contract.

6VAC35-71-750. Communication with court service unit staff.

A. ~~Each~~ A resident's probation or parole officer shall be provided with the contact information for an individual at the facility to whom inquiries on assigned resident cases may be addressed.

B. The resident's probation or parole officer shall be invited to participate in any scheduled classification and staffing team ~~meetings at RDC and any scheduled~~ and treatment team meetings.

6VAC35-71-760. Communication with parents.

A. Each resident's parent or legal guardian, as appropriate and applicable, shall be provided with the contact information for an individual at the facility to whom inquiries regarding the resident may be addressed.

B. The resident's parent or legal guardian, as appropriate and applicable, shall be provided written notice of and the opportunity to participate in any scheduled classification and staffing team ~~meetings at RDC and any scheduled~~ treatment team meetings.

6VAC35-71-765. Family engagement.

To the extent practicable and in accordance with written procedures, a JCC shall adhere to the following in order to

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ensure the inclusion and involvement of immediate family members and natural supports during a resident's commitment to the department:

1. Permit the resident a specified number of weekly calls, as identified in written procedures, to immediate family members or natural supports;

2. Ensure the periodic arrangement of events and activities, as specified in written procedures, in which family members will be invited to participate;

3. Ensure that a designated visiting area is available that is conducive to family visits in accordance with 6VAC35-71-410; and

4. Maximize involvement of immediate family members and natural supports in the resident treatment process, as prescribed in written procedures.

6VAC35-71-770. Case management services.

A. The facility shall implement written procedures governing case management services, ~~which that~~ shall address:

1. The resident's adjustment to the facility, group living, and separation from the resident's family;

2. Supportive counseling, as needed;

3. Transition and community ~~reintegration~~ reentry planning and preparation; and

4. ~~Communicating~~ Communication with (i) staff at the facility; (ii) the parents or legal guardians, as appropriate and applicable; (iii) the court service unit; and (iv) community resources, as needed.

B. The provision of case management services shall be documented in the case record.

6VAC35-71-790. Individual service plans.

A. An individual service plan shall be developed and placed in the resident's record within 30 days following arrival at the facility and implemented immediately thereafter. ~~This section does not apply to residents who are housed at RDC for 60 days or less. If a resident remains at RDC for longer than 60 days, an individual plan shall be developed at that time, placed in the resident's record, and implemented immediately thereafter.~~

B. Individual service plans shall describe in measurable terms the:

1. Strengths and needs of the resident;

~~2. Resident's current level of functioning;~~

~~3. Goals~~ 2. Short-term and long-term goals, objectives, and strategies established for the resident, and timeframes for reaching those goals, and the individuals responsible for carrying out the service plan;

~~4. 3.~~ Projected family involvement;

~~5. 4.~~ Projected date for accomplishing each objective; and

~~6. 5.~~ Status of the projected release plan and estimated length of stay except that this requirement shall not apply to residents who are determinately committed to the department.

~~C. Each individual service plan shall include the date it was developed and the signature of the person who developed it.~~

~~D. C.~~ The resident and facility staff shall participate in the development of the individual service plan.

~~E. D.~~ The supervising agency and resident's parents, legal guardian, or legally authorized representative, if appropriate and applicable, shall be given the opportunity to participate in the development of the resident's individual service plan.

E. The individual service plan shall include the date it was developed and the signature of the person who developed it.

F. Copies of the individual service plan shall be provided to the (i) resident; (ii) resident's parents or legal guardians, as appropriate and applicable; and (iii) placing agency.

G. The individual service plan shall be reviewed within 60 days ~~of the development of the individual service plan~~ its development and within each 90-day period thereafter.

H. The individual service plan shall be updated annually and revised as necessary. ~~Any changes~~ Changes to the plan shall be made in writing. All participants shall receive copies of the revised plan.

6VAC35-71-800. Quarterly reports.

A. The resident's progress toward meeting his individual service plan goals shall be reviewed, and a progress report shall be prepared within 60 days of the development of the individual service plan and within each 90-day period thereafter. The report shall review the status of the following:

1. Resident's progress toward meeting the plan's objectives;

2. Family's involvement;

3. Continuing needs of the resident;

4. Resident's progress towards discharge; and

5. Status of discharge planning.

B. Each quarterly progress report shall include the date it was developed and the signature of ~~the person who developed~~ it ~~its~~ author.

C. All quarterly progress reports shall be reviewed with the resident and distributed to the resident's parents, legal guardian, or legally authorized representative; the supervising agency; and appropriate facility staff.

6VAC35-71-805. Suicide prevention.

Written procedure shall ~~provide~~ require that (i) there is a suicide prevention and intervention program developed in consultation with a qualified medical or mental health professional and (ii) all direct care ~~staff employees, direct supervision employees, security employees, and employees providing medical services~~ are trained and retrained in the implementation of the program, in accordance with 6VAC35-71-160 and 6VAC35-71-170.

6VAC35-71-810. Behavioral health services.

Behavioral health services, if provided, shall be ~~provided~~ furnished by an individual (i) licensed by the Department of Health Professions or (ii) who is working under the supervision of a licensed clinician.

6VAC35-71-815. Daily housing unit log.

A. A daily housing unit log shall be maintained in each housing unit, in accordance with written procedures, to inform staff of significant ~~happenings~~ incidents or problems experienced by residents, including ~~but not limited to~~ health and dental complaints and injuries.

B. Each entry in the daily housing unit log shall contain (i) the date of the entry, (ii) the name of the individual making the entry, and (iii) the time each entry is made.

C. If the daily housing unit log is electronic, all entries shall be made in accordance with subsection B of this section. The computer program shall possess the functionality to prevent previous entries from being overwritten.

6VAC35-71-820. Staff supervision of residents.

A. Staff shall provide 24-hour awake supervision seven days a week.

B. No member of the direct care staff shall be on duty more than six consecutive days without a rest day, except in an emergency. ~~For the purpose of this section, a rest day means a period of not less than 24 consecutive hours during which the direct care staff person has no responsibility to perform duties related to the operation of a JCC.~~

C. Direct care staff shall be scheduled with an average of at least two rest days per week in any four-week period.

D. Direct care staff shall not be on duty more than 16 consecutive hours, except in an emergency.

E. There shall be at least one trained direct care staff on duty and actively supervising residents at all times ~~that~~ in areas of the premises in which one or more residents are present.

F. Notwithstanding the requirement in subsection E of this section, a staff member who meets the definition of a direct supervision employee and who satisfies the following additional requirements shall be authorized to be alone with a resident outside the active supervision of direct care staff:

1. The direct supervision employee completes the training required by 6VAC35-71-160 C and satisfies any additional retraining requirements provided for in 6VAC35-71-170;

2. The staff completes agency-approved training for direct supervision employees on safety and security including training on the supervision of residents, verbal de-escalation techniques, personal protection techniques, and emergency intervention prior to being alone with residents outside of the active supervision of security series staff;

3. The direct supervision staff passes an assessment demonstrating the ability to perform all physical requirements related to personal protection;

4. During any period in which the resident is not actively supervised by direct care employees, the direct supervision employee has the ability to communicate immediately with a direct care employee through a two-way radio or by other means provided in written procedures; and

5. The direct supervision employee notifies the direct care employee immediately prior to and immediately following meeting with resident.

~~F. G.~~ G. The facility shall implement written procedures that address staff supervision of residents, including contingency plans for resident illnesses, emergencies, and off-campus activities. These procedures shall be based on the:

1. Needs of the population served;
2. Types of services offered;
3. Qualifications of staff on duty; and
4. Number of residents served.

~~G. H.~~ H. Staff shall regulate the movement of residents within the facility in accordance with written procedures.

~~H. I.~~ I. No JCC shall permit an individual resident or group of residents to exercise control or authority over other residents except when practicing leadership skills as part of an approved program under the direct and immediate supervision of staff.

6VAC35-71-830. Staffing pattern.

A. During the hours that residents are scheduled to be awake, there shall be at least one direct care staff member awake, on duty, and responsible for supervision of every ~~10~~ eight residents, or portion thereof, ~~on the premises or participating in~~ wherever there are youth present in the facility, as well as wherever residents are attending off-campus, facility-sponsored activities. However, pursuant to 6VAC35-71-540, security staff shall be authorized to transport residents for routine or emergency purposes, such as for work release programs or in response to an injury, without the presence of direct care staff, provided the same staffing ratios are maintained as required in this subsection.

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B. During the hours that residents are scheduled to sleep, there shall be ~~no less than~~ at least one direct care staff member awake, on duty, and responsible for supervision of every 16 residents, or portion thereof, ~~on the premises~~ wherever there are youth present in the facility.

C. There shall be at least one direct care staff member on duty and responsible for the supervision of residents in each building or living housing unit where residents are sleeping.

6VAC35-71-840. Outside personnel.

A. JCC staff shall ~~monitor~~ supervise all situations in which outside personnel perform any kind of work in the immediate presence of residents.

B. ~~Adult inmates~~ Adults who are confined in a public or privately-operated prison or a local jail shall not work in the immediate presence of any resident and shall be ~~monitored~~ supervised in a way manner that ~~there shall be no~~ prohibits direct contact between or interaction among ~~adult inmates~~ these individuals and residents.

6VAC35-71-850. Facility work assignments.

A. Work assignments, whether paid or unpaid, shall be in accordance with the age, health, and ability, ~~and service plan~~ of the resident.

B. Work assignments shall not interfere with school programs, study periods, meals, or sleep.

6VAC35-71-860. Agreements governing juvenile industries work programs.

A. If the department enters into an agreement with a public or private entity for the operation of a work program pursuant to § 66-25.1 of the Code of Virginia, the agreement shall:

1. Comply with all applicable federal and state laws and regulations, including ~~but not limited to~~ the Fair Labor Standards Act (29 USC § 201 et seq.), child labor laws, and workers' compensation insurance laws;
2. State the ~~length~~ duration of the agreement and the criteria by which it may be extended or terminated;
3. Specify where residents will work and, if not at a ~~juvenile correctional center~~ JCC, the security arrangements at the work site; and
4. Summarize the educational, ~~vocational, or job training~~ and career and job-readiness benefits to residents.

B. The agreement shall address how residents will be hired and supervised, including:

1. The application and selection process;
2. The qualifications required of residents;
3. A requirement that there be a job description for each resident's position;

4. ~~Evaluation~~ A requirement that there be an evaluation of each resident's job-related behaviors and attitudes, attendance, and quality of work; and

5. Whether and how either party may terminate a resident's participation.

C. The agreement shall address ~~resident's~~ resident compensation including:

1. The manner by which and through what funding source residents are to be paid; and
2. If applicable, whether any deductions shall be made from the resident's compensation for subsistence payments, restitution to victims, ~~etc~~ fines, or other similar deductions.

D. As applicable, the agreement shall specify:

1. ~~That accurate records be kept of the work program's finances, materials inventories, and residents' hours of work.~~ How records of the work program's finances, materials inventories, and residents' hours of work shall be maintained and that ~~such these~~ these records ~~be~~ are subject to inspection by either party and by an independent auditor;
2. How the project's goods or services will be marketed;
3. How proceeds from the project will be collected and distributed to the parties; and
4. Which party is responsible for providing:
 - a. The materials to be worked on;
 - b. The machinery to be used;
 - c. Technical training and supervision in the use of equipment or processes;
 - d. Utilities;
 - e. Transportation of raw materials and finished goods;
 - f. Disposal of waste generated in the work project; and
 - g. Safety and other special equipment and clothing.

E. Prior to execution of the agreement, the director or the director's designee shall review the agreement for compliance with the requirements of this section. Except upon explicit authorization by the board, the director and the director's designee shall be prohibited from executing any agreement that is missing one or more elements enumerated in this section.

6VAC35-71-880. Local health Health authority.

A JCC shall ensure that a physician, health administrator, government authority, health care contractor, supervising registered nurse or head nurse, or health agency ~~shall be is~~ is designated to serve as the ~~local~~ health authority responsible for organizing, planning, and monitoring the timely provision of appropriate health care services in that facility, including ~~arrangements~~ arranging for all levels of health care and ~~the~~

ensuring of the quality and accessibility of all ~~health services, including~~ medical, nursing, dental, and mental health care ~~services~~, consistent with applicable statutes, prevailing community standards, and medical ethics. All medical, psychiatric, dental, and nursing matters are the province of the physician, psychiatrist, dentist, and nurse, respectively.

6VAC35-71-890. Provision of health care services.

~~A. The health care provider shall be guided by recommendations of the American Academy of Family Practice or the American Academy of Pediatrics, as appropriate, in the direct provision of health care services.~~

~~B. Treatment by nursing personnel~~ A. Licensed health care professionals shall be performed provide treatment pursuant to the laws and regulations governing the applicable practice of nursing within the Commonwealth.

B. Other health trained personnel shall provide care within their level of training and certification and shall not administer health care services for which they are not qualified or specifically trained.

C. The facility shall retain documentation of the training received by health trained personnel necessary to perform any designated health care services. Documentation of applicable, current licensure or certification shall constitute compliance with this section.

6VAC35-71-900. Health care procedures.

A. The department shall have and implement written procedures for promptly:

1. Providing or arranging for the provision of medical and dental services for health problems identified at admission;
2. Providing or arranging for the provision of routine ongoing and follow-up medical and dental services after admission;
3. Providing emergency services for each resident who has reached 18 years of age and consents to these services or for any other resident, as provided by statute ~~or by the agreement with the resident's legal guardian, if under the age of 18, or the resident, if over the age of 18;~~
4. Providing emergency services and ongoing treatment, as appropriate and applicable, for any resident experiencing or showing signs of suicidal or homicidal thoughts, symptoms of mood or thought disorders, or other mental health problems; and
5. Ensuring that the required information in subsection B of this section is accessible and up to date.

B. The following written information concerning each resident shall be readily accessible to designated staff who may have to respond to a medical or dental emergency:

1. The name, address, and telephone number of the physician or dentist to be contacted;
2. ~~Name, The name, address, and telephone number of a relative or other person the parent, legal guardian, or supervising agency, as applicable, to be notified; and~~
3. Information concerning:
 - a. Use of medication;
 - b. ~~All allergies, Allergies,~~ including medication allergies;
 - c. Substance abuse and use; and
 - d. Significant past and present medical problems.

~~C. Other health trained personnel shall provide care as appropriate to their level of training and certification and shall not administer health care services for which they are not qualified or specifically trained.~~

~~D. The facility shall retain documentation of the training received by health trained personnel necessary to perform any designated health care services. Documentation of applicable, current licensure or certification shall constitute compliance with this section.~~

6VAC35-71-930. Consent to and refusal of health care services.

~~A. The~~ An appropriately-trained medical professional shall advise the resident or and parent or legal guardian, as applicable and appropriate, shall be advised by an appropriately trained medical professional of (i) the material facts regarding the nature, consequences, and risks of the proposed treatment, examination, or procedure; and (ii) the alternatives to ~~it~~ the proposed treatment, examination, or procedure.

B. ~~Health~~ Consent to health care services, as defined in 6VAC35-71-10 (~~definitions~~), shall be provided in accordance with § 54.1-2969 of the Code of Virginia.

C. Residents may refuse, in writing, medical treatment and care. This subsection does not apply to medication refusals that are governed by 6VAC35-71-1070 (~~medication~~).

D. When health care is rendered against the resident's will, it shall be in accordance with applicable laws and regulations.

6VAC35-71-950. Tuberculosis screening.

A. Within seven days of ~~placement~~ arrival at a JCC, each resident, excluding residents transferred from another JCC shall have ~~had~~ undergone a screening or assessment for tuberculosis. The screening or assessment ~~can~~ shall be no older than 30 days.

B. A screening or assessment for tuberculosis shall be completed annually on each resident.

C. The facility's screening practices shall be performed in a manner that is consistent with the current ~~requirements~~

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recommendations of the Virginia Department of Health, Division of Tuberculosis Prevention and Control and the federal Department of Health and Human Services Centers for Disease Control and Prevention; for the detection, diagnosis, prophylaxis, and treatment of pulmonary tuberculosis.

6VAC35-71-960. Medical examinations.

A. Within five days of ~~arrival~~ an initial intake at a JCC, all residents ~~who are not directly transferred from another JCC~~ shall be medically examined by a physician or a qualified health care practitioner operating under the supervision of a physician to determine if the resident requires medical attention or poses a threat to the health of staff or other residents. This examination shall include the following:

1. Complete medical, immunization, and psychiatric history;
2. Recording of height, weight, ~~body mass index~~, temperature, pulse, respiration, and blood pressure;
3. Reports of medical laboratory testing and clinical testing results, as deemed medically appropriate, to determine both clinical status and freedom from communicable disease;
4. ~~Medical~~ Physical examination, including gynecological assessment of females, when appropriate;
5. Documentation of immunizations administered; and
6. A plan of care, including initiation of treatment, as appropriate.

B. ~~For residents~~ Residents transferring from one to the JCC to another, shall be acceptable from a direct care placement may submit the report of a medical examination conducted within the preceding 13 months at the discretion of the health care provider, upon review of the health screening at admission and prior medical examination report.

C. Each resident shall have an annual physical examination by or under the direction of a licensed physician.

6VAC35-71-970. Dental examinations.

A. Within ~~seven~~ 14 days of ~~arrival~~ an initial intake at a JCC, all residents ~~who are not directly transferred from another JCC~~ shall undergo a dental examination conducted by a dentist.

B. For residents transferring ~~from one to the JCC to another from a direct care placement~~, the report of a dental examination within the preceding 13 months ~~shall~~ may be acceptable at the discretion of the dentist upon review of the dental examination documentation.

C. Each resident shall have an annual dental examination by a dentist and routine prophylactic treatment.

6VAC35-71-990. Health screening for intrasystem transfers.

A. All residents transferred between JCCs shall receive a medical, dental, and mental health screening by health trained or qualified health care personnel upon arrival at the facility. The screening shall include:

1. A review of the resident's ~~health care~~ medical record;
2. Discussion with the resident on his medical status; and
3. Observation of the resident.

B. All findings shall be documented and the resident shall be referred for follow-up care as appropriate.

6VAC35-71-1000. Infectious or communicable diseases.

A. A resident with a known communicable disease that can be transmitted person-to-person shall not be housed in the general population unless a licensed ~~physician~~ health care professional certifies that:

1. The facility is capable of providing care to the resident without jeopardizing residents and staff; and
2. The facility is aware of the required treatment for the resident and the procedures to protect residents and staff.

B. The facility shall implement written procedures, approved by a medical professional, that:

1. Address staff (i) interactions with residents with infectious, communicable, or contagious medical conditions; and (ii) use of standard precautions;
2. Require staff training in standard precautions, initially and annually thereafter as required in 6VAC35-71-160 and 6VAC35-71-170; and
3. Require staff to follow procedures for dealing with residents who have infectious or communicable diseases.

C. Employees providing medical services shall be trained in tuberculosis control practices as required in 6VAC35-71-160.

6VAC35-71-1020. ~~Residents' health~~ Resident medical records.

A. Each resident's ~~health~~ medical record shall include written documentation of (i) the initial physical examination, (ii) an annual physical examination by or under the direction of a licensed physician including any recommendation for follow-up care, and (iii) ~~documentation of~~ the provision of follow-up medical care recommended by the physician or as indicated by the needs of the resident.

B. Each initial physical examination report shall include:

1. Information necessary to determine the health and immunization needs of the resident, including:
 - a. Immunizations administered at the time of the exam;

b. ~~Vision exam~~ Hearing and vision exams, conducted, at a minimum, on students in grades three, seven, eight, and 10 pursuant to 8VAC20-250-10;

e. ~~Hearing exam;~~

d. ~~General~~ c. A statement of the resident's general physical condition, including and documentation of ~~apparent freedom from~~ communicable disease status, including tuberculosis;

d. Current medical conditions or concerns;

e. Allergies, chronic conditions, and ~~handicaps, disabilities,~~ if any;

f. Nutritional requirements, including special diets, if any;

g. Restrictions on physical activities, if any; and

h. Recommendations for further treatment, immunizations, and other examinations indicated.

2. Date of the physical examination; and

3. Signature of a licensed physician, the physician's designee, or an official of a local health department.

C. ~~Each~~ A resident's ~~health medical~~ record shall include written documentation of (i) an annual examination by a licensed dentist and (ii) ~~documentation of~~ follow-up dental care recommended by the dentist based on the needs of the resident.

D. ~~Each~~ A resident's ~~health medical~~ record shall include notations of health and dental complaints and injuries and ~~shall summarize~~ a summary of the resident's symptoms and treatment given.

E. ~~Each~~ A resident's ~~health medical~~ record shall include, or document the facility's efforts to obtain, treatment summaries of ongoing psychiatric or other mental health treatment and reports, if applicable.

F. Written procedure shall provide that ~~residents' each~~ resident's active ~~health medical~~ records shall be:

1. Kept confidential from unauthorized persons and in a file separate from the case record;
2. Readily accessible in case of emergency; and
3. ~~Made available~~ Available to authorized staff consistent with applicable state and federal laws.

G. ~~Residents' A~~ resident's inactive health records shall be retained and disposed of as required by The Library of Virginia.

6VAC35-71-1030. First aid kits.

A. ~~Each facility~~ A JCC shall ~~have~~ maintain first aid kits ~~that shall be maintained~~ within the facility, as well as in facility vehicles used to transport residents in accordance with written

procedures that shall address the (i) contents; (ii) location; and (iii) method of restocking.

B. The first aid kit shall be readily accessible for minor injuries and medical emergencies.

6VAC35-71-1040. Sick call.

A. All residents shall have the opportunity daily to request health care services.

B. Resident requests for health care services shall be documented, reviewed for the immediacy of need and the intervention required, and responded to daily by qualified medical staff. Residents shall be referred to a physician consistent with established protocols and written or verbal orders issued by personnel authorized by law to give ~~such~~ these orders.

C. The frequency and duration of sick call shall be sufficient to meet the health needs of the facility population. ~~For the purpose of this section, sick call shall mean the evaluation and treatment of a resident in a clinical setting, either on or off site, by a qualified health care professional.~~

6VAC35-71-1050. Emergency medical services.

A. ~~Each~~ A JCC shall ~~have~~ ensure that residents have access to 24-hour emergency medical, mental health, and dental services for the care of an acute illness or unexpected health care need that cannot be deferred until the next scheduled sick call.

B. Procedures shall include arrangements for the following:

1. Utilization of 911 emergency services;
2. Emergency transportation of residents from the facility;
3. Security procedures for the immediate transfer of residents when appropriate;
4. Use of one or more designated hospital emergency departments or other appropriate facilities consistent with the operational procedures of local supporting rescue squads;
5. Response by on-call health care providers to include provisions for telephonic consultation, guidance, or direct response as clinically appropriate; and
6. ~~On-site~~ Onsite first aid and crisis intervention.

C. Staff who respond to medical or dental emergencies shall do so in accordance with written procedures.

6VAC35-71-1060. Hospitalization and other outside medical treatment of residents.

A. ~~When~~ If a resident needs hospital care or other medical treatment outside the facility:

1. The resident shall be transported ~~safely~~ and in accordance with applicable safety and security procedures

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that are applied consistent with the severity of the medical condition; and

2. Staff shall escort and supervise residents when outside the facility for hospital care or other medical treatment, until appropriate security arrangements are made. This subdivision shall not apply to the transfer of residents under the Psychiatric Inpatient Treatment of Minors Act (§ 16.1-355 et seq. of the Code of Virginia).

B. In accordance with applicable laws and regulations, the parent or legal guardian, as appropriate and applicable, shall be informed that the resident was taken outside the facility for medical attention as soon as is practicable.

6VAC35-71-1070. Medication.

A. All medication shall be properly labeled consistent with the requirements of the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia). Medication prescribed for individual use shall be so labeled.

B. All medication shall be securely locked, except when otherwise ordered by a physician on an individual basis for keep-on-person or equivalent use.

C. All staff responsible for medication administration who do not hold a license issued by the Virginia Department of Health Professions authorizing the administration of medications shall successfully complete a medication training program approved by the Board of Nursing and receive required annual refresher training ~~as required~~ before they ~~can~~ may administer medication.

D. Staff authorized to administer medication shall be informed of any known side effects of the medication and the symptoms of the effects.

E. A program of medication, ~~including procedures regarding the use of over-the-counter medication pursuant to written or verbal orders signed by personnel authorized by law to give such orders,~~ shall be initiated for a resident only when prescribed in writing by a person authorized by law to prescribe medication. This includes over-the-counter medication administered pursuant to a written or verbal order that is issued by personnel authorized by law to give these orders.

F. All medications shall be administered in accordance with the physician's or other prescriber's instructions and consistent with the requirements of ~~§ 54.2-2408~~ § 54.1-3408 of the Code of Virginia and the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

G. A medication administration record shall be maintained ~~of that identifies~~ all medicines received by each resident and ~~shall include that includes:~~

1. Date the medication was prescribed or most recently refilled;

2. Drug name;

3. Schedule for administration, to include notation of each dose administered or refused;

4. Strength;

5. Route;

6. Identity of the individual who administered the medication; and

7. ~~Dates~~ Date the medication was discontinued or changed.

