



VIRGINIA

REGISTER OF REGULATIONS

VOL. 36 ISS. 4

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

OCTOBER 14, 2019

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Virginia Code Commission

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

THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly for \$263.00 per year by Matthew Bender & Company, Inc., 3 Lear Jet Lane, Suite 102, P.O. Box 1710, Latham, NY 12110. Periodical postage is paid at Easton, MD and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

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>).

November 2019 through December 2020

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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: 18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy.

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

Name of Petitioner: David and Suzanne Mikkelson.

Nature of Petitioner's Request: To amend 18VAC115-50-55 to reduce the required internship number of hours of experience with couples and families from 200 to 120 of the required 240 hours.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition will be filed with the Registrar of Regulations and published on October 14, 2019, with comment requested until November 13, 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 comment, which is scheduled for February 7, 2020, the board will consider the request to amend regulations and all comment received in support or opposition. The petitioner will be informed of the board's response and any action it approves.

Public Comment Deadline: November 13, 2019.

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

VA.R. Doc. No. R20-11 Filed September 16, 2019, 12:24 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 12. HEALTH STATE BOARD OF HEALTH

Agency Notice

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Board of Health is conducting a periodic review and small business impact review of **12VAC5-381, Regulations for the Licensure of Home Care Organizations**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended, July 16, 2018).

The Notice of Intended Regulatory Action for 12VAC5-381, which is published in this issue of the Virginia Register, serves as the announcement of the periodic review.

Contact Information: Robert Payne, Director, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23230-4920, telephone (804) 367-2109, FAX (804) 527-4502, or email robert.payne@vdh.virginia.gov.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BARBERS AND COSMETOLOGY

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Barbers and Cosmetology conducted a small business impact review of **18VAC41-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board for Barbers and Cosmetology is publishing its report of findings dated September 24, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 2.2-4007.02 of the Code of Virginia mandates the Board for Barbers and Cosmetology solicit the input of interested parties in the formation and development of its regulations. Therefore the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare by establishing public participation guidelines that promote public involvement in the development, amendment, or repeal of an agency's regulation. By soliciting the input of interested parties, the board is better equipped to effectively regulate the occupation or profession. Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

The last periodic review of this regulation occurred in 2015. On September 9, 2019, the board reviewed the regulation and for the reasons stated in this section determined that the regulation should not be amended or repealed but retained in its current form.

Contact Information: Stephen Kirschner, Regulatory Operations Administrator, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email barbercosmo@dpor.virginia.gov.

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Barbers and Cosmetology conducted a small business impact review of **18VAC41-20, Barbering and Cosmetology Regulations**, and determined that this regulation should be retained in its current form. The Board for Barbers and Cosmetology is publishing its report of findings dated September 24, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Board for Barbers and Cosmetology to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board for Barbers and Cosmetology provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive a barber, cosmetology, nail or wax technician, instructor, salon, or school license or temporary permit. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulation.

There were no comments or complaints received during the public comment period. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent comprehensive regulatory review of the regulation took effect in February of 2017.

On September 9, 2019, the board reviewed the regulation and for the reasons stated in this section determined that the regulation should not be amended or repealed but retained in its current form.

Contact Information: Stephen Kirschner, Regulatory Operations Administrator, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email barbercosmo@dpor.virginia.gov.

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Barbers and Cosmetology conducted a small business impact review of **18VAC41-50, Tattooing Regulations**, and determined that this regulation should be retained in its current form. The Board for Barbers and Cosmetology is publishing its report of findings dated September 24, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Board for Barbers and Cosmetology to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board for Barbers and Cosmetology provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive a tattooing or permanent cosmetic tattooing, instructor, salon, parlor, or school license or temporary license. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulation.

The sole comment received during the public comment period requested the elimination of regulation of the profession, an act that can only be undertaken by the General Assembly. There is an ongoing general review of this regulation, started in 2017, currently in the proposed stage. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation.

On September 9, 2019, the board reviewed the regulation and for the reasons stated in this section determined that the regulation should not be amended or repealed but retained in its current form.

Contact Information: Stephen Kirschner, Regulatory Operations Administrator, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email barbercosmo@dpor.virginia.gov.