H. In the event of a medication incident or an adverse drug reaction, first aid shall be administered if indicated. As addressed in the physician's standing orders, staff shall promptly contact a poison control center, hospital, pharmacist, nurse, or physician, nurse, pharmacist, or poison control center and shall take actions as directed. If the situation is not addressed in standing orders, the attending physician shall be notified as soon as possible and the actions taken by staff shall be documented. ~~A medical incident shall mean an error made in administering a medication to a resident including the following: (i) a resident is given incorrect medication; (ii) medication is administered to the incorrect resident; (iii) an incorrect dosage is administered; (iv) medication is administered at a wrong time or not at all; and (v) the medication is administered through an improper method. A medication incident does not include a resident's refusal of appropriately offered medication.~~

I. Written procedures shall ~~provide for~~ require (i) the documentation of medication incidents, (ii) the review of medication incidents and reactions and ~~making~~ implementation of any necessary improvements, (iii) the storage of controlled substances, and (iv) the distribution of medication off campus. The procedures must be approved by a the department's health administrator services director. Documentation of this approval shall be retained.

J. Medication refusals and actions taken by staff shall be documented ~~including action taken by staff~~. The facility shall follow procedures for managing such these refusals, ~~which~~ that shall address:

1. ~~Manner~~ The manner by which medication refusals are documented; and

2. Physician follow-up, as appropriate.

K. Disposal and storage of unused, expired, and discontinued medications shall be in accordance with applicable laws and regulations.

L. The telephone number of a regional poison control center and other emergency numbers shall be posted on or next to each nonpay telephone that has access to an outside line in each building in which residents sleep or participate in programs.

M. Syringes and other medical implements used for injecting or cutting skin shall be locked and inventoried in accordance with facility procedures.

6VAC35-71-1080. Release physical.

Each resident shall be medically examined by a physician or qualified health care practitioner operating under the supervision of a physician within 30 days prior to release, unless exempted by the responsible physician based on a ~~sufficiently recent~~ full medical examination conducted within 90 days prior to release.

6VAC35-71-1110. Disciplinary process.

A. A JCC shall ensure that, to the extent practicable, resident behavioral issues are addressed (i) in the context of a therapeutic community; (ii) in a manner that is consistent with the department's behavior management program; (iii) with consideration of the safety and security of the residents, staff, and others in the facility; and (iv) with the goal of rehabilitating, rather than punishing the resident.

B. Each JCC shall follow written procedures for handling (i) minor resident misbehavior through an informal process and (ii) instances when a resident is charged with a violation of the rules of conduct through the formal process outlined ~~below~~ in subsections C, D, and E of this section. Such The procedures shall provide for (i) graduated sanctions and (ii) staff and resident orientation and training on the procedures.

~~B. When~~ C. If staff have reason to believe a resident has committed a rule violation that cannot be resolved through the facility's informal process, staff shall prepare a disciplinary report detailing the alleged rule violation. A written copy of the report shall be maintained by the housing unit staff. The resident shall be given a written copy of the report within 24 hours of the alleged rule violation; however, staff shall have the discretion to provide residents who are noncompliant or are displaying maladaptive behavior one or more opportunities to view the written report instead of providing a copy to the resident within 24 hours of the alleged rule violation. In the event that staff exercises this option, a copy of the written report shall be provided to the resident once the resident demonstrates that he is able to comply with the rules of the facility.

~~C. D.~~ After the resident receives notice of an alleged rule violation, the resident shall be provided the opportunity to admit or deny the charge.

1. The resident may admit to the charge in writing to a superintendent or the superintendent's designee who was not involved in the incident, accept the sanction prescribed for the offense, and waive his right to any further review.
2. If the resident denies the charge or there is reason to believe that the resident's admission is coerced or that the resident does not understand the charge or the implication of the admission, the formal process for resolving the

matter detailed in subsection ~~D~~ E of this section shall be followed.

~~D. E.~~ The formal process for resolving rule violations shall provide the following:

1. A disciplinary hearing to determine if substantial evidence exists to find the resident guilty of the rule violation shall be scheduled to occur no later than seven days, excluding weekends and holidays, after the rule violation. The hearing may be postponed with the resident's consent.
2. The resident alleged to have committed the rule ~~violations~~ violation shall be given at least 24 ~~hours~~ hours' notice of the time and place of the hearing, ~~but, however~~ the hearing may be held within 24 hours with the resident's written consent.
3. The disciplinary hearing on the alleged rule violation shall:
 - a. Be conducted by an impartial and objective ~~staff~~ employee who shall determine (i) what evidence is admissible, (ii) the guilt or innocence of the resident, and (iii) if the resident is found guilty of the rule violation, what sanctions shall be imposed;
 - b. Allow the resident to be present throughout the hearing, unless the resident waives the right to attend, his behavior justifies exclusion, or another resident's testimony must be given in confidence. The reason for the resident's absence or exclusion shall be documented;
 - c. Permit the resident to make a statement ~~and~~ and present evidence, ~~and to~~ request relevant witnesses on his behalf. The reasons for denying ~~such~~ these requests shall be documented;
 - d. Permit the resident to request a staff member to represent him and question the witnesses. A staff member shall be appointed to help the resident when it is apparent that the resident is not capable of effectively collecting and presenting evidence on his own behalf; and
 - e. Be documented, with a record of the proceedings kept for six months.
4. A written record shall be made of the hearing disposition and supporting evidence. The hearing record shall be kept on file at the JCC.
5. The resident shall be informed in writing of the disposition and, if found guilty of the rule violation, the reasons supporting the disposition and the right to appeal.
6. If the resident is found guilty of the rule violation, a copy of the disciplinary report shall be placed in the resident's case record.

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7. The superintendent or ~~the superintendent's~~ designee shall review all disciplinary hearings and dispositions to ensure conformity with procedures and regulations.

8. The resident shall have the right to appeal the disciplinary hearing decision to the superintendent or ~~the superintendent's~~ designee within 24 hours of receiving the decision. The appeal shall be decided within 24 hours of its receipt, and the resident shall be notified in writing of the results within three days. These ~~time frames~~ timeframes do not include weekends and holidays.

~~E. When it is necessary to place the resident in confinement to protect the facility's security or the safety of the resident or others, the charged resident may be confined pending the formal hearing for up to 24 hours. Confinement for longer than 24 hours must be reviewed at least once every 24 hours by the superintendent or designee who was not involved in the incident. For any confinement exceeding 72 hours, notice shall be made in accordance with 6VAC35-71-1140 D (room confinement).~~

6VAC35-71-1120. Timeout.

~~A. Facilities that use a systematic behavior management technique program component designed to reduce or eliminate inappropriate or problematic behavior by having a staff require a resident to move to a specific location that is away from a source of reinforcement for a specific period of time or until the problem behavior has subsided (timeout) shall implement written procedures governing that~~ provide the following:

- ~~1. The conditions, based on the resident's chronological and developmental level, under which a resident may be placed in timeout;~~
- ~~2. The maximum period of timeout based on the resident's chronological and developmental level; and~~
- ~~3. The area in which a resident is placed.~~

1. A resident may be placed in timeout only after less restrictive alternatives have been applied;

2. Timeout may be imposed only to address minor behavior infractions, such as talking back or failing to follow instructions, and shall not be applied to address any chargeable offenses as designated in written procedures or any aggressive behaviors;

3. A resident shall be released from the timeout period when the resident demonstrates the ability to rejoin the group activity and comply with the expectations that are in place; and

4. Staff shall be authorized to determine the area in which a resident is placed for timeout on a case-by-case basis.

~~B. A resident in timeout shall be able to communicate~~ have a means of immediate communication with staff, either verbally or electronically.

~~C. Staff shall check on~~ monitor the resident in the timeout area at least every 15 minutes and more often depending on the nature of the resident's ~~disability, condition, and or~~ behavior.

~~D. Use of timeout and staff checks on the residents shall be documented.~~

6VAC35-71-1130. Physical restraint.

~~A. Physical restraint shall be used as a last resort only after less restrictive behavior intervention techniques have failed or to control residents whose behavior poses a risk to the safety of the resident, others, staff, or the public~~ others.

~~1. Staff shall use the least force deemed reasonably necessary to eliminate the risk or to maintain security and order and shall never use physical restraint as punishment or with intent to inflict injury.~~

~~2. Trained staff members may physically restrain a resident only after less restrictive behavior interventions have failed or when failure to restrain would result in harm to the resident or others.~~

~~3.~~ 2. Physical restraint may be implemented, monitored, and discontinued only by staff ~~who have been~~ trained in the proper and safe use of restraint in accordance with the requirements in 6VAC35-71-160 and 6VAC35-71-170.

~~4. For the purpose of this section, physical restraint shall mean the application of behavior intervention techniques involving a physical intervention to prevent an individual from moving all or part of that individual's body.~~

~~B. Each JCC shall implement written procedures governing use of physical restraint that shall include:~~

~~1. A requirement for~~ Require training in crisis prevention and behavior intervention techniques that staff may use to control residents whose behaviors pose a risk;

~~2. The~~ Identify the staff position ~~who that~~ will write the report and time frame for completing the report;

~~3. The~~ Identify the staff position ~~who that~~ will review the report for continued staff development for performance improvement and the time frame for this review; and

~~4. Methods~~ Identify the methods to be followed should physical restraint, less intrusive behavior interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior; ~~and~~ ~~5. Identification of control techniques that are appropriate for identified levels of risk.~~

C. Each application of physical restraint shall be fully documented in the resident's record ~~including~~. The documentation shall include:

1. Date and time of the incident;
2. Staff involved in the incident;
3. Justification for the restraint;
4. Less restrictive behavior interventions that were unsuccessfully attempted prior to using physical restraint;
5. Duration of the restraint;
6. Description of the method or methods of physical restraint techniques used;
7. Signature of the person completing the report and date; and
8. Reviewer's signature and date.

6VAC35-71-1140. Room confinement.

A. ~~Written procedures shall govern how and when residents may be confined to a locked governing room confinement shall address the following issues:~~

1. The actions or behaviors that may result in room confinement;
2. The factors, such as age, developmental level, or disability, that should be considered prior to placing a resident in room confinement;
3. The process for determining whether the resident's behavior threatens the safety and security of the resident, others, or the facility; the protocol for determining whether the threat necessitating room confinement has been abated; and the necessary steps for releasing the resident to a less restrictive setting after the threat is abated; and
4. The circumstances under which a debriefing with the resident should occur after the resident is released from confinement; the party that should conduct the debriefing; and the topics that should be discussed in the debriefing, including the cause and impact of the room confinement and the appropriate measures post-confinement to support positive resident outcomes.

~~B. Whenever a resident is confined to a locked room, including but not limited to being placed in isolation, staff shall check the resident visually at least every 30 minutes and more frequently if indicated by the circumstances.~~

~~C. Residents who are confined to a locked room, including but not limited to being placed in isolation, shall be afforded the opportunity for at least one hour of physical exercise, outside of the locked room, every calendar day unless the resident's behavior or other circumstances justify an exception. The reasons for any such exception shall be~~

~~approved in accordance with written procedures and documented~~

B. If a resident is placed in room confinement, regardless of the duration of the confinement period or the rationale for the confinement, staff shall take measures to ensure the continued health and safety of the confined resident. At a minimum, the following measures shall be applied:

1. Staff shall monitor the resident visually at least every 15 minutes and more frequently if indicated by the circumstances. If a resident is placed on suicide precautions, staff shall make additional visual checks as determined by the qualified mental health professional.
2. A qualified medical or mental health professional shall, at least once daily, visit with the resident to assess the resident's medical and mental health status.
3. The resident shall have a means of immediate communication with staff, either verbally or electronically, throughout the duration of the confinement period.
4. The resident shall be afforded the opportunity for at least one hour of large muscle activity outside of the locked room every calendar day unless the resident displays behavior that is threatening, presents an imminent danger to himself or others, or otherwise justifies an exception or unless other circumstances, such as lockdown or power failure, prevent the activity. The reasons for the exception shall be approved and documented in accordance with written procedures.

5. If the resident, while placed in room confinement, exhibits self-injurious behavior, staff shall (i) take appropriate action in response to the behavior; (ii) consult with a qualified mental health professional immediately after the threat is abated and document the consultation; and (iii) monitor the resident in accordance with established protocols, including constant supervision, if appropriate.

C. A resident shall never be placed in room confinement as a sanction for noncompliance or as a means of punishment. Room confinement may be imposed only in response to the following situations:

1. If a resident's actions threaten facility security or the safety and security of residents, staff, or others in the facility; or
2. In order to prevent damage to real or personal property when the damage is committed with the intent of fashioning an object or device that may threaten facility security or the safety and security of residents, staff, or others in the facility.

D. Room confinement may be imposed only after less restrictive measures have been exhausted or cannot be employed successfully. Once the threat necessitating the

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confinement is abated, staff shall initiate the process for releasing the resident from confinement and returning him to a lesser restrictive setting.

E. In the event that a resident is placed in room confinement, the resident shall be afforded the same opportunities as other residents in the housing unit, including treatment, education, and as much time out of the resident's room as security considerations allow.

F. Within the first three hours of a resident's placement in room confinement, a designated staff member shall communicate with the resident to explain (i) the reasons for which the resident has been placed in confinement; (ii) the expectations governing behavior while placed in room confinement; and (iii) the steps necessary in order for a resident to be released from room confinement.

G. A resident confined for six or fewer waking hours shall be afforded the opportunity at least once during the confinement period to communicate with a staff member wholly apart from the communications required in subsection F of this section, regarding his status or the impact of the room confinement. A resident confined for a period that exceeds six waking hours shall be afforded an opportunity twice daily during waking hours for these communications.

H. The superintendent or the superintendent's designee shall make personal contact with every resident who is placed in room confinement each day of confinement.

~~D. I.~~ If a resident is ~~confined to a locked~~ placed in room confinement for ~~more than~~ 24 hours, the superintendent or the superintendent's designee shall be notified and shall provide written approval for any continued room confinement beyond the 24-hour period.

~~E. If the confinement extends to more than 72 hours, the (i) confinement and (ii) the steps being taken or planned to resolve the situation shall be immediately reported to the department staff, in a position above the level of superintendent, as designated in written procedures. If this report is made verbally, it shall be followed immediately with a written, faxed, or secure email report in accordance with written procedures.~~

~~F. The superintendent or designee shall make personal contact with each resident who is confined to a locked room each day of confinement.~~

~~G. When confined to a room, the resident shall have a means of communication with staff, either verbally or electronically.~~

~~H. If the resident, after being confined to a locked room, exhibits self-injurious behavior (i) staff shall immediately consult with, and document that they have consulted with, a mental health professional; and (ii) the resident shall be monitored in accordance with established protocols, including constant supervision, if appropriate.~~

J. The facility superintendent's supervisor shall provide written approval before any room confinement may be extended beyond 48 hours.

K. The administrator who is two levels above the superintendent in the department's reporting chain-of-command shall provide written approval before any room confinement may be extended beyond 72 hours. The administrator's approval shall be contingent upon receipt of a written report outlining the steps being taken or planned to resolve the situation. The facility shall convene a treatment team consisting of stakeholders involved in the resident's treatment to develop this plan. The department shall establish written procedures governing the development of this plan.

L. Room confinement periods that exceed five days shall be subject to a case management review process in accordance with written procedures that provide the following:

1. A facility-level review committee shall conduct a case-management review at the committee's next scheduled meeting immediately following expiration of the five-day period.

2. If the facility-level case management review determines a need for the resident's continued confinement, the case shall be referred for a case management review at the division-level committee's next scheduled meeting immediately following the meeting for the facility-level review.

3. Upon completion of the initial reviews in subdivisions L 1 and L 2 of this section, any additional time that the resident remains in room confinement shall be subject to a recurring review by the facility-level review committee and the division-level review committee, as applicable, until either committee recommends the resident's release from room confinement. However, upon written request of the division-level review committee, the administrator who is two levels above the superintendent in the department's reporting chain-of-command shall be authorized to reduce the frequency of or waive the division-level reviews in accordance with written procedures.

M. The provisions of this section shall become effective (insert effective date of this regulation).

6VAC35-71-1150. Isolation. (Repealed.)

~~A. When a resident is confined to a locked room for a specified period of time as a disciplinary sanction for a rule violation (isolation), the provisions of 6VAC35-71-1140 (room confinement) apply.~~

~~B. Room confinement during isolation shall not exceed five consecutive days.~~

~~C. During isolation, the resident is not permitted to participate in activities with other residents and all activities are restricted, with the exception of (i) eating, (ii) sleeping,~~

(iii) personal hygiene, (iv) reading, (v) writing, and (vi) physical exercise as provided in 6VAC35-71-1140 (room confinement).

~~D. Residents who are placed in isolation shall be housed no more than one to a room.~~

6VAC35-71-1160. Administrative segregation. (Repealed.)

~~A. Residents who are placed in administrative segregation units shall be housed no more than two to a room. Single occupancy rooms shall be available when indicated for residents with severe medical disabilities, residents suffering from serious mental illness, sexual predators, residents who are likely to be exploited or victimized by others, and residents who have other special needs for single housing.~~

~~B. Residents who are placed in administrative segregation units shall be afforded basic living conditions approximating those available to the facility's general population and as provided for in written procedures. Exceptions may be made in accordance with written procedures when justified by clear and substantiated evidence. If residents who are placed in administrative segregation are confined to a room or placed in isolation, the provisions of 6VAC35-71-1140 (room confinement) and 6VAC35-71-1150 (isolation) apply, as applicable.~~

~~C. For the purpose of this section, administrative segregation means the placement of a resident, after due process, in a special housing unit or designated individual cell that is reserved for special management of residents for purposes of protective custody or the special management of residents whose behavior presents a serious threat to the safety and security of the facility, staff, general population, or themselves. For the purpose of this section, protective custody shall mean the separation of a resident from the general population for protection from or of other residents for reasons of health or safety.~~

6VAC35-71-1180. Mechanical restraints.

A. Written procedure shall govern the use of mechanical restraints and shall specify:

1. The conditions under which ~~handcuffs, waist chains, leg irons, disposable plastic cuffs, leather restraints, and mobile restraint chair~~ mechanical restraints may be used;
2. ~~That the superintendent or designee shall be notified immediately upon using restraints in an emergency situation;~~
3. ~~2.~~ That mechanical restraints shall never be applied as punishment;
3. That mechanical restraints shall not be applied for routine on-campus transportation unless (i) there is a heightened need for additional security as identified in written procedures or (ii) the resident is noncompliant and needs to be moved for the resident's own safety or security;

4. That ~~residents~~ a resident shall not be restrained to a fixed object or restrained in an unnatural position;

5. That each use of mechanical restraints, except when used to transport a resident off campus, shall be recorded in the resident's case ~~file or~~ record and in a central log book; and

6. That the facility maintains a written record of routine and emergency distribution of restraint equipment.

B. If a JCC uses mechanical restraints, written procedure shall provide that (i) all staff who are authorized to use restraints shall receive department-approved training in their use, including which training shall address procedures for checking the resident's resident for signs of circulation and ~~checking~~ checking for injuries; and (ii) only properly trained staff shall use restraints.

C. ~~For the purpose of this section, mechanical restraint shall mean the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or portion of an individual's body as a means to control his physical activities when the individual being restricted does not have the ability to remove the device. A JCC shall be authorized to use a mobile restraint chair for the sole purpose of controlled movement of a resident from one area of the facility to another and shall observe the following when utilizing the chair:~~

1. Staff shall be authorized to utilize the mobile restraint chair only after less restrictive interventions have been unsuccessful in moving a resident from one area of the facility to another or when use of the restraint chair is the least restrictive intervention available to move the resident.

2. Staff shall remove the resident from the restraint chair immediately upon reaching the intended destination. In no event shall a resident who is not being moved from one area of the facility to another be confined to a restraint chair for any period of time.

6VAC35-71-1190. Monitoring residents placed in mechanical restraints.

A. Written procedure shall provide that ~~when~~ if a resident is placed in mechanical restraints, staff shall:

1. Provide for the resident's reasonable comfort and ensure the resident's access to water, meals, and toilet; and
2. ~~Make~~ Conduct a ~~direct personal~~ visual check on the resident at least every 15 minutes and more often if the resident's behavior warrants.

B. When a resident is placed in mechanical restraints for more than ~~two hours cumulatively~~ one consecutive hour in a 24-hour period, with the exception of use in routine off-campus transportation of residents, staff shall ~~immediately~~ consult with a qualified mental health professional. This consultation shall be documented.

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C. If the resident, after being placed in mechanical restraints, exhibits self-injurious behavior, ~~(i)~~ staff shall (i) take appropriate action in response to the behavior; (ii) consult with a qualified mental health professional immediately ~~consult with, thereafter and document that they have consulted with, a mental health professional the consultation;~~ and (ii) monitor the resident shall be monitored in accordance with established protocols, including constant supervision, if appropriate. ~~Any such~~ The protocols shall ~~be in compliance~~ comply with the written procedures required by 6VAC35-71-1200 ~~(restraints for medical and mental health purposes).~~

6VAC35-71-1200. Restraints for medical and mental health purposes.

Written procedure shall govern the use of restraints for medical and mental health purposes. Written procedure ~~should~~ shall identify (i) the authorization needed; (ii) when, where, and how restraints may be used; (iii) for how long restraints may be applied; and (iv) what type of restraint may be used.

Part IX Private JCCs

6VAC35-71-1210. Private contracts for JCCs.

A. ~~Each~~ A privately operated JCC shall abide by the ~~requirement~~ requirements of (i) the Juvenile Corrections Private Management Act (§ 66-25.3 et seq. of the Code of Virginia), (ii) its governing contract, (iii) this chapter, and (iv) applicable department procedures, including ~~but not limited to~~ procedures relating to case management, the use of physical restraint and mechanical restraints, confidentiality, visitation, community relationships, and media access.

B. ~~Each~~ A privately operated JCC shall develop procedures, approved by the ~~department~~ director or the director's designee, to facilitate the transfer of the operations of the facility to the department in the event of the termination of the contract.

Part X Boot Camps

6VAC35-71-1230. Definition of boot camp. (Repealed.)

~~For the purpose of this chapter, a boot camp shall mean a short term secure or nonsecure juvenile residential program that includes aspects of basic military training, such as drill and ceremony. Such programs utilize a form of military style discipline whereby employees are authorized to respond to minor institutional offenses, at the moment they notice the institutional offenses being committed, by imposing immediate sanctions that may require the performance of some physical activity, such as pushups or some other sanction, as provided for in the program's written procedures.~~

6VAC35-71-1250. Residents' Resident physical qualifications.

The boot camp shall have written procedures that govern:

1. Admission, ~~including a required~~ which shall require a written statement from (i) a physician that the resident meets the American Pediatric Society's guidelines is cleared to participate in contact sports; and ~~(ii) from a licensed~~ qualified mental health professional that the resident is an appropriate candidate for a boot camp program; and
2. Discharge, should a resident be physically unable to ~~keep up with~~ continue the program.

6VAC35-71-1260. Residents' Resident nonparticipation.

The boot camp shall have written procedures approved by the ~~department~~ director for ~~dealing with~~ addressing residents who ~~are~~ do not ~~complying~~ comply with boot camp program requirements.

6VAC35-71-1270. Program description.

The boot camp shall have a written program description that ~~states~~ specifies:

1. How residents' physical training, work ~~assignment~~ assignments, education and ~~vocational~~ career-readiness training, and treatment program participation will be interrelated;
2. The ~~length~~ duration of the boot camp program ~~and the kind and duration of treatment and supervision that will be provided upon the resident's release from the residential program;~~
3. ~~That any juvenile boot camp program established by or as a result of a contract with the department shall require at least six months of intensive after care following a resident's release from the boot camp program and the type of treatment and supervision that will be provided upon the resident's release from the program;~~
4. Whether residents will be cycled through the program individually or in platoons; and
4. ~~5.~~ The program's incentives and sanctions, including whether military or correctional discipline will be used. If military style discipline is used, written procedures shall specify what summary punishments are permitted.

DOCUMENTS INCORPORATED BY REFERENCE (6VAC35-71)

~~Compliance Manual — Juvenile Correctional Centers, effective January 1, 2014, Virginia Department of Juvenile Justice~~

VA.R. Doc. No. R17-4810; Filed September 5, 2019, 4:40 p.m.



TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

REGISTRAR'S NOTICE: The State Board of Education is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Education will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 8VAC20-131. Regulations Establishing Standards for Accrediting Public Schools in Virginia (amending 8VAC20-131-240, 8VAC20-131-410).

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

Effective Date: October 30, 2019.

Agency Contact: Zachary Robbins, Director of Policy, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2092, or email zachary.robbyns@doe.virginia.gov.

Summary:

The amendments, (i) pursuant to Chapter 139 of the 2019 Acts of Assembly, require each school counselor employed by a school board in a public elementary or secondary school to spend at least 80% of the counselor's staff time during normal school hours in the direct counseling of individual students or groups of students and (ii) pursuant to Chapter 576 of the 2019 Acts of Assembly, rename the Virginia Index of Performance incentive program as the Exemplar School Recognition Program and require that the program recognize and reward schools or school divisions that exceed board-established requirements or show continuous improvement on academic and school quality indicators and also reward schools, school divisions, and school boards that implement effective, innovative practices that are aligned with the Commonwealth's goals for public education.

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

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

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

C. Each elementary, middle, and secondary school shall employ school counseling staff as prescribed by the Standards of Quality. School counseling shall be provided for students

to ensure that a program of studies contributing to the student's academic achievement and meeting the graduation requirements specified in this chapter is being followed.

D. ~~The~~ Each member of the school counseling staff in the counseling program for elementary, middle, and secondary schools shall provide a minimum of 60% of the time for each member of the school counseling staff devoted to spend at least 80% of his staff time during normal school hours in direct counseling of individual students or groups of students.

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

F. The secondary classroom teacher's standard load shall be based on teaching no more than the instructional day minus one planning period per day or the equivalent with no more than 150 students or 25 class periods per week. If a secondary school classroom teacher teaches more than 150 students or 25 class periods per week, an appropriate contractual arrangement and compensation shall be provided.

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

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

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

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

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

~~A.—~~ Schools and divisions may shall be recognized by the board in accordance with guidelines it shall establish for the Virginia Index of Performance (VIP) incentive program Exemplar School Recognition Program to recognize (i) schools or school divisions that exceed board-established requirements or show continuous improvement on academic and school quality indicators and (ii) schools, school

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divisions, and school boards that implement effective, innovative practices. In order to encourage school divisions to promote student achievement in science, technology, engineering, and mathematics (STEM), the board shall take into account in its guidelines a school division's increase in enrollment and elective course offerings in these STEM areas. Such recognition may include:

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

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

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

VA.R. Doc. No. R20-6108; Filed September 10, 2019, 4:01 p.m.



TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 14 of the Code of Virginia, which exempts adoption, amendment, or repeal of wasteload allocations by the State Water Control Board pursuant to State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) if the board (i) provides public notice in the Virginia Register; (ii) if requested by the public during the initial public notice 30-day comment period, forms an advisory group composed of relevant stakeholders; (iii) receives and provides summary response to written comments; and (iv) conducts at least one public meeting.

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-60).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; 33 USC § 1313(e) of the Clean Water Act.

Effective Date: October 30, 2019.

Agency Contact: Kelly Meadows, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4291, or email kelly.meadows@deq.virginia.gov.

Summary:

The amendment to the state's Water Quality Management Planning Regulation (9VAC25-720) adds one new total maximum daily load wasteload allocation in the James River Basin.

9VAC25-720-60. James River Basin.

A. Total maximum daily loads (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA ¹	Units
EDITOR'S NOTE: Rows numbered 1 through 171 in this TMDL table in subsection A of 9VAC25-720-60 are not amended; therefore, the text of those rows is not set out.							
<u>172.</u>	<u>Bullpasture River</u>	<u>Bacteria TMDL Development for the Bullpasture River in Highland County, Virginia</u>	<u>Highland</u>	<u>I13R</u>	<u>E. coli</u>	<u>2.63E+12</u>	<u>counts/year</u>
Notes: ¹ The total WLA can be increased prior to modification provided that the Department of Environmental Quality tracks these changes for bacteria TMDLs where the permit is consistent with water quality standards for bacteria. ² GS means growing season.							

EDITOR'S NOTE: Subsections B and C of 9VAC25-720-60 are not amended; therefore, the text of those subsections is not set out.

VA.R. Doc. No. R20-6159; Filed September 10, 2019, 11:05 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Final Regulation

REGISTRAR'S NOTICE: The Common Interest Community Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Common Interest Community Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC48-50. Common Interest Community Manager Regulations (amending 18VAC48-50-60, 18VAC48-50-90, 18VAC48-50-190; repealing 18VAC48-50-80).

Statutory Authority: § 54.1-2349 of the Code of Virginia.

Effective Date: November 1, 2019.

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

Summary:

The amendments (i) change Code of Virginia citations pursuant to Chapter 712 of the 2019 Acts of Assembly, which recodifies Title 55 of the Code of Virginia to a new Title 55.1, effective October 1, 2019, and (ii) update forms.

18VAC48-50-60. Fee schedule.

Fee Type	Fee Amount		Recovery Fund Fee* (if applicable)	Total Amount Due	When Due
Initial Common Interest Community Manager Application	\$100	+	25	\$125	With application
Common Interest Community Manager Renewal	\$100			\$100	With renewal application
Common Interest Community Manager Reinstatement (includes a \$200 reinstatement fee in addition to the regular \$100 renewal fee)	\$300			\$300	With renewal application
Certified Principal or Supervisory Employee Initial Application	\$75			\$75	With application
Certified Principal or Supervisory Employee Renewal	\$75			\$75	With renewal application
Certified Principal or Supervisory Employee Reinstatement (includes a \$75 reinstatement fee in addition to the regular \$75 renewal fee)	\$150			\$150	With renewal application

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Training Program Provider Initial Application	\$100			\$100	With application
Training Program Provider Additional Program	\$50			\$50	With application
*In accordance with § 55-530.1 § 54.1-2354.5 of the Code of Virginia.					

18VAC48-50-80. Provisional licenses. (Repealed.)

~~Provisional licensees must submit annual proof of current bond or insurance policy in accordance with 18VAC48-50-30 E, and are also subject to the provisions of 18VAC48-50-150 D. Failure to submit proof of current bond or insurance policy within 30 days of the request by the board shall result in the automatic suspension of the license.~~

Part IV Renewal and Reinstatement

18VAC48-50-90. Renewal required.

A license issued under this chapter shall expire one year from the last day of the month in which it was issued. A certificate issued under this chapter shall expire two years from the last day of the month in which it was issued. A fee shall be required for renewal. ~~In accordance with § 54.1-2346 F of the Code of Virginia, provisional licenses shall expire on June 30, 2012, and shall not be renewed.~~

18VAC48-50-190. Prohibited acts.

The following acts are prohibited and any violation may result in disciplinary action by the board:

1. Violating, inducing another to violate, or cooperating with others in violating any of the provisions of any of the regulations of the board ~~or~~; Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia, ~~Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia, Chapter 24 (§ 55-424 et seq.) of Title 55 of the Code of Virginia, Chapter 26 (§ 55-508 et seq.) of Title 55 of the Code of Virginia, or Chapter 29 (§ 55-528 et seq.) of Title 55 of the Code of Virginia;~~ or Chapter 18 (§ 55.1-1800 et seq.), Chapter 19 (§ 55.1-1900 et seq.), or Chapter 21 (§ 55.1-2100 et seq.) of Title 55.1 of the Code of Virginia or engaging in any acts enumerated in §§ 54.1-102 and 54.1-111 of the Code of Virginia.
2. Allowing a license or certificate issued by the board to be used by another.
3. Obtaining or attempting to obtain a license or certificate by false or fraudulent representation, or maintaining, renewing, or reinstating a license or certificate by false or fraudulent representation.
4. A regulant having been convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC48-50-180.

5. Failing to inform the board in writing within 30 days that the regulant was convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC48-50-180.

6. Failing to report a change as required by 18VAC48-50-150 or 18VAC48-50-170.

7. The intentional and unjustified failure to comply with the terms of the management contract, operating agreement, or association governing documents.

8. Engaging in dishonest or fraudulent conduct in providing management services.

9. Failing to satisfy any judgments or restitution orders entered by a court or arbiter of competent jurisdiction.

10. Egregious or repeated violations of generally accepted standards for the provision of management services.

11. Failing to handle association funds in accordance with the provisions of § 54.1-2353 A of the Code of Virginia or 18VAC48-50-160.

12. Failing to account in a timely manner for all money and property received by the regulant in which the association has or may have an interest.

13. Failing to disclose to the association material facts related to the association's property or concerning management services of which the regulant has actual knowledge.

14. Failing to provide complete records related to the association's management services to the association within 30 days of any written request by the association or within 30 days of the termination of the contract unless otherwise agreed to in writing by both the association and the common interest community manager.

15. Failing upon written request of the association to provide books and records such that the association can perform pursuant to ~~§§ 55-510 §§ 55.1-1815~~ (Property Owners' Association Act), ~~55-79.74:1~~ (Condominium Act), ~~55.1-1945~~ (Virginia Condominium Act), and ~~55-474 55.1-2151~~ (Virginia Real Estate Cooperative Act) of the Code of Virginia.

16. Commingling the funds of any association by a principal, his employees, or his associates with the principal's own funds or those of his firm.

17. Failing to act in providing management services in a manner that safeguards the interests of the public.

18. Advertising in any name other than the name ~~or names~~ in which licensed.

19. Failing to make use of a legible, written contract clearly specifying the terms and conditions of the management services to be performed by the common interest community manager. The contract shall include, ~~but not be limited to,~~ the following:

- a. Beginning and ending dates of the contract;
- b. Cancellation rights of the parties;
- c. Record retention and distribution policy;
- d. A general description of the records to be kept and the bookkeeping system to be used; and
- e. The common interest community manager's license number.

20. Performing management services or accepting payments prior to the signing of the contract by an authorized official of the licensed firm and the client or the client's authorized agent.

NOTICE: Forms used in administering the 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 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 (18VAC48-50)

[Common Interest Community Manager Change of Personnel Form, A492-0501MGTCHEG-v2 \(rev. 10/2018\)](#)

~~Common Interest Community Manager License Application, A492-0501LIC-v3 (rev. 7/2019)~~

[Common Interest Community Manager License Renewal Application, A492-0501REN-v4 \(rev. 11/2019\)](#)

[Common Interest Community Manager Training Program Approval Application, A492-05TRAPRV-v3 \(rev. 10/2018\)](#)

[Experience Verification Form, A492-0501_10EXPv2 \(rev. 10/2018\)](#)

~~Common Interest Community Manager License Renewal Application, A492-0501REN-v3 (rev. 7/2019)~~

[Common Interest Community Manager License Application, A492-0501LIC-v4 \(rev. 11/2019\)](#)

[Common Interest Community Manager Principal or Supervisory Employee Certificate Application, A492-0510CERT-v2 \(rev. 10/2018\)](#)

[Principal or Supervisory Employee Certificate Renewal Form, A492-0510REN-v2 \(rev. 10/2018\)](#)

[Common Interest Community Manager Application Supplement Comprehensive Training Program Equivalency Form, A492-0501TREQ-v2 \(rev. 10/2018\)](#)

VA.R. Doc. No. R20-5976; Filed September 10, 2019, 10:02 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Common Interest Community Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Common Interest Community Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC48-60. Common Interest Community Board Management Information Fund Regulations (amending 18VAC48-60-10, 18VAC48-60-13, 18VAC48-60-50).**

Statutory Authority: §§ 54.1-201 and 54.1-2349 of the Code of Virginia.

Effective Date: November 1, 2019.

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

Summary:

The amendments (i) change Code of Virginia citations pursuant to Chapter 712 of the 2019 Acts of Assembly, which recodifies Title 55 of the Code of Virginia to a new Title 55.1, effective October 1, 2019, and (ii) update forms.

18VAC48-60-10. Purpose.

These regulations govern the exercise of powers granted to and the performance of duties imposed upon the Common Interest Community Board by §§ 54.1-2350, ~~55-79.93-1, 55-504.1, 55-516.1 and 55-528~~ 54.1-2354.2, 55.1-1835, 55.1-1980, and 55.1-2182 of the Code of Virginia.

18VAC48-60-13. Definitions.

"Association" ~~shall be as~~ means the same as the term is defined in § 55-528 § 54.1-2345 of the Code of Virginia.

"Governing board" ~~shall be as~~ means the same as the term is defined in § 54.1-2345 of the Code of Virginia.

18VAC48-60-50. Annual report by property owners' association.

Within the meaning and intent of ~~§ 55-516.1 § 55.1-1835~~ of the Code of Virginia, within 30 days of the creation of the

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association, and every year thereafter, the association shall file an annual report with the board.

NOTICE: Forms used in administering the 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 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 (18VAC48-60)

~~Community Association Registration Application, A492-0550REG v6 (rev. 7/2019)~~

~~Community Association Annual Report, A492-0550ANRPT v8 (rev. 7/2019)~~

~~Community Association Governing Board Change Form, A492-0550GBCHG v1 (eff. 9/2013)~~

~~Community Association Point of Contact/Management Change Form, A492-0550POCCHG v2 (eff. 9/2017)~~

[Common Interest Community Association Registration Application, A492-0550REG-v7 \(rev. 11/2019\)](#)

[Common Interest Community Association Annual Report Form, A492-0550ANRPT-v9 \(rev. 11/2019\)](#)

[Common Interest Community Association Contact Person/Management Change Form, A492-0550POCCHG-v3 \(eff. 11/2019\)](#)

[Common Interest Community Association Governing Board Change Form, A492-0550GBCHG-v2 \(eff. 11/2019\)](#)

VA.R. Doc. No. R20-5963; Filed September 10, 2019, 10:03 a.m.

BOARD OF MEDICINE

Emergency Regulation

Title of Regulation: 18VAC85-21. Regulations Governing Prescribing of Opioids and Buprenorphine (adding 18VAC85-21-21).

Statutory Authority: §§ 54.1-2400 and 54.1-2928.2 of the Code of Virginia.

Effective Dates: September 18, 2019, through March 17, 2021.

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.

Preamble:

Section 2.2-4011 B of the Code of Virginia states that agencies may adopt emergency regulations in situations in

which 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, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.

The amendments add a section regarding electronic prescribing. Consistent with the Code of Virginia, beginning July 1, 2020, a prescription for a controlled substance that contains an opioid is required to be issued as an electronic prescription. The proposed regulation also provides a one-time waiver of this requirement for a maximum of one year if a practitioner can demonstrate economic hardship, technological limitations, or other exceptional circumstances beyond the practitioner's control.

18VAC85-21-21. Electronic prescribing.

A. Beginning July 1, 2020, a prescription for a controlled substance that contains an opioid shall be issued as an electronic prescription consistent with § 54.1-3408.02 of the Code of Virginia.

B. Upon written request, the board may grant a one-time waiver of the requirement of subsection A of this section, for a period not to exceed one year, due to demonstrated economic hardship, technological limitations that are not reasonably within the control of the prescriber, or other exceptional circumstances demonstrated by the prescriber.

VA.R. Doc. No. R20-6085; Filed September 18, 2019, 1:43 p.m.

BOARD OF NURSING

Proposed Regulation

Titles of Regulations: 18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-10, 18VAC90-30-20, 18VAC90-30-50, 18VAC90-30-85, 18VAC90-30-110, 18VAC90-30-120; adding 18VAC90-30-86).

18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (amending 18VAC90-40-90).

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Public Hearing Information:

October 16, 2019 - 9:05 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Board Room 2, Henrico, VA 23233

Public Comment Deadline: November 29, 2019.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Medicine and Board of Nursing the authority to promulgate regulations to administer the regulatory system. Authority for licensure and practice of nurse practitioners and for prescriptive authority is found in § 54.1-2957 of the Code of Virginia.

Purpose: Regulations for autonomous practice are consistent with the statute as amended by the 2018 General Assembly and provide for evidence of years of clinical practice with a patient care team physician and for the limitation of practice within the category for which a nurse practitioner is licensed and certified. By law and regulation, a nurse practitioner practicing autonomously must "(a) only practice within the scope of his clinical and professional training and limits of his knowledge and experience and consistent with the applicable standards of care, (b) consult and collaborate with other health care providers based on the clinical conditions of the patient to whom health care is provided, and (c) establish a plan for referral of complex medical cases and emergencies to physicians or other appropriate health care providers." Therefore, the health and safety of patients is adequately protected by the qualifications for autonomous practice and the specified scope of such practice.

Substance: Regulations set the qualifications for authorization for a nurse practitioner to practice without a practice agreement with a patient care team physician, including the hours required for the equivalent of five years of full-time clinical experience, content of the attestation from the physician and nurse practitioner, submission of an attestation when the nurse practitioner is unable to obtain a physician attestation, requirements for autonomous practice, and the fee for authorization.

Issues: The primary advantage to the public is the potential for an expansion of access to care. By allowing nurse practitioners to practice autonomously, it is anticipated that there will be an increased number who will choose to open practices in underserved areas where it is currently difficult to find a collaborating physician. The agency does not believe there are disadvantages to the public because nurse practitioners practicing autonomously are still required to consult and collaborate with other health care providers based on clinical conditions and must practice only within the scope of their training and limits of experience. There are no particular advantages or disadvantages to the agency. There may be an advantage to the Commonwealth by an increase in access to care.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 776 of the 2018 Acts of Assembly,² the Boards of Nursing and Medicine (Boards) jointly propose to

establish criteria for nurse practitioners wishing to work autonomously.

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

Estimated Economic Impact. The 2018 General Assembly authorized nurse practitioners to work autonomously and required the Boards to promulgate regulations governing such practice. Consistent with the enabling legislation, the Boards, under an emergency regulation,³ set the qualifications for authorization for a nurse practitioner to practice without a practice agreement with a patient care team physician, including the hours required for the equivalent of five years of full-time clinical experience, content of the attestation from the physician and nurse practitioner, submission of an attestation when the nurse practitioner is unable to obtain a physician attestation, requirements for autonomous practice, and the fee for authorization. The Boards now propose to make the emergency regulation permanent.

The main economic effects of autonomous practice fall on the nurse practitioners with the prerequisite experience, the doctors who used to have a practice agreement with a nurse practitioner, and the public in general. In a few cases, a nurse practitioner (or the employer of the nurse practitioner) practicing under the oversight of a doctor pursuant to a practice agreement may pay the doctor for such an arrangement. Anecdotally, the magnitude of such payments may range from \$500 to \$3,000 per month.⁴ Thus, autonomous practice may relieve a nurse practitioner or his employer from such ongoing payments. This legislative change benefits qualifying nurse practitioners while taking away a possible stream of income from few doctors providing oversight. Whether loss of income by a supervising doctor is a net cost or not depends on specific circumstances. In some cases, the doctor may be better off because he can use the time he would gain from no longer providing oversight in more productive activities. In other cases, the physician may be worse off if the value of the time that would be freed up from reduced oversight is less than the amount he may have received in oversight payment.

According to the Department of Health Professions (DHP), the legislative requirements and the proposed rules ensure quality of services because nurse practitioners practicing autonomously are still required to consult and collaborate with other health care providers based on clinical conditions and to only practice within the scope of their training and limits of experience. Thus, no additional health risks are expected from this change. In addition, this change may improve access to care in rural areas where it is generally difficult to find a collaborating physician if interested nurse practitioners choose to work in those areas. However, according to DHP, the 440 applications received so far are from all over Virginia and do not dominantly come from rural areas.

Finally, the Boards propose to establish a one-time \$100 fee for autonomous practice applications. This fee will be used to cover the administrative expenses to evaluate and process

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applications. The legislation also requires liability insurance. The required fee and the insurance coverage should not negatively affect applicants as they are required from only those who are interested in such a practice and who would likely benefit from such an authority.

Businesses and Entities Affected. There are approximately 4,000 persons who have held licenses as nurse practitioners for five years or more. However, it is unknown how many of that number have been actively engaged in full-time clinical practice. As of May 28, 2019, there were 440 applications received for autonomous practice and 372 of them were approved.

Localities Particularly Affected. The proposed changes have the potential to improve access to care in rural areas where supply of physicians are lacking. However, it may be too early to see the evidence for such an effect.

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

Effects on the Use and Value of Private Property. The proposed changes would allow a nurse practitioner to work autonomously. Autonomous practice may positively affect asset value of such a business.

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 may reduce the cost for nurse practitioners to actively practice. This may reduce costs for small medical practices that employ nurse practitioners.

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

Adverse Impacts:

Businesses. The proposed amendments should not adversely affect businesses.

Localities. The proposed amendments should not adversely affect localities.

Other Entities. The proposed amendments should not have a direct adverse effect other entities.

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

Summary:

Pursuant to Chapter 776 of the 2018 Acts of Assembly, which permits a nurse practitioner who meets certain statutory requirements to practice without a practice agreement with a patient care team physician, the proposed amendments set the qualifications for authorization for a nurse practitioner to practice without a practice agreement, including (i) the hours required to be the equivalent of five years of full-time clinical experience, (ii) the content of the attestation from the physician and the nurse practitioner, (iii) the submission of an attestation when the nurse practitioner is unable to obtain a physician attestation, (iv) the requirements for autonomous practice, and (v) the fee for authorization for autonomous practice.

Part I

General Provisions

18VAC90-30-10. Definitions.

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

"Approved program" means a nurse practitioner education program that is accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools, American College of Nurse Midwives, Commission on Collegiate Nursing Education, or the National League for Nursing Accrediting Commission or is offered by a school of nursing or jointly offered by a school of medicine and a school of nursing that grant a graduate degree in nursing and ~~which that~~ hold a national accreditation acceptable to the boards.

"Autonomous practice" means practice in a category in which a nurse practitioner is certified and licensed without a written or electronic practice agreement with a patient care team physician in accordance with 18VAC90-30-86.

"Boards" means the Virginia Board of Nursing and the Virginia Board of Medicine.

"Certified nurse midwife" means an advanced practice registered nurse who is certified in the specialty of nurse midwifery and who is jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner pursuant to § 54.1-2957 of the Code of Virginia.

"Certified registered nurse anesthetist" means an advanced practice registered nurse who is certified in the specialty of nurse anesthesia, who is jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner pursuant to § 54.1-2957 of the Code of Virginia, and who practices under the supervision of a doctor of medicine, osteopathy, podiatry,

²<http://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+CHAP0776>

³<https://townhall.virginia.gov/ViewStage.cfm?stageid=8395>

⁴Source: DHP

or dentistry but is not subject to the practice agreement requirement described in § 54.1-2957.

"Collaboration" means the communication and decision-making process among members of a patient care team related to the treatment and care of a patient and includes (i) communication of data and information about the treatment and care of a patient, including exchange of clinical observations and assessments, and (ii) development of an appropriate plan of care, including decisions regarding the health care provided, accessing and assessment of appropriate additional resources or expertise, and arrangement of appropriate referrals, testing, or studies.

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"Consultation" means the communicating of data and information, exchanging of clinical observations and assessments, accessing and assessing of additional resources and expertise, problem solving, and arranging for referrals, testing, or studies.

"Licensed nurse practitioner" means an advanced practice registered nurse who has met the requirements for licensure as stated in Part II (18VAC90-30-60 et seq.) of this chapter.

"National certifying body" means a national organization that is accredited by an accrediting agency recognized by the U.S. Department of Education or deemed acceptable by the National Council of State Boards of Nursing and has as one of its purposes the certification of nurse anesthetists, nurse midwives, or nurse practitioners, referred to in this chapter as professional certification, and whose certification of such persons by examination is accepted by the committee.

"Patient care team physician" means a person who holds an active, unrestricted license issued by the Virginia Board of Medicine to practice medicine or osteopathic medicine.

"Practice agreement" means a written or electronic statement, jointly developed by the collaborating patient care team ~~physician(s)~~ physician and the licensed nurse ~~practitioner(s)~~ practitioner that describes the procedures to be followed and the acts appropriate to the specialty practice area to be performed by the licensed nurse ~~practitioner(s)~~ practitioner in the care and management of patients. The practice agreement also describes the prescriptive authority of the nurse practitioner, if applicable. For a nurse practitioner licensed in the category of certified nurse midwife, the practice agreement is a statement jointly developed with the consulting physician.

18VAC90-30-20. Delegation of authority.

A. The boards hereby delegate to the executive director of the Virginia Board of Nursing the authority to issue the initial licensure and the biennial renewal of such licensure to those persons who meet the requirements set forth in this chapter, to grant authorization for autonomous practice to those

persons who have met the qualifications of 18VAC90-30-86, and to grant extensions or exemptions for compliance with continuing competency requirements as set forth in subsection E of 18VAC90-30-105. Questions of eligibility shall be referred to the Committee of the Joint Boards of Nursing and Medicine.

B. All records and files related to the licensure of nurse practitioners shall be maintained in the office of the Virginia Board of Nursing.

18VAC90-30-50. Fees.

A. Fees required in connection with the licensure of nurse practitioners are:

1. Application	\$125
2. Biennial licensure renewal	\$80
3. Late renewal	\$25
4. Reinstatement of licensure	\$150
5. Verification of licensure to another jurisdiction	\$35
6. Duplicate license	\$15
7. Duplicate wall certificate	\$25
8. Return check charge	\$35
9. Reinstatement of suspended or revoked license	\$200
<u>10. Autonomous practice attestation</u>	<u>\$100</u>

B. For renewal of licensure from July 1, 2017, through June 30, 2019, the following fee shall be in effect:

Biennial renewal	\$60
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18VAC90-30-85. Qualifications for licensure by endorsement.

A. An applicant for licensure by endorsement as a nurse practitioner shall:

1. Provide verification of licensure as a nurse practitioner or advanced practice nurse in another ~~U.S.~~ United States jurisdiction with a license in good standing, or, if lapsed, eligible for reinstatement;
2. Submit evidence of professional certification that is consistent with the specialty area of the applicant's educational preparation issued by an agency accepted by the boards as identified in 18VAC90-30-90; and
3. Submit the required application and fee as prescribed in 18VAC90-30-50.

B. An applicant shall provide evidence that includes a transcript that shows successful completion of core coursework that prepares the applicant for licensure in the appropriate specialty.

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C. An applicant for licensure by endorsement who is also seeking authorization for autonomous practice shall comply with subsection F of 18VAC90-30-86.

18VAC90-30-86. Autonomous practice for nurse practitioners other than certified nurse midwives or certified registered nurse anesthetists.

A. A nurse practitioner with a current, unrestricted license, other than someone licensed in the category of certified nurse midwife or certified registered nurse anesthetist, may qualify for autonomous practice by completion of the equivalent of five years of full-time clinical experience as a nurse practitioner.

1. Five years of full-time clinical experience shall be defined as 1,800 hours per year for a total of 9,000 hours.
2. Clinical experience shall be defined as the postgraduate delivery of health care directly to patients pursuant to a practice agreement with a patient care team physician.

B. Qualification for authorization for autonomous practice shall be determined upon submission of a fee as specified in 18VAC90-30-50 and an attestation acceptable to the boards. The attestation shall be signed by the nurse practitioner and the nurse practitioner's patient care team physician stating that:

1. The patient care team physician served as a patient care team physician on a patient care team with the nurse practitioner pursuant to a practice agreement meeting the requirements of this chapter and §§ 54.1-2957 and 54.1-2957.01 of the Code of Virginia;
2. While a party to such practice agreement, the patient care team physician routinely practiced with a patient population and in a practice area included within the category, as specified in 18VAC90-30-70, for which the nurse practitioner was certified and licensed; and
3. The period of time and hours of practice during which the patient care team physician practiced with the nurse practitioner under such a practice agreement.

C. The nurse practitioner may submit attestations from more than one patient care team physician with whom the nurse practitioner practiced during the equivalent of five years of practice, but all attestations shall be submitted to the boards at the same time.

D. If a nurse practitioner is licensed and certified in more than one category as specified in 18VAC90-30-70, a separate fee and attestation that meets the requirements of subsection B of this section shall be submitted for each category. If the hours of practice are applicable to the patient population and in practice areas included within each of the categories of licensure and certification, those hours may be counted toward a second attestation.

E. In the event a patient care team physician has died, become disabled, retired, or relocated to another state, or in the event of any other circumstance that inhibits the ability of the nurse practitioner from obtaining an attestation as specified in subsection B of this section, the nurse practitioner may submit other evidence of meeting the qualifications for autonomous practice along with an attestation signed by the nurse practitioner. Other evidence may include employment records, military service, Medicare or Medicaid reimbursement records, or other similar records that verify full-time clinical practice in the role of a nurse practitioner in the category for which the nurse practitioner is licensed and certified. The burden shall be on the nurse practitioner to provide sufficient evidence to support the nurse practitioner's inability to obtain an attestation from a patient care team physician.

F. A nurse practitioner to whom a license is issued by endorsement may engage in autonomous practice if such application includes an attestation acceptable to the boards that the nurse practitioner has completed the equivalent of five years of full-time clinical experience as specified in subsection A of this section and in accordance with the laws of the state in which the nurse practitioner was previously licensed.

G. A nurse practitioner authorized to practice autonomously shall:

1. Only practice within the scope of the nurse practitioner's clinical and professional training and limits of the nurse practitioner's knowledge and experience and consistent with the applicable standards of care;
2. Consult and collaborate with other health care providers based on the clinical conditions of the patient to whom health care is provided; and
3. Establish a plan for referral of complex medical cases and emergencies to physicians or other appropriate health care providers.

18VAC90-30-110. Reinstatement of license.

A. A licensed nurse practitioner whose license has lapsed may be reinstated within one renewal period by payment of the current renewal fee and the late renewal fee.

B. An applicant for reinstatement of license lapsed for more than one renewal period shall:

1. File the required application and reinstatement fee;
2. Be currently licensed as a registered nurse in Virginia or hold a current multistate licensure privilege as a registered nurse; and
3. Provide evidence of current professional competency consisting of:

- a. Current professional certification by the appropriate certifying agency identified in 18VAC90-30-90;
- b. Continuing education hours taken during the period in which the license was lapsed, equal to the number required for licensure renewal during that period, not to exceed 120 hours; or
- c. If applicable, current, unrestricted licensure or certification in another jurisdiction.

4. If qualified for autonomous practice, provide the required fee and attestation in accordance with 18VAC90-30-86.

C. An applicant for reinstatement of license following suspension or revocation shall:

- 1. Petition for reinstatement and pay the reinstatement fee;
- 2. Present evidence that he is currently licensed as a registered nurse in Virginia or hold a current multistate licensure privilege as a registered nurse; and
- 3. Present evidence that he is competent to resume practice as a licensed nurse practitioner in Virginia to include:
 - a. Current professional certification by the appropriate certifying agency identified in 18VAC90-30-90; or
 - b. Continuing education hours taken during the period in which the license was suspended or revoked, equal to the number required for licensure renewal during that period, not to exceed 120 hours.

The committee shall act on the petition pursuant to the Administrative Process Act, (§ 2.2-4000 et seq. of the Code of Virginia).

Part III
Practice of Licensed Nurse Practitioners

18VAC90-30-120. Practice of licensed nurse practitioners other than certified registered nurse anesthetists or certified nurse midwives.

A. A nurse practitioner licensed in a category other than certified registered nurse anesthetist or certified nurse midwife shall be authorized to render care in collaboration and consultation with a licensed patient care team physician as part of a patient care team or if determined by the boards to qualify in accordance with 18VAC90-30-86, authorized to practice autonomously without a practice agreement with a patient care team physician.

B. The practice shall be based on specialty education preparation as an advanced practice registered nurse in accordance with standards of the applicable certifying organization, as identified in 18VAC90-30-90.

C. All nurse practitioners licensed in any category other than certified registered nurse anesthetist or certified nurse midwife shall practice in accordance with a written or

electronic practice agreement as defined in 18VAC90-30-10 or in accordance with 18VAC90-30-86.

D. The written or electronic practice agreement shall include provisions for:

- 1. The periodic review of patient charts or electronic patient records by a patient care team physician and may include provisions for visits to the site where health care is delivered in the manner and at the frequency determined by the patient care team;
- 2. Appropriate physician input in complex clinical cases and patient emergencies and for referrals; and
- 3. The nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits, and endorsements provided it is:
 - a. In accordance with the specialty license of the nurse practitioner and within the scope of practice of the patient care team physician;
 - b. Permitted by § 54.1-2957.02 or applicable sections of the Code of Virginia; and
 - c. Not in conflict with federal law or regulation.

E. The practice agreement shall be maintained by the nurse practitioner and provided to the boards upon request. For nurse practitioners providing care to patients within a hospital or health care system, the practice agreement may be included as part of documents delineating the nurse practitioner's clinical privileges or the electronic or written delineation of duties and responsibilities; however, the nurse practitioner shall be responsible for providing a copy to the boards upon request.

Part III
Practice Requirements

18VAC90-40-90. Practice agreement.

A. ~~With the exception of exceptions listed in~~ subsection E of this section, a nurse practitioner with prescriptive authority may prescribe only within the scope of the written or electronic practice agreement with a patient care team physician.

B. At any time there are changes in the patient care team physician, authorization to prescribe, or scope of practice, the nurse practitioner shall revise the practice agreement and maintain the revised agreement.

C. The practice agreement shall contain the following:

- 1. A description of the prescriptive authority of the nurse practitioner within the scope allowed by law and the practice of the nurse practitioner.
- 2. An authorization for categories of drugs and devices within the requirements of § 54.1-2957.01 of the Code of Virginia.

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3. The signature of the patient care team physician who is practicing with the nurse practitioner or a clear statement of the name of the patient care team physician who has entered into the practice agreement.

D. In accordance with § 54.1-2957.01 of the Code of Virginia, a physician shall not serve as a patient care team physician to more than six nurse practitioners with prescriptive authority at any one time.

E. Exceptions.

1. A nurse practitioner licensed in the category of certified nurse midwife and holding a license for prescriptive authority may prescribe in accordance with a written or electronic practice agreement with a consulting physician or may prescribe Schedule VI controlled substances without the requirement for inclusion of such prescriptive authority in a practice agreement.

2. A nurse practitioner who is licensed in a category other than certified nurse midwife or certified registered nurse anesthetist and who has met the qualifications for autonomous practice as set forth in 18VAC90-30-86 may prescribe without a practice agreement with a patient care team physician.

VA.R. Doc. No. R19-5512; Filed September 5, 2019, 3:49 p.m.

BOARD OF OPTOMETRY

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Optometry is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 14 of the Code of Virginia, which exempts the Board of Optometry from the Administrative Process Act when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1 of the Code of Virginia.

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-47).**

Statutory Authority: §§ 54.1-2400 and 54.1-3223 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 30, 2019.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 597-4130, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

Background: Chapter 214 of the 2019 Acts of Assembly placed the drug gabapentin as a controlled substance in

Schedule V. Regulations of the Board of Optometry currently prohibit optometrists from prescribing Schedule V drugs. Since July 1, 2019, optometrists have not been able to prescribe gabapentin, making prescribing of an opioid the only alternative an optometrist currently has for pain control for certain patients.

Summary:

The amendments (i) add gabapentin to the therapeutic pharmaceutical agent formulary and (ii) correct text to reflect an exception allowed for prescribing hydrocodone in combination with acetaminophen.

18VAC105-20-47. Therapeutic pharmaceutical agents.

A. A TPA-certified optometrist, acting within the scope of his practice, may procure, administer, and prescribe medically appropriate therapeutic pharmaceutical agents (or any therapeutically appropriate combination thereof) to treat diseases and abnormal conditions of the human eye and its adnexa within the following categories:

1. Oral analgesics - Schedule II controlled substances consisting of hydrocodone in combination with acetaminophen and Schedule III, IV, and VI narcotic and nonnarcotic agents.

2. Topically administered Schedule VI agents:

- a. Alpha-adrenergic blocking agents;
- b. Anesthetic (including esters and amides);
- c. Anti-allergy (including antihistamines and mast cell stabilizers);
- d. Anti-fungal;
- e. Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);
- f. Anti-infective (including antibiotics and antivirals);
- g. Anti-inflammatory;
- h. Cycloplegics and mydriatics;
- i. Decongestants; and
- j. Immunosuppressive agents.

3. Orally administered Schedule VI agents:

- a. Aminocaproic acids (including antifibrinolytic agents);
- b. Anti-allergy (including antihistamines and leukotriene inhibitors);
- c. Anti-fungal;
- d. Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);
- e. Anti-infective (including antibiotics and antivirals);

- f. Anti-inflammatory (including steroidal and nonsteroidal);
- g. Decongestants; and
- h. Immunosuppressive agents.

B. Schedule I, II, and V drugs are excluded from the list of therapeutic pharmaceutical agents with the exception of controlled substances consisting of hydrocodone in combination with acetaminophen in Schedule II and gabapentin in Schedule V.

C. Over-the-counter topical and oral medications for the treatment of the eye and its adnexa may be procured for administration, administered, prescribed, or dispensed.

VA.R. Doc. No. R20-6134; Filed September 5, 2019, 1:23 p.m.

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TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

Titles of Regulations: **22VAC40-60. Standards and Regulations for Licensed Adult Day Care Centers (repealing 22VAC40-60-10 through 22VAC40-60-1020).**

22VAC40-61. Standards and Regulations for Licensed Adult Day Care Centers (adding 22VAC40-61-10 through 22VAC40-61-560).

Statutory Authority: § 63.2-1733 of the Code of Virginia.

Effective Date: December 29, 2019.

Agency Contact: Cynthia Carneal Heflin, Licensing Consultant, Division of Licensing Programs, Department of Social Services, 801 East Main Street, 9th Floor, Richmond, VA 23219, telephone (804) 726-7140, FAX (804) 726-7132, TTY (800) 828-1120, or email cynthia.carneal@dss.virginia.gov.

Summary:

The regulatory action repeals the existing Standards and Regulations for Licensed Adult Day Care Centers (22VAC40-60) and replaces it with a new regulation, Standards and Regulations for Licensed Adult Day Care Centers (22VAC40-61). The new regulation updates standards to (i) reflect changed practices and procedures, (ii) reflect current federal and state law and regulation, and (iii) improve the organization of the regulation and increase clarity and consistency.

The State Board of Social Services did not adopt proposed 22VAC40-61-40 regarding quality assurance in the final regulation. Other changes to the proposed regulation include (i) requiring that at least two staff members be

certified in cardiopulmonary resuscitation instead of a certification requirement for all direct care staff; (ii) amending the requirement for a Virginia driver's license to allow those who maintain a driver's license in a border state to fulfill transportation requirements; (iii) removing requirements already stated in federal statute and regulations; and (iv) clarifying requirements and terms.

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

CHAPTER 61

STANDARDS AND REGULATIONS FOR LICENSED ADULT DAY CARE CENTERS

Part I

General Provisions

22VAC40-61-10. Definitions.

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

"Activities of daily living" or "ADLs" means bathing, dressing, toileting, transferring, bowel control, bladder control, eating, and feeding. A person's degree of independence in performing these activities is a part of determining required care needs and necessary services.

"Administer medication" means to open a container of medicine or to remove the ordered dosage and to give it to the participant for whom it is ordered in such a manner as is ordered or is appropriate.

"Adult" means any person 18 years of age or older.

"Adult day care center" or "center" means any facility that is either operated for profit or that desires licensure and that provides supplementary care and protection during only a part of the day to four or more aged, infirm, or disabled adults who reside elsewhere, 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 and (ii) the home or residence of an individual who cares for only persons related to him by blood or marriage. Included in this definition are any two or more places, establishments, or institutions owned, operated, or controlled by a single entity and providing such supplementary care and protection to a combined total of four or more aged, infirm, or disabled adults.

"Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 of the Code of Virginia or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983 of the Code of Virginia.

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"Ambulatory" means the condition of a participant who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as described in 13VAC5-63, the Virginia Uniform Statewide Building Code, without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such participant may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate.

"Business entity" means an individual or sole proprietor, association, partnership, limited liability company, business trust, corporation, public agency, or religious organization.

"Chapter" or "this chapter" means these regulations, that is, Standards and Regulations for Licensed Adult Day Care Centers, 22VAC40-61, unless noted otherwise.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the participant's medical symptoms or symptoms from mental illness or intellectual disability and that prohibits an individual from reaching his highest level of functioning.

"Communicable disease" means an illness that spreads from one person to another or from an animal to a person.

"CPR" means cardiopulmonary resuscitation.

"Department" means the Virginia Department of Social Services.

"Dietary supplement" means a product intended for ingestion that supplements the diet, is labeled as a dietary supplement, is not represented as a sole item of a meal or diet, and contains a dietary ingredient, for example, vitamins, minerals, amino acid, herbs or other botanicals, dietary substances (such as enzymes), and concentrates, metabolites, constituents, extracts, or combinations of the preceding types of ingredients. "Dietary supplements" may be found in many forms, such as tablets, capsules, liquids, or bars.

"Direct care staff" means supervisors, assistants, aides, or other staff of a center who assist participants in the performance of personal care or ADLs.

"Director" means the qualified person who has been delegated responsibility for the programmatic and administrative functions of the adult day care center.

"Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Good character and reputation" means findings have been established that the individual (i) maintains business or

professional and community relationships that are characterized by honesty, fairness, truthfulness, and dependability and (ii) has a history or pattern of behavior that demonstrates the individual is suitable and able to administer a program for the care, supervision, and protection of adults.

"Legal representative" means a person legally responsible for representing or standing in the place of the participant for the conduct of his affairs. "Legal representative" may include a guardian, conservator, attorney-in-fact under durable power of attorney, trustee, or other person expressly named by a court of competent jurisdiction or the participant as his agent in a legal document that specifies the scope of the representative's authority to act. A legal representative may only represent or stand in the place of a participant for the function [~~or functions~~] for which he has legal authority to act. A participant is presumed competent and is responsible for making all health care, personal care, financial, and other personal decisions that affect his life unless a representative with legal authority has been appointed by a court of competent jurisdiction or has been appointed by the participant in a properly executed and signed document. A participant may have different legal representatives for different functions. For any given standard, the term "legal representative" applies solely to the legal representative with the authority to act in regard to the function [~~or functions~~] relevant to that particular standard.

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of his profession, such as a nurse practitioner, registered nurse, licensed practical nurse (nurses may be licensed or hold multistate licensure pursuant to § 54.1-3000 of the Code of Virginia), clinical social worker, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, and speech-language pathologist. Responsibilities of physicians referenced in this chapter may be implemented by nurse practitioners or physician assistants in accordance with their protocols or practice agreements with their supervising physicians and in accordance with the law.

"Licensee" means the business entity to whom a license is issued and who is legally responsible for compliance with the laws and regulations related to the center. A license may not be issued in the name of more than one business entity.

"Mandated reporter" means a person specified in § 63.2-1606 of the Code of Virginia who is required to report matters giving reason to suspect abuse, neglect, or exploitation of an adult.

"Mental impairment" means a disability [~~characterized by the display of an intellectual defect, as manifested by diminished cognitive, interpersonal, social, and vocational effectiveness~~] that reduces an individual's ability to reason

logically, make appropriate decisions, or engage in purposeful behavior].

"Nonambulatory" means the condition of a participant who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

"Participant" means an adult who takes part in the program of care and receives services from the center.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the participant's body that the participant cannot remove easily, which restricts freedom of movement or access to his body.

"Physician" means an individual licensed to practice medicine or osteopathic medicine in any of the 50 states or the District of Columbia.

"Qualified" means having appropriate training and experience commensurate with assigned responsibilities, or if referring to a professional, possessing an appropriate degree or having documented equivalent education, training, or experience.

"Significant change" means a change in a participant's condition that is expected to last longer than 30 days. "Significant change" does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

"Staff" or "staff person" means personnel working at a center who are compensated or have a financial interest in the center, regardless of role, service, age, function, or duration of employment at the center. "Staff" or "staff person" also includes those individuals hired through a contract with the center to provide services for the center.

"Standard precautions" means a set of basic infection prevention practices intended to prevent transmission of infectious diseases from one person to another. These practices are applied to every person at every contact to assure that transmission of disease does not occur.

"Volunteer" means a person who works at the center who is not compensated. "Volunteer" does not include a person who, either as an individual or as part of an organization, is only present at or facilitates group activities on an occasional basis or for special events.

22VAC40-61-20. Requirements of law and applicability.

A. Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia includes requirements of law relating to licensure, including licensure of adult day care centers.

B. This chapter applies to adult day care centers as defined in § 63.2-100 of the Code of Virginia and in 22VAC40-61-10.

C. All programs, processes, plans, policies, or procedures required by this chapter must be in writing and must be implemented.

22VAC40-61-30. Program of care.

There shall be a program of care that:

1. Meets the participants' physical, intellectual, emotional, psychological, and spiritual needs;
2. Promotes the participants' highest level of functioning;
3. Provides protection, guidance, and supervision;
4. Promotes a sense of security, self-worth, and independence;
5. Promotes the participants' involvement with activities and services; and
6. Reduces risk in the caregiving environment.

22VAC40-61-40. [~~Quality assurance. (Reserved.)~~]

~~[At least annually, the center shall conduct an internal evaluation of its operation and services. A written report of the evaluation shall be kept on file and shall include:~~

- ~~1. Involvement of the licensee, program director, staff, participants, family members, legal representative, center's advisory body, if any, and other relevant agencies or organizations;~~
- ~~2. Review of the extent to which the program assisted participants and their families or legal representatives;~~
- ~~3. Measurement of the achievement of the program of care as described in 22VAC40-61-30;~~
- ~~4. Outcome measures as designed by the center, which may include client satisfaction and caregiver surveys;~~
- ~~5. Assessment of the relationship of the program to the rest of the community service network;~~
- ~~6. Recommendations for improvement, corrective action of problem areas, and future program directions.]~~

22VAC40-61-50. Participant rights and responsibilities.

A. All participants shall be guaranteed the following:

1. The right to be treated as an adult, with consideration, respect, and dignity, including privacy in treatment and care of personal needs.
2. The right to participate in a program of services and activities designed to interest and engage the participant and encourage independence, learning, growth, awareness, and joy in life.

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3. The right to self-determination within the center setting, including the opportunity to:

- a. Participate in developing or changing one's plan of care;
- b. Decide whether or not to participate in any given activity;
- c. Be involved to the extent possible in program planning and operation;
- d. Refuse treatment and be informed of the consequences of such refusal; and
- e. End participation at the center at any time.

4. The right to a thorough initial assessment, development of an individualized participant plan of care, and a determination of the required care needs and necessary services.

5. The right to be cared for in an atmosphere of sincere interest and concern in which needed support and services are provided.

6. The right to a safe, secure, and clean environment.

7. The right to receive nourishment and assistance with meals as necessary to maximize functional abilities and quality and enjoyment of life.

8. The right to confidentiality and the guarantee that no personal or medical information or photographs will be released to persons not authorized under law to receive it without the participant's written consent.

9. The right to voice or file grievances about care or treatment and to make recommendations for changes in the policies and services of the center, without coercion, discrimination, threats, or reprisal for having voiced or filed such grievances or recommendations.

10. The right to be fully informed, as documented by the participant's written acknowledgment, of all participant rights and responsibilities and of all rules and regulations regarding participant conduct and responsibilities.

11. The right to be free from harm or fear of harm, including physical or chemical restraint, isolation, excessive medication, and abuse or neglect.

12. The right to be fully informed, at the time of acceptance into the program, of services and activities available and related charges.

13. The right to communicate with others and be understood by them to the extent of the participant's capability.

B. The rights of participants shall be printed in at least 14-point type and posted conspicuously in a public place in the center.

C. The center shall make its policies and procedures available and accessible to participants, relatives, agencies, and the general public.

D. Each center shall post the name and telephone number of the appropriate regional licensing administrator of the department; the Adult Protective Services toll-free telephone number; the toll-free telephone number of the Virginia Long-Term Care Ombudsman Program and any local ombudsman program servicing the area; and the toll-free telephone number of the disAbility Law Center of Virginia.

E. The rights and responsibilities of participants shall be reviewed annually with each participant, or, if a participant is unable to fully understand and exercise his rights and responsibilities, the annual review shall include his family member or his legal representative. Evidence of this review shall include the date of the review and the signature of the participant, family member, or legal representative and shall be included in the participant's file.

F. A participant shall be assumed capable of understanding and exercising these rights and responsibilities unless a physician determines otherwise and documentation is contained in the participant's record.

Part II Administration

22VAC40-61-60. Requirements for licensee.

A. The licensee shall ensure compliance with all regulations for licensed adult day care centers and terms of the license issued by the department; with relevant federal, state, or local laws; with other relevant regulations; and with the center's own policies and procedures.

B. The licensee shall:

1. Be of good character and reputation;

2. Protect the physical and mental well-being of the participants;

3. Keep such records and make such reports as required by this chapter for licensed adult day care centers. Such records and reports may be inspected by the department's representative at any reasonable time in order to determine compliance with this chapter;

4. Meet the qualifications of the director if he assumes those duties;

5. Act in accordance with General Procedures and Information for Licensure (22VAC40-80);

6. Ensure that the current license is posted in the center in a place conspicuous to the participants and the public; and

7. Be responsible for the overall planning of the program and services to be provided by the center, including the following:

a. Develop and keep current a statement of the purpose and scope of the services to be provided by the center, a description of adults who may be accepted into the program as well as those whom the program cannot serve, and policies and procedures under which the center will operate.

b. Appoint and identify in writing a qualified director to be responsible for the day-to-day operation and management of the center. When the business entity is an individual who serves as the director, this shall also be noted in writing.

c. Provide an adequate number of qualified staff capable of carrying out the operation of the program and to develop a staffing plan that includes a staffing schedule.

d. Develop policies and procedures for the selection and supervision of volunteers.

e. Develop a written organizational chart indicating chain of command.

f. Make certain that when it is time to discard records, the records are disposed of in a manner that ensures confidentiality.

22VAC40-61-70. Liability insurance.

The center shall maintain public liability insurance for bodily injury with a minimum limit of at least \$1 million for each occurrence or \$1 million aggregate. Evidence of insurance coverage shall be made available to the department's representative upon request.

22VAC40-61-80. Electronic records and signatures.

A. Use of electronic records or signatures shall comply with the provisions of the Uniform Electronic Transactions Act (§ 59.1-479 et seq. of the Code of Virginia).

B. In addition to the requirements of the Uniform Electronic Transactions Act, the use of electronic signatures shall be deemed to constitute a signature and have the same effect as a written signature on a document as long as the licensee:

1. Develops and maintains specific policies and procedures for the use of electronic signatures;
2. Ensures that each electronic signature identifies the individual signing the document by name and title;
3. Ensures that the document cannot be altered after the signature has been affixed;
4. Ensures that access to the code or key sequence is limited;
5. Ensures that all users have signed statements that they alone have access to and use the key or computer password for their signature and will not share their key or password with others; and

6. Ensures that strong and substantial evidence exists that would make it difficult for the signer or the receiving party to claim the electronic representation is not valid.

C. A back-up and security system shall be utilized for all electronic documents.

22VAC40-61-90. Incident reports.

A. Each center shall report to the regional licensing office within 24 hours of the occurrence of any major incident that has negatively affected or that threatens the life, health, safety, or welfare of any participant.

B. The report required in subsection A of this section shall include (i) the name of the center, (ii) the name of the participant [~~or participants~~] involved in the incident, (iii) the name of the person making the report, (iv) the date of the incident, (v) a description of the incident, and (vi) the actions taken in response to the incident.

C. The center shall submit a written report of each incident specified in subsection A of this section to the regional licensing office within seven days from the date of the incident. The report shall be signed and dated by the director or his designee and include the following information:

1. Name and address of the center;
2. Name of the participant [~~or participants~~] involved in the incident;
3. Date and time of the incident;
4. Description of the incident, the circumstances under which it happened, and when applicable, extent of injury or damage;
5. Location of the incident;
6. Actions taken in response to the incident;
7. The outcome of the incident;
8. Actions to prevent recurrence of the incident if applicable;
9. Name of staff person in charge at the time of the incident;
10. Names, telephone numbers, and addresses of witnesses to the incident if any; and
11. Name, title, and signature of the person making the report, if other than the director or his designee.

D. The center shall submit to the regional licensing office amendments to the written report when circumstances require, such as when substantial additional actions are taken, when significant new information becomes available, or when there is resolution of the incident after the submission of the report.

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E. A copy of the written report of each incident shall be maintained by the center for at least two years.

F. All reports [pertaining specifically to a participant,] such as but not limited to, adult protective services, medical, or police, shall be maintained in the participant's record.

Part III Personnel

22VAC40-61-100. General qualifications.

All staff members shall:

1. Be of good character and reputation;
2. Be competent, qualified, and capable of carrying out assigned responsibilities;
3. Be considerate, understanding, and respectful of the rights, dignity, and sensitivities of persons who are aged, infirm, and disabled;
4. Be clean and well groomed;
5. Be able to speak, read, understand, and write in English as necessary to carry out their job responsibilities;
6. Be able to understand and apply the standards in this chapter as they relate to their respective responsibilities; and
7. Meet the requirements specified in the Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers (22VAC40-90).

22VAC40-61-110. Staff orientation and initial training.

A. Prior to working directly with participants, all staff shall receive training in:

1. Participant rights and responsibilities;
2. Their individual responsibilities in the event of fire, including the location and operation of any fire extinguishers, fire alarm boxes, and approved exits;
3. Their individual responsibilities in the event of illness or injuries, including the location and use of the first aid kit and emergency supplies;
4. Their individual responsibilities in the event of emergencies, such as a lost or missing participant, severe weather, and loss of utilities;
5. Infection control;
6. Requirements and procedures for detecting and reporting suspected abuse, neglect, or exploitation of participants and for the mandated reporters, the consequences for failing to make a required report (§ 63.2-1606 of the Code of Virginia); and
7. Confidential treatment of personal information about participants and their families.

B. Staff who work with participants shall receive training in the following areas or topics no later than three weeks after their starting date of employment; part-time staff shall receive the training no later than six weeks after their starting date of employment. The areas or topics to be covered in the staff training shall include:

1. The purpose and goals of the adult day care center;
2. The policies and procedures of the center as they relate to the staff member's responsibilities;
3. Required compliance with regulations for adult day care centers as it relates to their duties and responsibilities;
4. The physical, emotional, and cognitive needs of the center's population;
5. The current participants' strengths and preferences, their individualized plans of care, and their service needs and supports;
6. The schedule of activities;
7. Behavioral interventions, behavior acceptance and accommodation, and behavior management techniques;
8. Interdisciplinary team approach;
9. Implementation of advance directives and Do Not Resuscitate Orders;
10. Risk management; and
11. The needs of participants' family members or caregivers.

C. A supervisor or designated trained staff shall be on the premises and closely oversee the individual's work with participants until training required in subsection B of this section is complete.

22VAC40-61-120. Reports of abuse, neglect, and exploitation.

A. All staff who are mandated reporters under § 63.2-1606 of the Code of Virginia shall report suspected abuse, neglect, or exploitation of participants in accordance with that section.

B. The center shall notify [the participant and] the participant's contact person or legal representative when a report is made as referenced in subsection A of this section, without identifying any confidential information [unless such notification would jeopardize the participant].

22VAC40-61-130. Director.

A. The director, or a designated assistant director who meets the qualifications of the director, shall be responsible for the center's program and day-to-day operations of the center and shall be present at least 51% of the center's weekly hours of operation. The responsibilities of the director shall include the following areas:

1. The content of the program offered to the participants in care.

2. Programmatic functions, including orientation, training, and scheduling of all staff.

3. Management of the supervision provided to all staff.

4. Assignment of a sufficient number of qualified staff to meet the participants' needs for:

a. Adequate nutrition;

b. Health supervision and maintenance;

c. Personal care;

d. Socialization, recreation, activities, and stimulation; and

e. Supervision, safety, and protection.

5. The duties and responsibilities required by this chapter.

B. The director shall meet the following qualifications:

1. Be at least 21 years of age.

2. Have completed, at a minimum, a bachelor's degree from an accredited college or university and two years of experience working with older adults or persons with disabilities. This may be paid full-time employment or its equivalent in part-time employment, volunteer work, or internship. The following qualifications are also acceptable for the director:

a. Current licensure as a nursing home administrator or assisted living facility administrator from the Board of Long-Term Care Administrators; or

b. Current licensure in Virginia as a registered nurse. The requirement for two years of experience working with older adults or persons with disabilities also must be met.

[~~Exception: Any~~ c. An exception to subdivisions 2 a and 2 b of this subsection is made for any] person continuously employed in an adult day care center licensed prior to July 1, 2000, as either a director or assistant director [~~shall have~~ who has] completed at least 48 semester hours or 72 quarter hours of postsecondary education from an accredited college or institution and [~~shall have~~ has] completed at least two years experience working with older adults or persons with disabilities. This may be paid full-time employment or its equivalent in part-time employment or in volunteer work.

3. The director shall demonstrate knowledge, skills, and abilities in the administration and management of the adult day care program including (i) knowledge and understanding of the population being served by the center, (ii) supervisory and interpersonal skills, (iii) ability to plan and implement the program, and (iv) knowledge of

financial management sufficient to ensure program development and continuity.

C. The director shall complete 24 hours of continuing education training annually to maintain and develop skills. At least two of the required hours of training shall focus on infection control and prevention. When adults with mental impairments participate at the center, at least four of the required hours shall focus on topics related to participants' mental impairments. This training shall be in addition to first aid, CPR, orientation, or initial or refresher medication aide training. Documentation of attendance shall be retained at the center and shall include type of training, name of the entity that provided the training, and date and number of hours of training.

22VAC40-61-140. Direct care staff qualifications.

A. All staff persons who work [~~directly~~] with participants and who are counted in the staff-to-participant ratio shall be at least 18 years of age unless certified in Virginia as a nurse aide.

B. Direct care staff shall meet one of the requirements in this subsection. If the staff does not meet the requirement at the time of employment, he shall successfully meet one of the requirements in this subsection within two months of employment. Licensed health care professionals practicing within the scope of their profession are not required to complete the training in this subsection.

1. Certification as a nurse aide issued by the Virginia Board of Nursing.

2. Successful completion of a Virginia Board of Nursing-approved nurse aide education program.

3. Successful completion of a personal care aide training program that meets the requirements of the Elderly or Disabled with Consumer Direction Waiver program for adult day health care as required by the Department of Medical Assistance Services.

4. Successful completion of an educational program for geriatric assistant or home health aide or for nurse aide that is not covered under subdivision 2 of this subsection. The program shall be provided by a hospital, nursing facility, or educational institution and may include out-of-state training. The program must be approved by the department. To obtain department approval:

a. The center shall provide to the department's representative an outline of course content, dates and hours of instruction received, the name of the entity that provided the training, and other pertinent information.

b. The department will make a determination based on the information in subdivision 4 a of this subsection and provide written confirmation to the center when the educational program meets department requirements.

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5. Successful completion of the department-approved 40-hour Assisted Living Facility Direct Care Staff Training curriculum.

6. Successful completion of at least 40 hours of training as taught by a licensed health care professional or, if online training is accessed, accredited by a national association. Topics for this training shall include the following:

- a. Participant rights;
- b. Physical, biological, and psychological aspects of aging;
- c. Health care needs such as hypertension, arthritis, diabetes, heart disease, osteoporosis, stroke, incontinence [; or] skin care [; etc.];
- d. Functional needs, limitations, and disabilities including sensory, physical, and developmental disabilities; mental illness; substance abuse; and aggressive behavior;
- e. Dementia and other cognitive impairment;
- f. Assistance with activities of daily living;
- g. Body mechanics, ambulation, and transfer;
- h. Infection control;
- i. Meals and nutrition;
- j. Activities; and
- k. Safety and accident prevention.

C. The center shall obtain a copy of the certificate issued or other documentation indicating that the person has met one of the requirements of subsection B of this section, which shall be part of the staff member's record in accordance with 22VAC40-61-180.

D. [~~All direct~~ Direct] care staff [employed by the center prior to December 29, 2019,] who do not meet one of the requirements in subsection B of this section [~~on the date that this chapter becomes effective~~] shall do so [~~within one year after the effective date of this chapter~~ by December 29, 2020].

22VAC40-61-150. Staff training.

A. Staff who provide direct care to participants shall attend at least 12 hours of training annually.

[~~B. 1.~~] The training shall be relevant to the population in care and shall be provided by a qualified individual through in-service training programs or institutes, workshops, classes, or conferences.

[~~C. 2.~~] At least two of the required hours of training shall focus on infection control and prevention. [~~When adults with mental impairments participate at the center, at least~~

four of the required hours shall focus on topics related to participants' mental impairments

3. When adults with mental impairments participate at the center, at least four of the required hours shall focus on topics related to participants' mental impairments];

[~~D. B.~~] Documentation of the type of training received, the entity that provided the training, number of hours of training, and dates of the training shall be kept by the center in a manner that allows for identification by individual staff person and is considered part of the staff member's record.

[~~E. C.~~] The required hours of training shall be in addition to first aid, CPR, orientation, or initial or refresher medication aide training.

22VAC40-61-160. First aid and CPR certification.

A. First aid.

1. Each direct care staff member [~~who does not have shall maintain~~] current certification in first aid [~~as specified in subdivision 2 of this subsection shall receive certification in first aid within 60 days of employment~~] from the American Red Cross, American Heart Association, National Safety Council, American Safety and Health Institute, community college, hospital, volunteer rescue squad, or fire department. The certification must either be in adult first aid or include adult first aid. [~~To be considered current, the certification shall have been issued within the past three years.~~]

2. Each direct care staff member [~~shall maintain current certification in first aid from an organization listed in subdivision 1 of this subsection. To be considered current, first aid certification from community colleges, hospitals, volunteer rescue squads, or fire departments shall have been issued within the past three years. The certification must either be in adult first aid or include adult first aid~~ who does not have current certification in first aid as specified in subdivision 1 of this subsection shall receive certification in first aid within 60 days of employment];

3. A direct care staff member who is a registered nurse or licensed practical nurse does not have to meet the requirements of subdivisions 1 and 2 of this subsection. With current certification, an emergency medical technician, first responder, or paramedic does not have to meet the requirements of subdivisions 1 and 2 of this subsection.

4. There shall be at least one staff person on the premises at all times who has current certification in first aid that meets the specifications of this section, unless the center has an on-duty registered nurse or licensed practical nurse.

B. Cardiopulmonary resuscitation. [~~1. Each direct care staff member who does not~~ There shall be at least two direct care staff on the premises at all times who] have current

certification in CPR [as specified in subdivision 2 of this subsection shall receive certification in CPR within 60 days of employment] from the American Red Cross, American Heart Association, National Safety Council, American Safety and Health Institute, community college, hospital, volunteer rescue squad, or fire department. The certification must either be in adult CPR or include adult CPR. [To be considered current, the certification must have been issued within the past two years.]

[~~2. Each direct care staff member shall maintain current certification in CPR from an organization listed in subdivision 1 of this subsection. To be considered current, CPR certification from community colleges, hospitals, volunteer rescue squads, or fire departments shall have been issued within the past two years. The certification must either be in adult CPR or include adult CPR.~~

~~3. There shall be at least one staff person on the premises at all times who has current certification in CPR that meets the specifications of this section.]~~

C. A staff person with current certification in first aid and CPR shall be present for the duration of center-sponsored activities off the center premises.

[D. Direct care staff employed by the center prior to December 29, 2019, who do not meet the requirement of subsections A and B of this section shall do so by March 27, 2020.]

22VAC40-61-170. Volunteers.

A. Individuals who volunteer at the center shall:

1. Have qualifications appropriate to the services they render; and
2. Be subject to laws and regulations governing confidential treatment of personal information.

B. No volunteer shall be permitted to serve in an adult day care center without the permission or unless under the supervision of a person who has received a criminal record clearance pursuant to § 63.2-1720 of the Code of Virginia.

C. Duties and responsibilities of all volunteers shall be clearly defined in writing.

D. At least one staff member shall be assigned responsibility for overall selection, supervision, and orientation of volunteers.

E. All volunteers shall be under the supervision of a designated staff person when participants are present.

F. Prior to beginning volunteer service, all volunteers shall attend an orientation including information on their duties and responsibilities, participant rights, confidentiality, emergency procedures, infection control, the name of their supervisor, and reporting requirements. All volunteers shall sign and date

a statement that they have received and understood this information.

G. Volunteers may be counted in the staff-to-participant ratio if both of the following criteria are met:

1. These volunteers meet the qualifications and training requirements for staff; and
2. For each volunteer, there shall be at least one staff also counted in the staff-to-participant ratio.

22VAC40-61-180. Staff records and health requirements.

A. A record shall be established for each staff member and shall be kept in a locked cabinet or area, or secured electronically, and retained at the center for currently employed staff and for two years after termination of employment, unless otherwise required by other state or federal regulations.

B. All staff records shall be kept confidential.

C. Records shall be updated and kept current as changes occur.

D. Personal and social data to be maintained on staff are as follows:

1. Name;
2. Birth date;
3. Current address and telephone number;
4. Position title and date employed;
5. Last previous employment;
6. An original criminal record report and a sworn disclosure statement;
7. Previous experience or training or both;
8. Documentation of qualifications for employment related to the staff person's position, including any specified relevant information;
9. Verification of current professional license, certification, registration, or completion of a required approved training course;
10. Name and telephone number of a person to contact in an emergency;
11. Documentation of attendance of formal training received after employment, including title of course, location, date, number of contact hours, and name of the entity that provided the training; and
12. Date of termination of employment.

E. The following required health information shall be maintained at the center and be included in the staff record for each staff member and [also for] each volunteer [~~who~~

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comes in contact with participants counted in the staff-to-participant ratio]).

1. Initial tuberculosis (TB) examination and report.

a. Each staff person [and volunteer identified in this subsection] shall obtain an evaluation by a qualified licensed practitioner that completes an assessment for tuberculosis in a communicable form no earlier than 30 days before or no later than seven days after employment or contact with participants.

b. The tuberculosis evaluation shall be consistent with the TB risk assessment as published by the Virginia Department of Health, with additional testing, singly or in combination, as deemed necessary.

c. Documentation of this evaluation shall include all pertinent information contained on the "Report of Tuberculosis Screening" form recommended by the Virginia Department of Health. This documentation shall be maintained at the facility.

d. An evaluation shall not be required for an individual who (i) has separated from employment with a facility or center licensed or certified by the Commonwealth of Virginia, (ii) has had a break in service of six months or less, and (iii) submits the original statement of tuberculosis screening to the new employer.

2. Subsequent evaluations for tuberculosis.

a. All staff [and volunteers identified in this subsection] shall be screened annually in accordance with [~~subsection~~ subdivision] 1 of this [~~section~~ subsection], with the exception that annual chest x-rays are not required in the absence of symptoms for those with prior positive test results for TB infection (tuberculin skin test or interferon gamma release assay blood test).

b. Any staff person [and volunteer identified in this subsection] who develops chronic respiratory symptoms of three weeks duration shall be evaluated immediately for the presence of infectious tuberculosis. Any staff suspected of having infectious tuberculosis shall not be allowed to return to work or have any contact with the participants and staff of the center until a physician has determined that the staff person is free of infectious tuberculosis.

c. Any staff person [and volunteer identified in this subsection] who comes in contact with a known case of infectious tuberculosis shall be screened as determined appropriate based on consultation with the local health department.

3. The center shall report any active case of tuberculosis developed by a staff member to the local health department.

Part IV Supervision

22VAC40-61-190. General supervision.

A. During the center's hours of operation, one staff person on the premises shall be in charge of the administration of the center. This person shall be either the director or a staff member appointed by the licensee or designated by the director. This person may not be a volunteer.

B. At least two staff persons shall be on duty at the center and on field trips at all times when one or more participants are present. The use of volunteers as staff shall be in accordance with 22VAC40-61-170 G.

C. The center shall maintain a daily participant attendance log, documenting the name of the participant and his arrival and departure time.

22VAC40-61-200. Staff-to-participant ratio.

A. There shall be at least one staff person on duty providing direct care and supervision for every six participants in care, or portion thereof, whether at the center or on field trips.

B. The staff-to-participant ratio is to be calculated for the center rather than for a room or activity.

C. The number of any additional staff persons required shall depend upon:

1. The program and services the center provides;
2. The assessed functional levels and current needs of the participants; and
3. The size and physical layout of the building.

Part V Admission, Retention, and Discharge

22VAC40-61-210. Admission policies.

A. The center shall have admission policies, to include admission criteria, that shall be discussed with each person entering the program, his family members, legal representative, or the public, as appropriate. A copy of the admission policies shall be available upon request.

B. Only those persons who meet the admission criteria shall be admitted to the center.

C. All participants shall be 18 years of age or older.

22VAC40-61-220. Assessment procedures.

A. A written assessment of a participant shall be secured or conducted prior to [or on the date of] admission by the director, a staff person who meets the qualifications of the director, or a licensed health care professional employed by the center.

B. The assessment shall be based upon the information presented by the participant, family members, friends, legal

representative, the report of the required physical examination, and from other care providers.

C. The assessment shall identify the person's abilities and needs to determine if and how the program can serve the participant.

D. The assessment shall include at minimum a description of the participant's:

1. Medical and functional condition, including:

a. Ambulatory ability;

b. Ability to perform activities of daily living; and

c. Health status to include diagnoses and medications.

2. Mental status, including any intellectual, cognitive, and behavioral impairment and known psychiatric or emotional problems;

3. Social environment, including living arrangements and the availability of family, friends, and other people and organizations in the community to provide services to the participant;

4. Economic conditions;

5. Nutrition needs;

6. Communication limitations;

7. Hobbies and interests; and

8. Personal preferences that would enhance the participant's experience at the center.

E. The assessment shall be reviewed and updated at least every six months.

F. A reassessment shall also be made when there are changes to indicate that a participant's needs may no longer be met by the current plan of care or the center's program of care.

G. The initial assessment and any reassessments shall be in writing and completed, signed, and dated by the staff person identified in subsection A of this section. The assessment or reassessment shall also indicate any other individuals who contributed to the development of the plan with a notation of the date of the contribution.

22VAC40-61-230. Participant plan of care.

A. Prior to or on the date of admission, a preliminary multidisciplinary plan of care based upon the assessment shall be developed for each participant. The plan shall be reviewed and updated, if necessary, within 30 days of admission.

B. The plan shall be developed by the director, a staff person who meets the qualifications of the director, or a licensed health care professional employed by the center.

C. The plan shall be developed in conjunction with the participant and, as appropriate, with the participant's family members, legal representative, direct care staff members, case manager, or health care provider.

D. The plan shall be developed to maximize the participant's level of functional ability and to support the principles of individuality, personal dignity, and freedom of choice. Whenever possible, participants shall be given a choice of options regarding the type and delivery of services. The plan shall include:

1. A description of the identified needs and the date identified;

2. The expected outcome or goal to be achieved in meeting those needs;

3. The activities and services that will be provided to meet those outcomes or goals, who will provide them, and when they will be provided;

4. If appropriate, the time by which the outcome or goals should be achieved; and

5. Date outcome or goal achieved.

E. The plan of care shall be reviewed and updated as significant changes occur and at least every six months.

F. The preliminary plan of care and any updated plans shall be in writing and completed, signed, and dated by the staff person identified in subsection B of this section. The participant, family member, or legal representative shall also sign the plan of care. The plan shall indicate any other individual who contributed to the development of the plan, with a notation of the date of contribution.

22VAC40-61-240. Participant agreement with the center.

A. At or prior to the time of admission, there shall be a written agreement between the participant and the center. The agreement shall be signed and dated by the participant or legal representative and the center representative.

B. The agreement shall specify the following:

1. Services and care to be provided to the participant by the center. Any additional fees for specific services and care shall be identified.

2. Financial arrangement to include:

a. The amount to be paid, frequency of payments, and rules relating to nonpayment.

b. The amount and purpose of an advance payment or deposit payment and the refund policy for such payment.

c. The policy with respect to increases in charges and the length of time for advance notice of intent to increase charges.

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d. The refund policy to apply when transfer of ownership, closing of center, or participant discharge occurs.

e. The fee or notification requirement, if any, associated with participant discharge.

f. The provision of a monthly statement or itemized receipt of the participant's account.

3. Conditions for discharge.

C. A copy of the signed agreement shall be given to the participant or to the legal representative, as appropriate, and a copy shall be kept in the participant's record at the center.

D. The agreement shall be reviewed and updated whenever there is any change in the services or the financial arrangements. The updated agreement shall be signed and dated by the participant or his legal representative and the center representative.

22VAC40-61-250. Participant record.

A. The center shall establish policies and procedures for documentation and recordkeeping to ensure that the information in participant records is accurate, clear, and well organized. The record shall contain all information, reports, and documents required by this chapter and other information relevant to the plan of care.

B. The following personal information shall be kept current for each participant:

1. Full name of participant, address, and telephone number;
2. Date of admission;
3. Birth date;
4. Marital status;
5. Names, addresses, and telephone numbers of at least two family members, friends, or other designated people to be contacted in the event of illness or an emergency;
6. Names, addresses, and telephone numbers of the participant's local primary care provider, personal physician, any other health or social service provider and the name of the preferred hospital in the event of an emergency;
7. Name, address, and telephone number of any legal representative and documentation regarding the scope of their representation;
8. Known allergies, if any;
9. Information regarding an advance directive or Do Not Resuscitate Order, if applicable;
10. Mental health, substance abuse, or behavioral concerns; and

11. A current photograph or narrative physical description of the participant, which shall be updated annually.

C. Participant records shall be retained at the center and kept in a locked area.

D. The center shall assure that all records are kept confidential and that information shall be made available only when needed for care of the participant and in accordance with applicable federal and state laws. All records shall be made available for inspection by the department's representative.

E. If the participant or legal representative consents in writing, records shall be shared with other centers or agencies for a specific purpose such as care coordination, referral for other services, or upon discharge.

F. Participants shall be allowed access to their own records. A legal representative of a participant shall be provided access to the participant's record or part of the record only as allowed within the scope of his legal authority.

G. The complete participant record shall be retained for at least two years after the participant leaves the center.

22VAC40-61-260. Physical examinations and report.

A. Within the 30 days preceding admission, a participant shall have a physical examination by a licensed physician.

B. The report of the required physical examination shall be on file at the center and shall include:

1. The person's name, [date of birth,] address, and telephone number.
2. The date of the physical examination.
3. Height, weight, and blood pressure.
4. Significant medical history.
5. General physical condition, including a systems review as is medically indicated.
6. All diagnoses and significant medical problems.
7. Any known allergies and description of the person's reactions.
8. Any recommendations for care including:
 - a. A list of all medications including dosages, route, and frequency of administration;
 - b. Any special diet or any food intolerances;
 - c. Any therapy, treatments, or procedures the individual is undergoing or should receive and by whom; and
 - d. Any restrictions or limitations on physical activities or program participation.
9. The participant shall obtain an evaluation by a qualified licensed practitioner that completes an assessment for

tuberculosis (TB) in a communicable form no earlier than 30 days before admission. The evaluation for tuberculosis shall be consistent with the TB risk assessment as published by the Virginia Department of Health, with additional testing, singly or in combination, as deemed necessary. Documentation of the TB evaluation is required, which includes the information contained on the form "Report of Tuberculosis Screening" recommended by the Virginia Department of Health. The form shall be signed by the qualified licensed practitioner who performs the evaluation.

10. A statement that specifies whether the individual is considered to be ambulatory or nonambulatory.

11. A statement that specifies whether the individual is or is not capable of self-administering medication.

12. The signature of the examining physician or his designee.

C. Subsequent medical evaluations.

1. Each participant shall annually submit a report of physical examination by a physician including the information required in subdivisions B 1 through B 8 and B 10, B 11, and B 12 of this section.

2. At the request of the licensee or director of the center or the Department of Social Services, a report of examination by a physician shall be obtained when there are indications that the center can no longer provide appropriate or safe care because of changes in the participant's physical or mental health. The written report of the physical examination shall be:

- a. Dated;
- b. Signed by a physician or the physician's designee; and
- c. Used in evaluating the participant's continued suitability for adult day care.

D. Subsequent evaluations for tuberculosis.

1. Any participant who comes in contact with a known case of infectious tuberculosis shall be screened as deemed appropriate in consultation with the local health department.

2. Any participant who develops respiratory symptoms of three or more weeks duration shall be evaluated immediately for the presence of infectious tuberculosis. Any such participant shall not be allowed to return to the program until a physician has determined that the individual is free of infectious tuberculosis.

3. If a participant develops an active case of tuberculosis, the center shall report this information to the local health department.

22VAC40-61-270. Discharge of participants.

A. When actions, circumstances, conditions, or care needs occur that will result in the discharge of a participant, discharge planning shall begin immediately.

B. A written discharge notice shall identify the reasons for discharge and outline the services needed by the participant upon discharge. The discharge notice shall be provided to and discussed with the participant and family members or legal representative.

C. The center shall notify the participant and family members or legal representative at least 30 calendar days prior to the actual discharge date.

D. The center shall develop a policy regarding the number of days notice that is required when a participant wishes to leave the center. Any required notice of intent to leave shall not exceed 30 calendar days.

E. When a participant's condition presents an immediate and serious risk to the health, safety, or welfare of the participant or others and immediate discharge is necessary, the 30-day notification of planned discharge does not apply.

F. The center shall assist the participant, his family members or legal representative, if any, in the discharge or transfer process. The center shall prepare a transfer report for the new program, if requested.

G. The center shall have a process by which participants, family members, or legal representatives can appeal a center-initiated discharge.

**Part VI
Programs and Services**

22VAC40-61-280. Health care supervision.

A. The center shall develop a policy and procedure for monitoring the health status of participants consistent with the particular characteristics and needs of the population served by the center.

B. The center shall provide supervision of participant schedules, care, and activities including attention to specialized needs, such as prevention of falls and wandering.

C. Each participant shall be continually observed and monitored for changes in health status including physical, social, emotional, and mental functioning. Changes shall be discussed with the participant, family, legal representative, physician, or others as appropriate. Documentation of the change and any notifications shall be made in the participant's record.

D. Measures of health status include:

- 1. Vital signs;
- 2. Weight;

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3. Meal and fluid intake;
4. Elimination;
5. Skin integrity;
6. Behavior;
7. Cognition;
8. Functional ability; and
9. Special needs.

E. When the center identifies a need for a change in health care services, this shall be discussed with the participant, family, legal representative, physician, or others as appropriate and documented in the participant's record. The care plan shall be updated if necessary.

F. If the participant requires skilled or rehabilitative services, the center shall assist the participant and family in securing such services if necessary.

G. If skilled health care and rehabilitative services are provided at the center, the center shall ensure that such providers are licensed, certified, or registered as required by law. These services shall be provided in accordance with the physician or other health care professional's order.

22VAC40-61-290. Infection control program.

A. The center shall develop and maintain an infection prevention and occupational health program [~~compliant with Occupational Safety and Health Administration regulations~~] designed to provide a safe, sanitary, and comfortable environment for participants, staff, and the public.

B. The center shall develop infection prevention policies and procedures appropriate for the services provided by the center and including the physical plant and grounds. These shall be based upon evidence-based guidelines such as those published by the Centers for Disease Control and Prevention or the Virginia Department of Health and updated as recommendations change and shall include:

1. Standard precautions to include:
 - a. Hand hygiene;
 - b. Use of personal protective equipment such as gloves and masks;
 - c. Safe injection and blood glucose monitoring practices;
 - d. Safe handling of potentially contaminated equipment or surfaces in the center environment; and
 - e. Respiratory hygiene and cough etiquette.
2. Specific methods and timeframes to monitor infection prevention practices by staff and volunteers.
3. Parameters for ensuring that staff, volunteers, and participants with communicable disease or infections are

prohibited from direct contact with others if contact may transmit disease, in accordance with applicable local, state, and federal regulations.

4. Handling, storing, processing, and transporting linens, supplies, and equipment consistent with current infection prevention methods.

5. Handling, storing, and transporting medical waste in accordance with applicable regulations.

6. Maintaining an effective pest control program.

C. The center shall ensure that at least one staff person with training [or experience] in infection prevention [~~specific~~ relevant] to [~~this~~ a congregate care] setting is employed by or regularly available (e.g., by contract) to manage the center's infection prevention program.

D. All staff and volunteers shall be trained on requirements of the center's infection prevention program according to their job duties during the orientation period and at least annually. Competencies shall be documented following each training and may include a written test, skills demonstration, or other method as appropriate.

E. The center shall ensure that sufficient and appropriate supplies to maintain standard precautions are available at all times, such as gloves, hand hygiene and cleaning products, and any other supplies needed specific to center services.

F. The director shall be responsible for ensuring that any outbreak of disease as defined by the Virginia Department of Health is immediately reported to the local health department and to the regional licensing office.

22VAC40-61-300. Medication management.

A. The center shall have, keep current, and implement a plan for medication management. The center's medication management plan shall address procedures for administering medication and shall include:

1. Standard operating procedures and any general restrictions specific to the center;
2. Methods to ensure an understanding of the responsibilities associated with medication management including the following:
 - a. Determining that staff who are responsible for administering medications meet the qualification requirements of subdivisions E 7 a and E 7 b of this section;
 - b. Ensuring that staff who are responsible for administering medications are trained on requirements of the center's medication management plan; and
 - c. Ensuring that staff who are responsible for administering medications are adequately supervised, including periodic direct observation of medication

administration. Supervision shall be provided by (i) an individual employed by the center who is licensed by the Commonwealth of Virginia to administer medications or (ii) the director who has successfully completed a training program as required in subdivisions E 7 a and E 7 b of this section.

3. Methods to ensure that authorizations for the administration of medications are current;

4. Methods to secure and maintain supplies of each participant's prescription medications and any over-the-counter drugs and supplements in a timely manner to avoid missed dosages;

5. Methods for verifying that medication orders have been accurately transcribed to medication administration records (MARs), including within 24 hours of receipt of a new order or a change in an order;

6. Methods for monitoring medication administration and the effective use of the MARs for documentation;

7. Methods to ensure that participants do not receive medications or dietary supplements to which they have known allergies;

8. Methods to ensure accurate accounting for all controlled substances whenever received by center staff, returned to participant, or whenever assigned medication administration staff changes;

9. Procedures for proper disposal of medication; and

10. Procedures for preventing, detecting, and investigating suspected or reported drug diversion.

B. The center shall have readily accessible as reference materials for medication aides, at least one pharmacy reference book, drug guide, or medication handbook for nurses that is no more than two years old.

C. Prescription and nonprescription medications, including sample medications, shall be given to a participant according to the center's medication policies and only with written or verbal authorization from the physician or prescriber, or the physician's authorized agent. For the purposes of this section, an "authorized agent" means an employee of the physician who is under his immediate and personal supervision. Verbal orders shall be reviewed and signed by the physician or prescriber within 10 working days.

D. The center shall maintain a list of all medications, including those taken at home and at the center, for each participant. The center shall attempt to verify and update the list of center-administered medications with the prescribing health care professional at least twice a year. Unsuccessful attempts to verify shall be documented.

E. The following standards shall apply when medications are administered to participants at the adult day care center:

1. All medication shall be in the original container with the prescription label or direction label attached and legible. Sample medications shall remain in the original packaging, labeled by a physician or other prescriber or pharmacist with the participant's name, the name of the medication, the strength, dosage, and route and frequency of administration, until administered.

2. All medication shall be labeled with the participant's name, the name of the medication, the strength and dosage amount, the route of administration, and the frequency of administration.

3. The medication shall be kept in a locked compartment or area, not accessible to participants. The locked compartment or area shall be free from direct sunlight and high temperatures and free from dampness and shall remain darkened when closed.

4. The area in which the medication is prepared shall have sufficient light so that the labels can be read accurately and the correct dosage can be clearly determined.

5. Medication shall be refrigerated, if required. When medication is stored in a refrigerator used for food, the medications shall be stored together in a locked container in a clearly defined area. If a refrigerator is used for medication only, it is permissible to store dietary supplements and foods and liquids used for medication administration.

6. Unless it is contrary to the center's policy, a participant may take his own medication provided that:

a. A physician has deemed the participant capable of administering medication to himself;

b. The physician has given written authorization for the participant to self-administer his medication; and

c. Medications are kept in a safe manner inaccessible to other participants.

7. When the center staff administers medications to participants, the following standards shall apply:

a. Each staff person who administers medication shall be authorized by § 54.1-3408 of the Code of Virginia. All staff responsible for medication administration shall:

(1) Be licensed by the Commonwealth of Virginia to administer medications;

(2) Be a registered medication aide;

(3) Successfully complete a training program approved by the Board of Nursing and accepted [for use] in adult day care centers; or

(4) Successfully complete a training program approved by the Board of Nursing for the registration of

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medication aides that consists of 68 hours of student instruction and training.

b. All staff who administer medications, except those licensed by the Commonwealth, shall complete, on an annual basis, four hours of medication management refresher training on topics specific to the administration of medications in the adult day care center setting.

c. Medications shall remain in the original or pharmacy issued container until administered to the participant by the qualified medication staff. All medications shall be removed from the pharmacy container and be administered by the same qualified person within one hour of the individual's scheduled dosing time.

d. Documentation shall be maintained on the MAR of all medications, including prescription, nonprescription, and sample medication, administered to a participant while at the center. This documentation shall become part of the participant's permanent record and shall include:

(1) Name of participant;

(2) All known allergies;

(3) Diagnosis, condition, or specific indications for which the medication is prescribed;

(4) Date medication prescribed;

(5) Drug product name;

(6) Dosage and strength of medication;

(7) Route of administration;

(8) Frequency of administration;

(9) Date and time given and initials of staff administering the medication;

(10) Date the medication is discontinued or changed;

(11) Any medication errors or omissions;

(12) Notation of any adverse effects or unusual reactions that occur; and

(13) The name, signature, and initials of all staff administering medications. A master list may be used in lieu of this documentation on individual MARs.

F. In the event of an adverse drug reaction or a medication error, the following applies:

1. Action shall be taken as directed by a physician, pharmacist, or a poison control center;

2. The participant's physician and family member or other legal representative shall be notified as soon as possible. [If not contrary to immediate medical needs of the participant, the participant shall also be notified of the error;] and

3. Medication administration staff shall document actions taken in the participant's record.

G. The use of PRN (as needed) medications is prohibited unless one or more of the following conditions exist:

1. The participant is capable of determining when medication is needed;

2. A licensed health care professional administers the medication;

3. The participant's physician has provided detailed written instructions, including symptoms that might indicate the need for the medication, exact dosage, exact timeframes the medication is to be given in a 24-hour period, and directions for what to do if symptoms persist; or

4. The center staff has telephoned the participant's physician prior to administering the medication and explained the symptoms and received a documented verbal order that includes the information in subdivision 3 of this subsection.

H. Any physician ordered treatment provided by staff shall be documented and shall be within the staff's scope of practice.

22VAC40-61-310. Restraints.

The use of chemical or physical restraints is prohibited.

22VAC40-61-320. Assistance with activities of daily living [and ambulation] .

A. Dignity, privacy, and confidentiality shall be maintained for participants whenever assistance with activities of daily living (ADLs) is provided.

B. When providing assistance with ADLs, staff shall ensure all necessary supplies and equipment are available and organized to aid in assistance and to maximize the participant's safety.

C. Assistance with eating and feeding.

1. Dining areas shall be supervised by staff whenever meals or snacks are served.

2. [~~Additional~~ Adequate] staff shall be present in the dining areas to assist participants who cannot eat independently.

3. Self-feeding skills of participants shall be continuously observed and evaluated so that meals and snacks are not missed because of a participant's inability to feed himself.

4. Appropriate adapted utensils, including adapted plates, bowls, and cups with straws and handles, shall be [~~provided~~ utilized] for those participants who need them. Information about effective eating adaptations shall be shared with the [~~participant's~~ participant and his] family. Assistance such as, but not limited to, opening containers

and cutting food shall be provided to those participants who need it.

5. Low-stimulus dining areas shall be provided for participants with cognitive deficits or other conditions that impair concentration.

6. Changes in food and liquid intake shall be documented in the participant's record, and changes shall be made to the care plan to ensure adequate intake. The [participant's participant and his] family shall be notified of such changes.

D. Assistance with ambulation and transfer.

1. The ability of the participant to safely transfer and ambulate shall be continually monitored. Any changes shall be documented in the participant's record and noted on the plan of care.

2. There shall be adequate staff to provide individualized assistance to participants to ambulate to activities, meals, and the restroom [, and transfer,] if such assistance is needed.

3. The center shall have at least one wheelchair available for emergency use, even if all participants are ambulatory or have their own wheelchairs.

4. Staff shall identify unmet ambulation and transfer needs, including equipment needs and repairs, and shall discuss such needs with the participant, family, legal representative, or physician, as appropriate.

5. Participants who use wheelchairs shall be offered other seating options throughout the day if appropriate.

E. Assistance with toileting.

1. Staff shall develop and follow appropriate toileting procedures for each participant who requires assistance according to that individual's abilities and plan of care.

2. Participants who are at risk of falling or who have other safety risks shall not be left alone while toileting.

3. Staff shall arrange for coverage of program responsibilities when they must leave the group to assist with toileting a participant.

F. Assistance with bathing.

1. A shower chair, bench, or other seating; safety equipment such as grab bars; and nonslip surfaces shall be provided.

2. The participant shall not be left unattended in the shower or bath. If the bathing area is not in sight or sound of other occupied parts of the building, there shall be an emergency call system to summon additional assistance.

G. Assistance with dressing.

1. Assistance shall be provided according to that individual's abilities and plan of care.

2. Extra clothing shall be available for participants who need to change during the day. Each participant may keep a change of clothing at the center, or the center may keep a supply to use as needed.

3. Participants' clothing, equipment, and supplies kept at the center shall be properly labeled and stored to prevent loss.

4. Special attention shall be given to footwear of participants who are at risk of falling. Staff shall encourage family members to provide appropriate shoes and shall document those recommendations in the participant's record.

22VAC40-61-330. Activities.

A. Activities shall be planned to support the plans of care for the participants and shall be consistent with the program statement and the admission policies.

B. Activities shall:

1. Support the physical, social, mental, and emotional skills and abilities of participants in order to promote or maintain their highest level of independence or functioning;

2. Accommodate individual differences by providing a variety of types of activities and levels of involvement; and

3. Offer participants a varied mix of activities including the following categories: physical; social; cognitive, intellectual, or creative; productive; sensory; reflective or contemplative; outdoor; and nature or the natural world. Community resources as well as center resources may be used to provide activities. Any given activity may fall under more than one category.

C. Participation in activities.

1. Participants shall be encouraged but not forced to participate in activity programs offered by the center and the community.

2. During an activity, each participant shall be encouraged but not coerced to join in the activity at his level of functioning, which may include his observation of the activity.

3. If appropriate to meet the needs of the participant with a short attention span, multiple short activities shall be provided.

4. Any restrictions on participation imposed by a physician shall be followed and documented in the participant's record and the plan of care.

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D. There shall be a designated staff person who is routinely present in the center and who shall be responsible for managing or coordinating the structured activities program. This staff person shall maintain personal interaction with the participants and familiarity with their needs and interests and shall meet at least one of the following qualifications:

1. Be a qualified therapeutic recreation specialist or an activities professional;
2. Be eligible for certification as a therapeutic recreation specialist or an activities professional by a recognized accrediting body;
3. Be a qualified occupational therapist or an occupational therapy assistant; [~~or~~]
4. [Have at least an associate's degree in a discipline focusing on the provision of activities for adults; or
5.] Have one year full-time work experience within the last five years in an activities program in an adult care setting.

E. [The requirements of subsection D shall be met by June 28, 2020.

F.] Participants, staff, and family members shall be encouraged to be involved in the planning of the activities.

[~~F. G.] Schedule of activities.~~

1. There shall be planned activities and programs throughout the day whenever the center is in operation.
2. A written schedule of activities shall be developed on a monthly basis.
3. The schedule shall include:
 - a. Group activities for all participants or small groups of participants; and
 - b. The name, type, date, and hour of the activity.
4. If one activity is substituted for another, the change shall be noted on the schedule.
5. The current month's schedule shall be posted in a readily accessible location in the center and also may be made available to participants and their families.
6. The schedule of activities for the preceding two years shall be kept at the center.
7. If a participant requires an individual schedule of activities, that schedule shall be a part of the plan of care.

[~~G. H.] During an activity, when needed to ensure that each of the following is adequately accomplished, there shall be staff persons or volunteers to:~~

1. Lead the activity;
2. Assist the participants with the activity;

3. Supervise the general area;

4. Redirect any individuals who require different activities; and

5. Protect the health, safety, and welfare of the participants involved in the activity.

[~~H. I.] The staff person or volunteer leading the activity shall have a general understanding of the following:~~

1. Attention spans and functional levels of each of the participants;
2. Methods to adapt the activity to meet the needs and abilities of the participants;
3. Various methods of engaging and motivating individuals to participate; and
4. The importance of providing appropriate instruction, education, and guidance throughout the activity.

[~~J. J.] Adequate supplies and equipment appropriate for the program activities shall be available in the center.~~

[~~J. K.] All equipment and supplies used shall be accounted for at the end of the activity so that a safe environment can be maintained.~~

[~~K. L.] In addition to the required scheduled activities, there shall be unscheduled staff and participant interaction throughout the day that fosters an environment that promotes socialization opportunities for participants.~~

22VAC40-61-340. Food service.

A. Meals and snacks shall be provided by the center. The center shall (i) prepare the food, (ii) have the food catered, or (iii) utilize a contract food service.

B. When any portion of an adult day care center is subject to inspection by the Virginia Department of Health, the center shall be in compliance with those regulations, as evidenced by an initial and subsequent annual report from the Virginia Department of Health. The report shall be retained at the center for a period of at least two years.

C. If a catering service or contract food service is used, the service shall be approved by the local health department. The center shall be responsible for monitoring continued compliance by obtaining a copy of the Virginia Department of Health approval.

D. The center shall encourage, but not require, participants to eat the meals and snacks provided by the center. If a participant brings food from home, the food shall be labeled with the participant's name, dated, and stored appropriately until meal or snack time. The fact that the participant brought food does not relieve the center of its responsibility to provide meals and snacks.

E. A minimum of 45 minutes shall be allowed for each participant to complete a meal. If a participant needs additional time to finish his meal due to special needs, such additional time shall be provided.

22VAC40-61-350. Serving of meals and snacks.

A. Centers shall serve meals and snacks at appropriate times, depending on the hours of operation. For example, a center open during the hours of 7 a.m. to 1 p.m. must serve a morning snack and a mid-day meal; a center open during the hours of 8 a.m. to 5 p.m. must serve a morning snack, a mid-day meal, and an afternoon snack; a center open during the hours of 2 p.m. to 6 p.m. must serve an afternoon snack; a center open after 6 p.m. must serve an evening meal. Centers open after 9 p.m. shall serve an evening snack. Snacks shall also be available throughout the day.

B. There shall be at least two hours between scheduled snacks and meals.

C. Adequate kitchen facilities and equipment shall be provided for preparation and serving of meals and snacks or for the catering of meals.

D. Sufficient working refrigeration shall be available to store perishable food and medicine.

22VAC40-61-360. Menu and nutrition requirements.

A. Food preferences of participants shall be considered when menus are planned.

B. Menus for meals and snacks for the current week shall be dated and posted in an area conspicuous to participants.

1. Any menu substitutions or additions shall be recorded on the posted menu.

2. Menus shall be kept at the center for two years.

C. Minimum daily menu.

1. Unless otherwise ordered in writing by the participant's physician, the daily menu, including snacks, for each participant shall meet the current guidelines of the U.S. Department of Agriculture food 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 participant.

2. Other foods may be added to enhance the meals or meet individual participant needs.

[~~3. Second servings and snacks shall be available at no additional charge.~~

4-3.] Drinking water shall be available at all times.

D. When a diet is prescribed for a participant by his physician or other prescriber, it shall be prepared and served according to the physician's or other prescriber's orders.

E. A current copy of a diet manual containing acceptable practices and standards for nutrition shall be available to staff responsible for food preparation and meal planning.

22VAC40-61-370. Observance of religious dietary practices.

A. The participant's religious dietary practices shall be respected [~~and followed~~].

B. Religious dietary practices of the director, staff, or licensee shall not be imposed upon participants unless mutually agreed upon in the [~~admission~~ participant] agreement.

22VAC40-61-380. Transportation services.

A. Centers that provide participant transportation directly or by contract shall ensure that the following requirements are met:

1. The vehicle shall be accessible and appropriate for the participants being transported. Vehicles shall be equipped with a ramp or hydraulic lift to allow entry and exit if there are participants who remain in their wheelchairs during transport.

2. The vehicle's seats shall be attached to the floor, and wheelchairs shall be secured when the vehicle is in motion.

3. Arrangement of wheelchairs and other equipment in the vehicle shall not impede access to exits.

4. The vehicle shall be insured for at least the minimum limits established by law and regulation.

5. All vehicles shall have working heat and air conditioning systems.

6. The vehicle shall meet the safety standards set by the Department of Motor Vehicles and shall be kept in satisfactory condition to ensure the safety of participants.

B. Centers that provide participant transportation directly or by contract shall ensure that during transportation the following requirements are met:

1. The driver has a valid [~~Virginia~~] driver's license to operate the type of vehicle being used.

2. Virginia statutes regarding safety belts are followed.

3. Every person remains seated while the vehicle is in motion.

4. Doors are properly closed and locked while the vehicle is in motion.

5. Supervision and safety needs of participants are maintained at all times.

6. The following information is maintained in vehicles used for transportation:

a. The center's name, address, and phone number;

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b. A list of the names of the participants being transported;

c. A list of the names, addresses, and telephone numbers of participants' emergency contact persons; and

d. A first aid kit containing the supplies as listed in 22VAC40-61-550.

7. The driver, another staff person, or a volunteer in the vehicle is current in first aid and CPR training.

8. There shall be a means of communication between the driver and the center.

C. If staff or volunteers supply personal vehicles, the center shall be responsible for ensuring that the requirements of subsections A and B of this section are met.

22VAC40-61-390. Field trips.

A. Any center that takes participants on field trips shall develop a policy that addresses the following:

1. A communication plan between staff at the center and staff who are accompanying participants on a field trip;

2. Maintenance of staff-to-participant ratio at both the center and on the field trip as required by 22VAC40-61-200;

3. Provision of adequate food and water for participants during field trips;

4. Safe storage of food to prevent food-borne illnesses; and

5. Medication administration that meets the requirements of 22VAC40-61-300.

B. Before leaving on a field trip, a list of participants taking the trip and a schedule of the trip's events and locations shall be left at the center and shall be accessible to staff.

C. A wheelchair that is available for emergency use shall be taken on field trips.

D. The requirements of 22VAC40-61-380 apply when participants are transported on field trips.

Part VII

Buildings and Grounds

22VAC40-61-400. Physical environment.

A center must provide an environment that ensures the safety and well-being of the participants but is not so restrictive as to inhibit physical, intellectual, emotional, or social stimulation.

22VAC40-61-410. Maintenance of buildings and grounds.

A. The interior and exterior of all buildings shall be maintained in good repair, kept clean and free of rubbish, and free from safety hazards.

B. All buildings shall be well-ventilated and free from foul, stale, and musty odors.

C. Adequate provisions for the collection and legal disposal of garbage, ashes, and waste material shall be made.

D. Buildings shall be kept free of infestations of insects and vermin. The grounds shall be kept free of insect and vermin breeding places.

E. Cleaning products, pesticides, and all poisonous or harmful materials shall be stored separately from food and shall be kept in a locked place when not in use.

F. All furnishings, fixtures, and equipment, including furniture, window coverings, sinks, toilets, bathtubs, and showers, shall be kept clean and in good repair and condition.

G. Grounds shall be properly maintained to include mowing of grass and removal of snow and ice.

H. A safe area for participant discharge and pick-up shall be available.

I. Adequate outdoor lighting shall be provided to ensure safe ambulation and the safety of participants during arrival and departure.

J. All interior and exterior stairways and ramps shall have a nonslip surface or carpet that shall be secured to the stairways or ramps.

K. Sturdy handrails shall be provided on all stairways, ramps, and elevators and at all changes in floor level.

L. All interior and exterior stairways, changes in floor level, and ramps shall be indicated by a warning strip or contrast in color.

22VAC40-61-420. Lighting.

A. All areas of the center shall be adequately lighted for the safety and comfort of the participants.

B. Artificial lighting shall be powered by electricity.

C. Glare shall be kept at a minimum in rooms used by participants. When necessary to reduce glare, coverings shall be used for windows and lights.

D. If used, fluorescent lights shall be replaced if they flicker or make noise.

F. Flashlights or battery lanterns in working order shall be available at all times for emergency lighting.

G. Open flame lighting is prohibited.

22VAC40-61-430. Heating and cooling.

A. Heat shall be supplied from a central heating plant or an electrical heating system in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63).

B. Provided their installation or operation has been approved by the state or local building or fire authorities, space heaters, such as but not limited to gas stoves, wood burning stoves, coal burning stoves, and oil heaters, or portable heating units either vented or unvented may be used only to provide or supplement heat in the event of a power failure or similar emergency. These appliances shall be used in accordance with the manufacturer's instructions. When any of these heating sources are used, care shall be taken to protect participants from injuries.

C. The temperature of the center shall be maintained at a level safe and suitable for the participants in accordance with the following:

1. The inside temperature shall be between 70°F and 84°F. This standard applies unless otherwise mandated by federal or state authorities.
2. Fans and air conditioners shall be placed to avoid direct drafts on participants and to prevent safety hazards. Any electric fans shall be screened and placed for the protection of the participants.
3. The center shall develop a plan to protect participants from heat-related and cold-related illnesses in the event of a loss of heat or cooling due to emergency situations or malfunctioning or broken equipment.
4. At least one movable thermometer shall be available in each building for measuring temperatures in individual rooms that do not have a fixed thermostat that shows the temperature in the room.

22VAC40-61-440. General areas.

A. Any center licensed after July 1, 2000, shall provide at least 50 square feet of indoor floor space for each participant, in addition to hallways, office space, bathrooms, storage space, or other rooms or areas that are not normally used for program activities; otherwise the square footage shall be 40 square feet.

B. There shall be sufficient and suitable space for planned program activities that may be interchangeable or adaptable for a variety of activities, including meals.

1. There shall be at least one room with sufficient space for the participants to gather together for large group activities.
2. There shall be rooms or areas appropriate for small group activities and individual activities.
3. An area shall be available and accessible so that participants shall have opportunities for supervised outdoor activities. The area shall be equipped with appropriate seasonal outdoor furniture.

C. Furnishings.

1. The furniture shall be sturdy, safe, and appropriate for participants in care.

2. All centers shall have:

- a. At least one chair for each participant and each staff person, excluding any people who remain in wheelchairs throughout the day;
- b. Table space adequate for all participants to take part in activities at the same time; and
- c. Recliners, lounge chairs, rockers, or other seating to allow participants to relax and rest.

22VAC40-61-450. Privacy space.

Space shall be available to allow privacy for participants during interviews, visits, telephone conversations, counseling, therapy, and other similar activities.

22VAC40-61-460. Restroom facilities.

A. There shall be a minimum of one toilet that is suitable to accommodate a participant who needs human assistance or specialized equipment available for every 10 participants, or portion thereof. For restrooms that have multiple stalls, only the toilets that accommodate a person who needs human assistance or specialized equipment shall be counted in the total required number of toilets.

B. Restrooms that are equipped with only one toilet may be used by either men or women.

C. Restrooms equipped with more than one toilet shall have each toilet enclosed.

D. Restrooms that are equipped with multiple stalls must be designated for men or for women.

E. Sturdy grab bars or safety frames shall be installed beside all toilets used by participants.

F. There shall be a minimum of one sink for every two toilets and the sinks shall be located close enough to toilets to encourage washing of hands after each toileting procedure.

G. There shall be an ample supply of hot and cold running water from an approved source available to the participants at all times.

H. Hot water at taps available to participants shall be maintained within a temperature range of 105°F to 120°F.

I. There shall be an adequate supply of toilet tissue, liquid soap, disposable hand towels, or air dryers and disposable gloves in each restroom at all times.

J. If bathing facilities are provided there shall be:

1. Handrails by bathtubs;
2. Handrails in stall showers; and
3. [~~A bench~~ Seating] for use in the shower and [~~a bench seating~~] for use in dressing, if necessary.

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22VAC40-61-470. Dining area.

A. Dining areas shall have a sufficient number of sturdy tables and chairs to serve all participants, either all at one time or in shifts.

B. If the center is licensed for nonambulatory participants, the dining area shall be large enough to provide sufficient table space and floor space to accommodate participants in wheelchairs or other assistive equipment.

22VAC40-61-480. Rest area.

A. A separate room or area shall be available for participants who become ill, need to rest, or need to have privacy. The separate room or area shall be equipped with one bed, comfortable cot, or recliner for every 12 participants.

B. Additional beds, comfortable cots, or recliners shall be available based on participant needs to accommodate rest periods. In centers that are open for evening or night care, beds shall be available for participants who need them.

C. A minimum of (i) one pillow covered with a pillow case, (ii) two sheets, and (iii) one blanket, spread, or covering per bed or cot shall be provided.

D. All sheets and pillow cases shall be laundered after each use.

E. Additional covering or blankets and pillows shall be available as necessary for recliners.

22VAC40-61-490. Storage.

A. Sufficient space shall be provided to store coats, sweaters, umbrellas, toilet articles, and other personal possessions of participants and staff.

B. Sufficient space shall be available for equipment, materials, and supplies used at the center.

22VAC40-61-500. Telephones.

A. Each building shall have at least one operable, nonpay telephone easily accessible to staff. There shall be additional telephones or extensions as may be needed to summon help in an emergency, including one that will operate during power outages.

B. Participants shall have reasonable access to a nonpay telephone on the premises.

[C. Staff shall provide assistance with telephone usage to any participant upon request.]

22VAC40-61-510. Fire safety: compliance with state regulations and local fire ordinances.

A. The center shall comply with the Virginia Statewide Fire Prevention Code (13VAC5-51) as determined by at least an annual inspection by the appropriate fire official. Reports of the inspections shall be retained at the center for at least two years.

B. An adult day care center shall comply with any local fire ordinance.

Part VIII Emergency Preparedness

22VAC40-61-520. Emergency preparedness and response plan.

A. The center shall develop an emergency preparedness and response plan that shall address:

1. Documentation of initial and annual contact with the local emergency coordinator to determine (i) local disaster risks, (ii) community wide plans to address different disasters and emergency situations, and (iii) assistance, if any, that the local emergency management office will provide to the center in an emergency.

2. Analysis of the center's potential hazards, including severe weather, biohazard events, fire, loss of utilities, flooding, work place violence or terrorism, severe injuries, or other emergencies that would disrupt normal operation of the center.

3. Emergency management policies and procedures for the provision of:

a. Administrative direction and management of response activities;

b. Coordination of logistics during the emergency;

c. Communications;

d. Life safety of participants, staff, volunteers, and visitors;

e. Property protection;

f. Continued services to participants;

g. Community resource accessibility; and

h. Recovery and restoration.

4. Emergency response procedures for assessing the situation; protecting participants, staff, volunteers, visitors, equipment, medications, and vital records; and restoring services. Emergency response procedures shall address:

a. Alerting emergency personnel and center staff;

b. Warning and notification of participants, including sounding of alarms when appropriate;

c. Providing emergency access to secure areas and opening locked doors;

d. Conducting evacuations and sheltering in place, as appropriate, and accounting for all participants;

e. Locating and shutting off utilities when necessary;

f. Maintaining and operating emergency equipment effectively and safely;

g. Communicating with staff and community emergency responders during the emergency;

h. Conducting relocations to emergency shelters or alternative sites when necessary and accounting for all participants; and

i. Strategies for reunification of participants with their family or legal representative.

5. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, and as applicable, memoranda of understanding with relocation sites and list of major resources such as suppliers of emergency equipment.

B. Staff and volunteers shall be knowledgeable in and prepared to implement the emergency preparedness plan in the event of an emergency.

C. The center shall develop and implement an orientation and semi-annual review on the emergency preparedness and response plan for all staff, participants, and volunteers with emphasis placed on an individual's respective responsibilities, except that for participants, the orientation and review may be limited to only subdivisions 1 and 2 of this subsection. The review shall be documented by signing and dating. The orientation and review shall cover responsibilities for:

1. Alerting emergency personnel and sounding alarms;
2. Implementing evacuation, shelter in place, and relocation procedures;
3. Using, maintaining, and operating emergency equipment;
4. Accessing emergency medical information, equipment, and medications for participants;
5. Locating and shutting off utilities; and
6. Utilizing community support services.

D. The center shall review the emergency preparedness [and response] plan annually or more often as needed, document the review by signing and dating the plan, and make necessary revisions. Such revisions shall be communicated to staff, participants, and volunteers and incorporated into the orientation and semi-annual review.

E. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, and welfare of participants, the center shall take appropriate action to protect the participants and to remedy the conditions as soon as possible.

F. After the disaster or emergency is stabilized, the center shall:

1. Notify [participants,] family members and legal representatives; and

2. Report the disaster or emergency to the regional licensing office as specified in 22VAC40-61-90.

22VAC40-61-530. Fire and emergency evacuation plan.

A. The center shall have a plan for fire and emergency evacuation that is to be followed in the event of a fire or other emergency. The plan shall be approved by the appropriate fire official.

B. A fire and emergency evacuation drawing showing primary and secondary escape routes, areas of refuge, assembly areas, telephones, fire alarm boxes, and fire extinguishers shall be posted in a conspicuous place.

C. The telephone numbers for the fire department, rescue squad or ambulance, police, and Poison Control Center shall be posted by each telephone shown on the fire and emergency evacuation plan.

D. Staff and volunteers shall be fully informed of the approved fire and emergency evacuation plan, including their duties, and the location and operation of fire extinguishers, fire alarm boxes, and any other available emergency equipment.

22VAC40-61-540. Fire and emergency evacuation drills.

A. Fire and emergency evacuation drill frequency and participation shall be in accordance with the current edition of the Virginia Statewide Fire Prevention Code (13VAC5-51).

B. Additional fire and emergency evacuation drills shall be held when there is any reason to question whether the requirements of the approved fire and emergency evacuation plan can be met.

C. Each required fire and emergency evacuation drill shall be unannounced.

D. Immediately following each required fire and emergency evacuation drill, there shall be an evaluation of the drill by the staff in order to determine the effectiveness of the drill. The licensee or director shall immediately correct any problems identified in the evaluation and document the corrective action taken.

E. A record of the required fire and emergency evacuation drills shall be kept in the center for two years. Such record shall include:

1. Identity of the person conducting the drill;
2. The date and time of the drill;
3. The method used for notification of the drill;
4. The number of staff participating;
5. The number of participants participating;
6. Any special conditions simulated;
7. The time it took to complete the drill;

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8. Weather conditions; and

9. Problems encountered, if any.

22VAC40-61-550. Emergency equipment and supplies.

A. Each building of the center and all vehicles being used to transport participants shall contain a first aid kit which shall include:

1. Scissors;

2. Tweezers;

3. Gauze pads;

4. Adhesive tape;

5. Adhesive bandages in assorted sizes;

6. Triangular bandages;

7. Flexible gauze;

8. Antiseptic cleansing solution;

9. Antibacterial ointment;

10. Bee sting swabs or preparation;

11. Ice pack or ice bag;

12. Thermometer;

13. Small operable flashlight;

14. Single use gloves, such as surgical or examining gloves; [~~and~~]

15. [Disposable single-use breathing barriers or shields for use with breathing or CPR (e.g., CPR mask or other type); and

16.] The first aid instructional manual.

B. The first aid kit shall be located in a designated place that is easily accessible to staff but not accessible to participants.

C. The first aid kit shall be checked at least annually and contents shall be replaced before expiration dates and as necessary.

D. Emergency equipment shall be available for use in the event of loss of utilities such as, but not limited to, a working flashlight, extra batteries, a portable radio, and a telephone or other communication device.

E. A plan shall be in place to provide an emergency meal and a supply of water to all participants in the event that meals are not able to be prepared or participants are required to shelter in place for a period of time.

22VAC40-61-560. Plan for participant emergencies.

A. The center shall have a plan for participant emergencies that includes:

1. Procedures for handling medical emergencies, including identifying the staff person responsible for (i) calling the rescue squad, ambulance service, participant's physician, or Poison Control Center and (ii) providing first aid and CPR when indicated.

2. Procedures for handling mental health emergencies such as, but not limited to, catastrophic reaction or the need for a temporary detention order.

3. Procedures for making pertinent medical information and history available to the rescue squad and hospital, including a copy of the current medical administration record, advance directives, and Do Not Resuscitate Orders.

4. Procedures to be followed in the event that a participant is missing, including (i) involvement of center staff, appropriate law-enforcement agency, and others as needed; (ii) areas to be searched; (iii) expectations upon locating the participant such as medical attention; and (iv) documentation of the event.

5. Procedures to be followed in the event of a vehicle emergency to include notifying the center or emergency personnel, telephone numbers for vehicle repair, and options for alternate transportation. Procedures to be followed in the event that a participant's scheduled transportation does not arrive or the participant is stranded at the center shall also be developed. The center shall ensure that these procedures are in place for transportation provided by both the center and contracted services if appropriate.

6. Procedures for notifying the participant's family, and legal representative.

7. Procedures for notifying the regional licensing office as specified in 22VAC40-61-90.

B. If the center serves participants who wander, a door bell or alarm shall be installed or attached to alert staff to wandering participants.

C. Staff shall be trained on all requirements of subsection A of this section during orientation and during a semi-annual review.

D. The plan for participant emergencies shall be readily available to all staff, family members, and legal representatives.

NOTICE: The following form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the form with a hyperlink to access it. The form is also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (22VAC40-61)

[Report of Tuberculosis Screening, Virginia Department of Health \(rev. June 2017\)](#)

VA.R. Doc. No. R16-4545; Filed September 9, 2019, 3:25 p.m.

Fast-Track Regulation**Title of Regulation: 22VAC40-470. Exemptions Applicable to Public Assistance Programs (repealing 22VAC40-470-10).****Statutory Authority:** § 63.2-217 of the Code of Virginia.**Public Hearing Information:** No public hearings are scheduled.**Public Comment Deadline:** October 30, 2019.**Effective Date:** November 15, 2019.**Agency Contact:** Karin Clark, Regulatory Coordinator, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7017, or email karin.clark@dss.virginia.gov.**Basis:** Section 63.2-217 of the Code of Virginia authorizes the State Board of Social Services to adopt regulations necessary or desirable to carry out the purpose of Title 63.2 of the Code of Virginia.**Purpose:** In 2013, legislative action transferred adult services and adult protective services from the State Board of Social Services and the Virginia Department of Social Services to the Department for Aging and Rehabilitative Services (DARS). In 2017, DARS included the regulatory provisions in 22VAC40-470 in 22VAC30-80-80. This regulation is no longer needed, and repealing this regulation will have no impact on the health, safety, and welfare of Auxiliary Grant recipients.**Rationale for Using Fast-Track Rulemaking Process:** The State Board of Social Services does not have the authority to regulate the Auxiliary Grant Program. For this reason, repealing this chapter is not expected to be controversial.**Substance:** The amendments repeal the regulation.**Issues:** There are no advantages or disadvantages to the public or Commonwealth.**Department of Planning and Budget's Economic Impact Analysis:**

Summary of the Proposed Amendments to Regulation. The State Board of Social Services (Board) seeks to repeal 22VAC40-470 (Exemptions Applicable to Public Assistance) for the Auxiliary Grants Program. The Auxiliary Grants Program is no longer administered by the Board; it is administered by the Department of Aging and Rehabilitative Services (DARS). Effective June 30, 2017, the text of this regulation has been included verbatim under 22VAC30-80, rendering this regulation redundant.

Background. The 2012 Acts of Assembly (Chapters 803 and 835) eliminated the Department for the Aging and the Department of Rehabilitative Services and transferred their powers to the concomitantly created DARS. The same Acts transferred powers relating to the administration of auxiliary grants, adult services, and adult protective services from the Department of Social Services (DSS) to the newly created DARS.

DSS regulations pertaining to the Auxiliary Grants Program were previously laid out in 22VAC40-25 and were relocated to DARS and renumbered as 22VAC30-80, effective October 23, 2013. However, 22VAC40-470 seems to have been erroneously omitted in the transfer that occurred in 2013. Recognizing this omission, DARS amended 22VAC30-80 in 2017 to add Section 80 containing the full text of 22VAC40-470-10 verbatim. In doing so, they folded it into the existing numbering convention such that it is unlikely to be erroneously omitted in the future.

The now redundant regulation, which the DSS seeks to repeal, contains a single section on "Foreign government restitution payments to Holocaust survivors" saying "all such payments made on or after August 1, 1994 be disregarded in the determination of eligibility or amount of assistance for the Auxiliary Grants Program as defined in § 51.5-160 of the Code of Virginia."

Estimated Benefits and Costs. The proposed amendment appears to benefit the public by marginally improving the clarity of the Virginia Administrative Code. The proposed amendment does not create any new initial or ongoing cost to the public.

Businesses and Other Entities Affected. The proposed amendment affects readers of the Virginia Administrative Code, but does not affect any business or other entities particularly.

Localities² Affected.³ The proposed amendment does not affect particular localities or introduce new costs for local governments. Accordingly, no additional funds would be required.

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

Effects on the Use and Value of Private Property. The proposed amendment has no effect on the use and value of private property, nor does it affect real estate development costs.

Adverse Effect on Small Businesses:⁴

The proposed amendment does not adversely affect small businesses.

²"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

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³§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

⁴Pursuant 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."

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

Summary:

The regulatory action repeals 22VAC40-470, which provides that the value of foreign government restitution payments to Holocaust survivors on or after August 1, 1984, are to be disregarded in determining Auxiliary Grant eligibility and assistance amounts. Since 2012, pursuant to Chapters 803 and 835 of the 2012 Acts of Assembly, the Auxiliary Grant Program has been administered by the Department of Aging and Rehabilitative Services, and this provision is included in one of that agency's regulations.

VA.R. Doc. No. R20-5985; Filed August 29, 2019, 8:35 a.m.

GOVERNOR

EXECUTIVE ORDER NUMBER FORTY (2019)

Declaration of a State of Emergency Due to Hurricane Dorian

Importance of the Issue

On September 2, 2019, I declared a state of emergency in the Commonwealth of Virginia to prepare and coordinate our response to Hurricane Dorian. The anticipated effects of this situation constitute a disaster as described in § 44-146.16 of the Code of Virginia (Code). Therefore, by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by §§ 44-146.17 and 44-75.1 of the Code, as Governor and Director of Emergency Management and Commander-in-Chief of the Commonwealth's armed forces, I proclaim a state of emergency. Accordingly, I direct state and local governments to render appropriate assistance to prepare for this event, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible. Emergency services shall be conducted in accordance with § 44-146.13 et seq. of the Code.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures, I order the following actions:

A. Implementation by state agencies of the Commonwealth of Virginia Emergency Operations Plan, as amended, along with other appropriate state plans.

B. Activation of the Virginia Emergency Operations Center and the Virginia Emergency Support Team, as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to state, local, and tribal governments and to facilitate emergency services assignments to other agencies.

C. Authorization for the heads of executive branch agencies, on behalf of their regulatory boards as appropriate, and with the concurrence of their cabinet secretary, to waive any state requirement or regulation, and enter into contracts without regard to normal procedures or formalities, and without regard to application or permit fees or royalties. All waivers issued by agencies shall be posted on their websites.

D. Activation of § 59.1-525 et seq. of the Code related to price gouging.

E. Activation of the Virginia National Guard to State Active Duty.

F. Authorization of a maximum of \$2.75 million in state sum sufficient funds for state and local government mission assignments and state response and recovery operations authorized and coordinated through the Virginia Department of Emergency Management allowable by The Stafford Act,

42 USC § 5121 et seq. Included in this authorization is \$750,000 for the Department of Military Affairs.

Effective Date of this Executive Order

This Executive Order shall be effective as of September 2, 2019, and shall remain in full force and in effect until October 2, 2019 unless sooner amended or rescinded by further executive order. Termination of this Executive Order is not intended to terminate any federal type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 3rd day of September, 2019.

/s/ Ralph S. Northam
Governor

EXECUTIVE ORDER NUMBER FORTY-ONE (2019)

Emergency Preparedness Responsibilities of State Agencies and Public Institutions of Higher Education

Importance of the Issue

Sections 44-146.13 to 44-146.28:1 of the Code of Virginia authorize the development and maintenance of the Commonwealth of Virginia's emergency management program and organization and defines the emergency powers, authorities, and responsibilities of the governor. Emergency preparedness is a core responsibility of all executive branch agencies and public institutions of higher education (State Agencies). Therefore, I direct that all State Agencies implement the emergency management initiatives prescribed in this Order to enhance emergency preparedness in our Commonwealth, focusing on continuity of government, continuity of operations, and the operational capability to fulfill their roles in the event of a disaster.

This Order describes the overarching strategic preparedness initiatives for State Agencies. Specific operational responsibilities of State Agencies to respond to emergencies in the Commonwealth are outlined in the Commonwealth of Virginia Emergency Operations Plan (COVEOP), adopted and implemented by Executive Order 42 (2019). The COVEOP also delegates to certain State Agencies and members of the governor's cabinet special powers and authorities, including the authority to grant waivers to regulations and routine processes. Executive Order No. 2 (2018) sets forth the procedural authorities for declaring a state of emergency.

Preparedness is a Core Responsibility of Every State Agency

With protecting the citizens of the Commonwealth as a primary duty, and by virtue of the authority vested in me by Article 5, §§ 1 and 7 of the Constitution of Virginia and by § 44-146.17 of the Code of Virginia, as governor and Director

of Emergency Management, I direct each State Agency to include emergency preparedness planning, training, and exercises as basic responsibilities. Additionally, each State Agency shall include emergency preparedness in its strategic planning and performance management process. All State Agencies shall support cabinet-level continuity of government efforts, develop and maintain a continuity of operations plan, use all resources and capabilities to support statewide response and recovery efforts and provide emergency public information resources. Furthermore, I encourage legislative, judicial, and independent State Agencies to develop and maintain a continuity of operations plan in order to ensure the continued provision of essential state governmental services to citizens during an emergency.

Ensure State-Level Readiness

Catastrophic disaster response and recovery requires the whole of state government. As such, all cabinet-level offices and State Agencies, including those not designated in the COVEOP, shall be prepared to support disaster preparedness, response, and recovery efforts upon direction of the governor or his designee.

In order to be prepared for potential emergency situations, I order the following:

A. Cabinet Responsibilities

Each member of the governor's cabinet shall be responsible for conducting an annual review of the disaster preparedness, response, and recovery roles assigned to his or her office and State Agencies to ensure that they have adequate plans, federally-compliant emergency procurement contracts, staff, and resources to fulfill their responsibilities as assigned in the COVEOP.

B. Agency-Designated Virginia Emergency Support Team (VEST) Liaison Officer

The VEST is the interagency coordinating group that operates the Virginia Emergency Operations Center (VEOC) to carry out emergency response and recovery activities. In order to fulfill the mission of the Commonwealth's emergency management program, it is essential that all State Agencies have adequate representation on the VEST. Therefore, each executive branch agency shall appoint a VEST Liaison Officer and at least one alternate to serve as the primary point of contact for all disaster preparedness, response and recovery matters. VEST Liaison Officers shall have subject matter expertise to staff relevant Emergency Support Functions, the authority to dedicate resources, and the ability to fulfill other assignments upon activation of the VEST. VEST Liaison Officers shall also participate in monthly exercises in the VEOC and follow a training program as determined by the Virginia Department of Emergency Management (VDEM). The primary and alternate VEST Liaison Officers shall have direct access to the head of his or her agency.

The VEST Liaison Officers shall be responsible for the following duties:

1. Familiarity with the COVEOP available on the VDEM website;
2. Preparation and maintenance of the portions of the COVEOP for which they are responsible. Lead agencies are responsible for coordinating revisions to their respective portions of the COVEOP and complying with the content and submission requirements established by VDEM;
3. Pursuant to § 2.2-222.1 of the Code of Virginia, preparation and maintenance of a written internal agency plan to fulfill the responsibilities designated in the COVEOP. Plans shall be compliant with VDEM's template and submitted to VDEM annually by May 1;
4. Maintenance of a current roster of personnel with appropriate skill-sets designated to staff Emergency Support Functions or other VEST assignments during disaster operations;
5. The staffing and/or coordination of personnel to support 13-hour shifts in the VEOC, Disaster Recovery Center, and/or Joint Field Office during disasters or other emergencies as directed by VDEM;
6. Coordination of disaster-related information through standard VEST processes;
7. To serve as the agency point-of-contact for disaster-related waivers or exemptions for registration, licensing, or permitting requirements;
8. Oversight of the agency's collection of disaster-related costs and its submission of cost reports to the Finance and Administration Section of the VEST;
9. Identification and coordination of appropriate agency personnel to participate in VEST exercises and training events as authorized by the agency head in order to increase awareness of the role of personnel during disasters or emergencies;
10. The State Agency's compliance with the National Incident Management System; and
11. Completion of emergency management course requirements as determined by VDEM and participation in monthly VEST training and exercises.

C. State Agency Emergency Management Coordinator

Each State Agency shall appoint an Emergency Management Coordinator (EMC) and at least one alternate. Under the guidance of the EMC, each State Agency shall develop and maintain plans that outline the actions to be undertaken by building occupants during emergency situations, severe weather scenarios, and all related preparedness drills. The State Agency primary and alternate EMCs shall have direct

access to the head of the facility, the head of the agency, or president of the public institutions of higher education during declared states of emergency.

EMCs shall be responsible for the following duties:

1. Development, adoption, and maintenance of a current written Occupant Emergency Action Plan with respect to executive branch agencies, consisting of building evacuation, shelter-in-place, active threat, and other hazards or emergencies as deemed appropriate;
2. Coordination of the Occupant Emergency Action Plan with the appropriate local emergency management agency; and
3. Development, adoption, and maintenance of a written Crisis and Emergency Management Plan with respect to public institutions of higher education, and compliance with all related requirements in § 3.1-804 of the Code of Virginia.

EMCs shall also be responsible for the following duties related to continuity of operations planning:

1. The annual creation and update of the State Agency's continuity of operations plan to conform to the most recent template produced by VDEM;
2. The conduct of continuity awareness briefings (or other means of orientation) for all newly-hired personnel (including host or contract personnel) on the State Agency's continuity of operations plan within 90 days of hire or appointment;
3. The conduct of an annual continuity awareness briefing for agency leadership. The continuity awareness briefing must include, at a minimum, individual continuity plan duties, mission essential functions, and orders of succession;
4. The maintenance of a current roster of State Agency personnel required to implement the continuity of operations plan;
5. The conduct of an annual test or exercise of the continuity of operations plan that includes alert, notification, and activation procedures for key personnel;
6. The completion of an After Action Report within three months of a continuity of operations plan test, exercise, or actual event, and monitor the correction of identified deficiencies. These deficiencies shall also be corrected in a reasonable time frame as resources allow; and
7. The annual submission of a list of continuity of operations plan alternate facilities to the Department of General Services by July 1.

D. State Agency Participation in the Joint Information Center during Emergencies

Providing a consistent message to citizens and the public during a disaster is of critical importance. Therefore, I direct that all members of the governor's cabinet and State Agencies coordinate emergency public information with VDEM during states of emergency. I also direct that executive branch agencies appoint a public information officer to staff the VEST Joint Information Center at the request of VDEM. All State Agency public information officers shall complete a training course in emergency public communications as directed by VDEM.

E. State Workforce Preparedness and Disaster Support

In order to promote a culture of preparedness within the Commonwealth, I direct that all personnel and faculty of State Agencies shall successfully complete Emergency Management for State Employees training annually. This course will be offered online through the Commonwealth of Virginia Learning Center website and will be available after January 1, 2020.

Members of my cabinet, executive branch agency heads, and other key personnel, including any state employee, are subject to having leave cancelled during preparedness activities for a declaration of state of emergency.

The state employee workforce is essential to the Commonwealth's ability to prepare for, respond to, and recover from emergencies and disasters. Therefore, all State Agencies shall include the standard emergency preparedness and assistance statement found on the Department of Human Resource Management web site in state Employee Work Profiles. This statement shall serve as notice to employees that they may be required to perform other emergency management duties, including supporting and staffing the VEST during a disaster. Department of Human Resource Management in coordination with VDEM, shall identify a method to leverage effectively the state employee workforce in anticipation of disaster response and recovery operations.

Effective Date of the Executive Order

This Executive Order rescinds and replaces Executive Order No. 41 (2011) issued by Governor Robert F. McDonnell.

This Executive Order shall be effective upon its signing and shall remain in full force and effect unless amended or rescinded by further executive order.

Given under my hand and the Seal of the Commonwealth of Virginia this 3rd day of September, 2019.

/s/ Ralph S. Northam
Governor

EXECUTIVE ORDER NUMBER FORTY-TWO (2019)

Promulgation of the Commonwealth of Virginia Emergency Operations Plan and Delegation of Authority

By virtue of the authority vested in me by § 44-146.17 of the Code of Virginia as governor and as Director of Emergency Management, I hereby promulgate and issue the Commonwealth of Virginia Emergency Operations Plan (Plan) updated in July 2019 by the Virginia Department of Emergency Management. The Plan provides for state government's response to emergencies and disasters wherein assistance is needed by affected state, tribal, and local governments in order to save lives, protect public health, safety, and property, restore essential services, and enable and assist with economic recovery.

The plan is consistent with the Commonwealth of Virginia Emergency Services and Disaster Law (§ 44-3.2 of the Code of Virginia), the National Incident Management System as implemented in the National Response Framework (Third Edition) adopted in 2016, and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC § 5121 et seq., as amended) with its implementing regulations.

The State Coordinator of Emergency Management is hereby authorized to activate the Plan in order to coordinate state government emergency operations on my behalf. Furthermore, the State Coordinator of Emergency Management is hereby authorized, in coordination with the governor's office, to amend the Plan as necessary in order to achieve the preparedness goals and initiatives of the Nation and the Commonwealth in accordance with the Commonwealth of Virginia Emergency Services and Disaster Law (§ 44-3.2 of the Code of Virginia).

Successful implementation of the Plan and response and recovery capabilities will require the whole of state government. Therefore, during a declared state of emergency, I delegate the authority to issue waivers or exemptions for registration, licensing, or permitting requirements to the authorizing executive branch agency head in coordination with their respective cabinet secretary. Upon action, the agency head shall provide my office and the Virginia Department of Emergency Management a copy of all waivers and exemptions.

When this Plan is activated, the following measures apply, as appropriate, in order to marshal all public resources and appropriate preparedness, response, and recovery measures to meet the threat and recover from its effects, and in accordance with my authority contained in § 44-146.17 of the Code of Virginia:

- Activation of the Virginia Emergency Operations Center (VEOC) and the Virginia Emergency Support Team (VEST), as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to

local governments, and emergency services assignments of other agencies as necessary and determined by the State Coordinator of Emergency Management and other agencies as appropriate.

- When called to active duty in a declaration of a state of emergency, provision of assistance by the Virginia National Guard to the Virginia Department of State Police to ensure crowd control, direct traffic, prevent looting, and perform such other law enforcement functions as deemed necessary by the Superintendent of State Police (in consultation with the State Coordinator of Emergency Management, the Adjutant General, the Secretary of Public Safety and Homeland Security, and the Secretary of Veterans and Defense Affairs). Pursuant to § 52-6 of the Code of Virginia, I authorize the Superintendent of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers as deemed necessary. The members of the Virginia National Guard activated for this event shall be authorized under § 44-75.1 A 3 of the Code of Virginia, to perform all acts necessary to accomplish the above assistance. The Virginia National Guard shall have the power of arrest to enforce laws, including all violations of § 18.2, Ch. 9, Art. 1 and 2 of the Code of Virginia (Crimes Against Peace and Order; Riot and Unlawful Assembly; Disorderly Conduct), and such other acts necessary to protect lives, preserve property, and in defense of self and others. Any bonds and/or insurance required by § 52-7 of the Code of Virginia shall be provided for them at the expense of the Commonwealth. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military command as prescribed by § 44-78.1 of the Code of Virginia and are not subject to the civilian authorities of county or municipal governments.

- When so ordered by me, evacuation of areas threatened or stricken by effects of this event, as appropriate. Pursuant to § 44-146.17(1) of the Code of Virginia, I reserve the right to direct and compel the evacuation of all or part of the populace therein from such areas based on the advice of the State Coordinator of Emergency Management. I reserve the right to control the ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein based upon the advice of the State Coordinator of Emergency Management. Violations of any order to citizens to evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

- As determined by the State Coordinator of Emergency Management, activation, implementation, and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to §§ 44-146.17(5) and 44-146.28:1 of

the Code of Virginia. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

- This Emergency Declaration implements limited relief from the provisions of 49 CFR §§ 390.23 and 395.3 for the purpose of providing direct relief or assistance as a result of this disaster.

- Authorization of the Virginia Departments of State Police, Transportation, and Motor Vehicles to grant temporary overweight, overwidth, registration, license, or hours of service exemptions to any carriers transporting essential emergency relief supplies to, through and from any area of the Commonwealth. This authorization also applies to water, food, heating oil, motor fuels or propane, agricultural products, agricultural supplies, livestock and poultry, livestock and poultry feed, forest products and salvaged wood, waste, and trees cut in preparation for the storm, or providing restoration of utilities (including but not limited to electricity, gas, phone, water, wastewater, and cable) or removal of waste to, through, and from any area of the Commonwealth in order to support the disaster response and recovery, regardless of their point of origin or destination. When and where overweight restrictions are granted, posted structures for restricted weight and restrictions on interstate highways are not valid. The exemption shall not exceed the duration of the motor carriers' or drivers' direct assistance in providing emergency relief.

1. All overwidth loads, up to a maximum of 12 feet, and overheight loads up to a maximum of 14 feet must follow Virginia Department of Motor Vehicles hauling permit and safety guidelines.

2. If overweight/overwidth transportation privileges are granted, the carriers are also exempt from vehicle registration with the Department of Motor Vehicles. This includes vehicles en route and returning to their home base. The agencies cited in this provision shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

- Implementation and discontinuance of the transportation-related provisions authorized above shall be disseminated by the publication of administrative notice to all affected and interested parties. I hereby delegate to the Secretary of Public Safety and Homeland Security, after consultation with other affected Cabinet Secretaries, the authority to implement and disseminate this Order as set forth in § 2.2-104 of the Code of Virginia.

- Authorization of the Commissioner of Agriculture and Consumer Services to grant a temporary waiver of the maximum vapor pressure prescribed in regulation 2VAC5-425 et seq., and to prescribe a vapor pressure limit the

Commissioner deems reasonable. The temporary waiver shall remain in effect until emergency relief is no longer necessary, as determined by the Commissioner of Agriculture and Consumer Services.

- Provision of appropriate assistance, including temporary assignments of non-essential state employees to the Adjunct Emergency Workforce, shall be rendered by state agencies to respond to this situation, as necessitated by each agency or as directed by the State Coordinator of Emergency Management.

- Authorization of appropriate oversight boards, commissions, and agencies to ease building code restrictions, permitting requirements, and to allow for emergency demolition, hazardous waste disposal, debris removal, emergency landfill siting, and other operations and activities necessary to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties. All appropriate executive branch agencies are to exercise discretion to the extent allowed by law to address any pending deadlines or expirations affected by or attributable to this emergency event.

- Authorization for the Marine Resources Commissioner to act on behalf of the Commission in issuing permits pursuant to § 28.2-1200 et seq. of the Code of Virginia when, in the judgment of the Commissioner, it is necessary to address immediate health and safety needs and the Commission would be unable to convene in a timely manner. In an effort to address the impacts attributable to the disaster on the health, safety, and general welfare of the residents of the Commonwealth, and in an attempt to expedite the return of impacted areas and structures to pre-event conditions insofar as possible, no permits for encroachments on state-owned submerged lands, tidal wetlands and coastal primary sand dunes or beaches shall be required to replace previously permitted structures in the same location and in identical or smaller dimensions as the previously permitted structure, and for beach nourishment activities along public beaches, provided any structure replacement or beach nourishment is initiated prior to the expiration of this Executive Order. No person may proceed with replacement of a previously permitted structure or beach nourishment activity under the provisions of this Executive Order without written approval from the Commissioner of the Virginia Marine Resources Commission.

- Authorization for the heads of executive branch agencies, with the concurrence of their Cabinet Secretary, to act, when appropriate, on behalf of their regulatory boards to waive any state requirement or regulation where the federal government has waived the corresponding federal or state regulation based on the impact of events related to this situation.

- Authorization for the State Veterinarian to grant exemptions for specific requirements for the importation of agricultural

and companion animals into the Commonwealth from affected areas.

- Activation of the statutory provisions in § 59.1-525 et seq. of the Code of Virginia related to price gouging.

- In the event, Virginia residents require a variety of emergency medical services and procedures to support the proper management, care, and support of persons affected by the disaster, activation of sections §§ 32.1-42.1, 32.1-48.05, and 44-146.17 (1) et seq. of the Code of Virginia.

- In the event of a mass fatality incident, as so determined by the Office of the Chief Medical Examiner in consultation with the State Coordinator of Emergency Management, authorization for the Board of Funeral Directors and Embalmers to ease enforcement of regulatory and statutory requirements relating to the management of human remains if necessary to address immediate health and safety needs and limit the spread of disease or contamination.

- Authorization for the Director of the Department of Health Professions to issue temporary licenses, registrations, and certifications to practice in the Commonwealth, for a period not to exceed one year, to health care practitioners who otherwise qualify by Virginia standards, who are displaced residents of affected U.S. jurisdictions, hold like unrestricted licenses, registrations, or certifications in their resident jurisdiction, and who are unable to furnish or have furnished on their behalf complete documentation of their credentials and license status as otherwise required by Virginia law. The Director shall also have the authority to defer the payment of licensing fees. The Director may revoke for cause, without hearing, any such license, regulation, or certification.

- As provided in the declaration of a state of emergency, authorization of state sum sufficient funds for state and local government mission assignments authorized and coordinated through the Virginia Department of Emergency Management. This funding is also available for state response and recovery operations, state share of federal disaster aid, state public assistance, and incident documentation. Out of this state disaster sum sufficient, I authorize funding for the Department of Military Affairs for the state's portion of the eligible disaster-related costs incurred for salaries, travel, and meals during mission assignments authorized and coordinated through the Virginia Department of Emergency Management.

- If eligible, authorization of matching funds for the Individuals and Household Program, authorized by The Stafford Act 42 USC § 5121 et seq. (when presidentially authorized), to be paid from state funds.

- Implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-

146.28 B of the Code of Virginia. § 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

- Any person who holds a license, certificate, or other permit issued by any state or political subdivision thereof, evidencing the meeting of qualifications for professional, mechanical, or other skills, the person, without compensation other than reimbursement for actual and necessary expenses, may render aid involving that skill in the Commonwealth during this emergency. Such person shall not be liable for negligently causing the death of, or injury to, any person or for the loss of, or damage to, the property of any person resulting from such service as set forth in § 44-146.23 C of the Code of Virginia. Additionally, members and personnel of volunteer, professional, auxiliary, and reserve groups identified and tasked by the State Coordinator of Emergency Management for specific disaster-related mission assignments, as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23 A of the Code of Virginia, shall not be liable for the death of, or any injury to, persons or damage to property as a result of such activities, as provided in § 44-146.23 A of the Code of Virginia.

- Designation of physicians, nurses, and other licensed and non-licensed health care providers and other individuals as well as hospitals, nursing facilities and other licensed and non-licensed health care organizations, political subdivisions and other private entities by state agencies, including the Departments of Health, Behavioral Health and Developmental Services, Social Services, Emergency Management, Transportation, State Police, Motor Vehicles, as representatives of the Commonwealth engaged in emergency services activities, at sites designated by the Commonwealth, within the meaning of the immunity provisions of § 44-146.23 A of the Code of Virginia, in the performance of their disaster-related mission assignments.

- A license issued to a health care practitioner by another state, and in good standing with such state, shall be deemed to be an active license issued by the Commonwealth to provide health care or professional services as a health care practitioner of the same type for which such license is issued in another state, provided such health care practitioner is engaged by a hospital, licensed nursing facility, or dialysis facility in the Commonwealth for the purpose of assisting that facility with public health and medical disaster response operations. Hospitals, licensed nursing facilities, and dialysis facilities must submit to the applicable licensing authority each out-of-state health care practitioner's name, license type, state of license, and license identification number within a reasonable time of such healthcare practitioner arriving at the applicable health care facility in the Commonwealth.

- As provided in § 44-146.23 F of the Code of Virginia, no individual, corporation, partnership, association, cooperative,

limited liability company, trust, joint venture, fraternal organization, religious organization, charitable organization, or any other legal or commercial entity and any successor, officer, director, representative, or agent thereof, who, without compensation other than reimbursement for actual and necessary expenses, provides services, goods, real or personal property, or facilities at the request and direction of the State Department of Emergency Management or a county or city employee whose responsibilities include emergency management shall be liable for the death of or injury to any person or for the loss of, or damage to, the property of any person where such death, injury, loss, or damage was proximately caused by the circumstances of the actual emergency or its subsequent conditions, or the circumstances of this emergency.

- Authorization for the State Coordinator of Emergency Management to determine as necessary that the Commissioner of the Virginia Department of Social Services (VDSS) will activate the SCR Shelter Plan and identify and make available such shelters as necessary. Pursuant to the authority in § 44.146.15 of the Code of Virginia, and in order to ensure public safety, all weapons listed in § 18.2-308 A of the Code of Virginia, including all firearms, are prohibited from such shelters. This prohibition applies to both open and concealed carry of firearms pursuant to a concealed carry permit. The firearm restriction shall not apply to members of the National Guard and law enforcement officers in the performance of their official duties.
- Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC as defined herein and in § 44-146.28 of the Code of Virginia, other than costs defined in the paragraphs above pertaining to the Virginia National Guard and pertaining to the Virginia Defense Force, shall be paid from state funds.

Effective Date of the Executive Order

This Executive Order rescinds and replaces the promulgation previously issued in Executive Order Number Fifty (50) issued on August 20, 2012, by Governor Robert F. McDonnell.

This Executive Order shall be effective upon its signing and shall remain in full force and effect unless amended or rescinded by further executive order.

Given under my hand and the Seal of the Commonwealth of Virginia this 3rd day of September, 2019.

/s/ Ralph S. Northam
Governor

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

STATE BOARD OF HEALTH

Title of Document: [Office of Drinking Water Guidance on Main Break Types and Responses.](#)

Public Comment Deadline: October 30, 2019.

Effective Date: October 31, 2019.

Agency Contact: Jeffrey S. Wells, PE, Field Director, Danville Field Office, Department of Health, 211 Nordan Drive, Suite 1040, Danville, VA 24540, telephone (434) 836-8416, or email jeff.wells@vdh.virginia.gov.

* * *

Title of Document: [Source Water Manual.](#)

Public Comment Deadline: October 30, 2019.

Effective Date: October 31, 2019.

Agency Contact: Aaron Moses, PE, Field Services Engineer, Office of Drinking Water, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7492, or email aaron.moses@vdh.virginia.gov.

DEPARTMENT OF HEALTH PROFESSIONS

Title of Document: [Reporting Imposed on Hospitals and Other Health Care Institutions.](#)

Public Comment Deadline: October 30, 2019.

Effective Date: October 31, 2019.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

Title of Document: [Opticians Approved Related Technical Instruction.](#)

Public Comment Deadline: October 30, 2019.

Effective Date: October 31, 2019.

Agency Contact: Stephen Kirschner, Regulatory Operations Administrator, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, or email hearingaidspec@dpor.virginia.gov.

STATE BOARD OF SOCIAL SERVICES

Title of Document: [Child and Family Services Manual, Chapter D, Local Department Resource, Foster, and Adoptive Family Home Approval Guidance.](#)

Public Comment Deadline: October 30, 2019.

Effective Date: October 31, 2019.

Agency Contact: Paulette King, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7503, or email paulette.king@dss.virginia.gov.

GENERAL NOTICES/ERRATA

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Public Comment Period on Initial Draft Amendments to 12VAC35-105

Background: Each state agency must ensure that its regulations are reviewed at least once every four years through a periodic review process. Agencies must then decide if the regulation will be amended, retained as is, or repealed. After conducting the most recent periodic review of the Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (12VAC35-105), the Department of Behavioral Health and Developmental Services filed a decision to amend the regulations.

Planned changes: The Office of Licensing developed draft revisions to both the structure and the content of the licensing regulations. In regard to structure, currently language addressing all disabilities is contained in 12VAC35-105. This all-in-one structure is actually unusual across Virginia agencies or in other states. The "general chapter" was developed to apply to three disability-specific chapters (developmental, behavioral health, and substance abuse). Further, it was deemed necessary to develop the general chapter first.

Response to periodic review versus behavioral health redesign: It is important to distinguish the response to the periodic review of the licensing regulations from other current discussions regarding behavioral health redesign.

Response to periodic review: Draft changes for the response to periodic review will be in a separate action and are not expected to take effect until at least 2021, following the standard process, which takes an average of 18 months to two years to complete.

Behavioral health redesign: The current effective licensing regulations will be the vehicle for any required department regulatory changes that come from the behavioral health redesign. Such changes would likely be emergency regulations as authorized by the General Assembly.

Public comment: Comment period opens on September 30, 2019.

To comment, register as a user on the Virginia Regulatory Town Hall at <http://townhall.virginia.gov/L/Register.cfm>. Comments will also be received via email, fax, or postal mail by Emily Bowles, Legal and Regulatory Manager, Office of Licensing, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, email emily.bowles@dbhds.virginia.gov, FAX (804) 692-0066, or TDD (804) 371-8977.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Caden Energix Axton LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Henry and Pittsylvania Counties

Caden Energix Axton LLC has provided to the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Henry and Pittsylvania Counties. The project is located on multiple parcels totaling approximately 550 acres on Centerville Road, approximately 1.5 miles southeast of Axton, Virginia. Latitude: 36.6407°; Longitude: -79.7039°. The project will have a rated capacity of 66 megawatts alternating current and include approximately 328,000 photovoltaic solar panels.

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.

Caden Energix Gladys LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Campbell County

Caden Energix Gladys LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Campbell County. The project is located on two parcels totaling 1,108 acres on Gladys Road, approximately 4.5 miles southwest of Gladys, Virginia. Latitude: 37.1366°; Longitude: -79.1329°. The project will have a rated capacity of 60 megawatts alternating current and include approximately 180,000 photovoltaic solar panels.

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.

Caden Energix Jarratt LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Greensville County

Caden Energix Jarratt LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Greensville County. The project is located on multiple parcels totaling 695 acres on Wyatts Mill Road, approximately four miles northwest of Jarratt, Virginia. Latitude: 36.8425°; Longitude: -77.5292°. The project will have a rated capacity of 82.5 megawatts alternating current and include approximately 235,000 photovoltaic solar panels.

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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.

Caden Energix Wytheville LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Wythe County

Caden Energix Wytheville LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Wythe County. The project is located on a single parcel totaling 154 acres on Nye Road, approximately two miles northeast of Wytheville, Virginia. Latitude: 36.9642°; Longitude: -81.0498°. The project will have a rated capacity of 20.0 megawatts alternating current and include approximately 50,000 photovoltaic solar panels.

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.

DEPARTMENT OF PLANNING AND BUDGET

Virginia Commercial Activities List for Fiscal Year 2018 and Fiscal Year 2019

Pursuant to § 2.2-1501.1 of the Code of Virginia, the Virginia Department of Planning and Budget (DPB) has updated the Commercial Activities List (CAL). The CAL is posted on the DPB website under Documents, Instructions and Publications as "Commercial Activities List - 2019" and is also included in this notice.

DPB is seeking written comments on the CAL and invites recommendations from the public regarding activities being performed by state agencies that might better be performed by the private sector.

NIGP	NIGP title
90608	Automation; Controls; Instrumentation - Architectural Services
90648	Historical Preservation
91013	Elevator Installation, Maintenance and Repair
91223	Construction, General (Backfill Services, Digging, Ditching, Road Grading, Rock Stabilization, etc.)
91265	Maintenance and Repair, Tennis/Sport Court
91316	Construction, Communication Equipment (Includes Antenna Towers)

91359	Construction and Upgrades, Wastewater Treatment Plant
91360	Construction, Water System/Plants, Main and Service Line
91427	Carpentry
91464	Plastering
91500	Communications and Media Related Services
91522	Communications Marketing Services
91806	Administrative Consulting
91815	Architectural Consulting
91819	Buildings, Structures and Components Consulting
91831	Construction Consulting
91875	Management Consulting
91878	Medical Consulting
91885	Personnel/Employment Consulting (Human Resources)
91887	Purchasing Consulting (Including Specification Development)
92000	Data Processing, Computer, Programming, and Software Services
92022	Data Preparation and Processing Services (Including Bates Coding)
92032	Intelligent Transportation System Software (Including Design, Development, and Maintenance Services)
92037	Networking Services (Including Installation, Security, and Maintenance)
92039	Processing System Services, Data (Not Otherwise Classified)
92040	Programming Services, Computer
92416	Course Development Services, Instructional/Training
92418	Educational Services, Alternative
92474	Special Education
92480	Tutoring
92500	Engineering Services, Professional
93881	Scientific Equipment Maintenance and Repair

93921	Computers, Data Processing Equipment and Accessories (Not Word Processing Equipment), Maintenance and Repair
94155	HVAC Systems Maintenance and Repair, Power Plant
94620	Auditing
94649	Financial Services (Not Otherwise Classified)
94650	Fundraising Services
94807	Administration Services, Health
94828	Dental Services
94876	Psychologists/Psychological and Psychiatric Services (Including Behavioral Management Services)
95226	Day Care (Adult)
95277	Research and Evaluation, Human Services (Including Productivity Audits)
95285	Support Services
95605	Business Research Services
95826	Construction Management Services
95839	Financial Management Services
95859	Industrial Management Services
95874	Personnel Management Services
95939	Dam and Levee Construction, Maintenance, Management and Repair
95973	Ship Maintenance and Repair
95984	Towing Services, Marine
96114	Commissioning of Facilities Services (Functional and Prefunctional)
96116	Claims Processing Services
96129	Economic Impact Studies
96130	Employment Agency and Search Firm Services (Including Background Investigations and Drug Testing for Employment)
96191	Water and Petroleum Pipeline Services
96196	Nonprofessional Services (Not Otherwise Classified)
96269	Personnel Services, Temporary
96343	Intergovernmental/Inter-Agency Contracts
96847	Inspection Services, Construction Type

96881	Traffic Sign Maintenance and Repair
98854	Lighting Services for Parks, Athletic Fields, Parking Lots, etc.
98863	Park Area Construction/Renovation
99029	Disaster Preparedness/Emergency Planning Services
99067	Patrol Services

Public comment period: Begins September 30, 2019, and ends October 14, 2019.

Contact Information: Cari Corr, Virginia Department of Planning and Budget, CAL, 1111 East Broad Street, Richmond, VA 23219, telephone (804) 225-4549, email cari.corr@dpb.virginia.gov. Please include "CAL" in the subject of the email.

STATE WATER CONTROL BOARD

Proposed Consent Special Order for AdvanSix Resins & Chemicals LLC

An enforcement action is proposed for AdvanSix Resins & Chemicals LLC for alleged violations of the State Water Control Law occurring in Chester, Virginia. The State Water Control Board proposes to issue a consent special order to AdvanSix Resins & Chemicals LLC that is available for review and comment at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Comments can be made from September 30, 2019, to October 30, 2019 by email to frank.lupini@deq.virginia.gov or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060.

Proposed Enforcement Action for AT&T Services Inc.

An enforcement action has been proposed for AT&T Services Inc. for violations of the State Water Control Law at the AT&T Oakton commercial office building facility located in Fairfax County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Jim Datko will accept comments by email at james.datko@deq.virginia.gov or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from October 1, 2019, through October 31, 2019.

Proposed Enforcement Action for the Town of Hamilton

An enforcement action has been proposed for the Town of Hamilton for violations of the State Water Control Law at the Town of Hamilton sewage treatment plant located in Loudoun County, Virginia. A description of the proposed

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action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Jim Datko will accept comments by email at james.datko@deq.virginia.gov or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from October 1, 2019, through October 31, 2019.

Proposed Consent Special Order for Virginia Electric and Power Company

An enforcement action is proposed for Virginia Electric and Power Company for alleged violations of the State Water Control Law occurring at the Woolridge-Otterdale Road Widening Project. The State Water Control Board proposes to issue a consent special order in Chesterfield, Virginia that is available for review and comment at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Comments can be made from September 30, 2019, to October 30, 2019, by email at cynthia.akers@deq.virginia.gov or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060.

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.