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Barbers and Cosmetology conducted a small business impact review of **18VAC41-60, Body Piercing Regulations**, and determined that this regulation should be retained in its current form. The Board for Barbers and Cosmetology is publishing its report of findings dated September 24, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Board for Barbers and Cosmetology to promulgate regulations. The continued need for the regulation is

established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board for Barbers and Cosmetology provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive a body piercing or salon license. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulation.

The sole comment received during the public comment period supported the continued regulation of the industry. There is an ongoing general review of this regulation, started in 2017, currently in the proposed stage. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation.

On September 9, 2019, the board reviewed the regulation and for the reasons stated in this section determined that the regulation should not be amended or repealed but retained in its current form.

Contact Information: Stephen Kirschner, Regulatory Operations Administrator, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email barbercosmo@dpor.virginia.gov.

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Barbers and Cosmetology conducted a small business impact review of **18VAC41-70, Esthetics Regulations**, and determined that this regulation should be retained in its current form. The Board for Barbers and Cosmetology is publishing its report of findings dated September 24, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Board for Barbers and Cosmetology to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board for Barbers and Cosmetology provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive an esthetician, master esthetician, instructor, spa, or school license or temporary permit. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulation.

The board received one public comment requesting a new type of license, which requires a statutory change. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent comprehensive regulatory review of the regulation took effect in February of 2017.

Periodic Reviews and Small Business Impact Reviews

On September 9, 2019, the board reviewed the regulation and for the reasons stated in this section determined that the regulation should not be amended or repealed but retained in its current form.

Contact Information: Stephen Kirschner, Regulatory Operations Administrator, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email barbercosmo@dpor.virginia.gov.

CEMETERY BOARD

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Cemetery Board conducted a small business impact review of **18VAC47-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Cemetery Board is publishing its report of findings dated September 18, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 2.2-4007.02 of the Code of Virginia mandates the Cemetery Board to solicit the input of interested parties in the formation and development of its regulations. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare by establishing public participation guidelines that promote public involvement in the development, amendment, or repeal of an agency's regulation. By soliciting the input of interested parties, the board is better equipped to effectively regulate the occupation or profession.

No comments or complaints were received during the public comment period. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation.

The most recent periodic review of the regulation occurred in 2015. On September 18, 2019, the board discussed the regulation and for the reasons stated in this section determined that the regulation should not be amended or repealed but retained in its current form.

Contact Information: Christine Martine, Executive Director, Cemetery Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 826-8863, or email cemetery@dpor.virginia.gov.

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Cemetery Board conducted a small business impact review of **18VAC47-20, Cemetery Board Rules and Regulations**, and determined that this regulation should be retained in its current form. The Cemetery Board is publishing its report of findings dated September 18, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Cemetery Board to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Cemetery Board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive a cemetery company license and sales personnel registration. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations.

No comments or complaints were received during the public comment period. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation.

The most recent periodic review of the regulation occurred in 2015. On September 18, 2019, the board discussed the regulation and for the reasons stated in this section determined that the regulation should not be amended or repealed but retained in its current form.

Contact Information: Christine Martine, Executive Director, Cemetery Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 826-8863, or email cemetery@dpor.virginia.gov.

COMMON INTEREST COMMUNITY BOARD

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Common Interest Community Board conducted a small business impact review of **18VAC48-30, Condominium Regulations**, and determined that this regulation should be retained in its current form. The Common Interest Community Board is publishing its report of findings dated September 17, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Sections 54.1-2349 and 55-79.98 of the Code of Virginia mandate the Common Interest Community Board promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation.

The Common Interest Community Board provides protection to the public welfare of the citizens of the Commonwealth by assuring full and fair disclosure in the offering and disposition of condominium interests and by establishing standards of conduct for condominium declarants.

No comments or complaints were received during the public comment period. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. This regulation became effective on August 1, 2015, and this is the first

periodic review of the regulation. On September 5, 2019, the board discussed the regulation and for the reasons stated in this section determined through proper unanimous vote that the regulation should not be amended or repealed but retained in its current form.

Contact Information: 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.

BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Hearing Aid Specialists and Opticians conducted a small business impact review of **18VAC80-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board for Hearing Aid Specialists and Opticians is publishing its report of findings dated September 24, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 2.2-4007.02 of the Code of Virginia mandates the board solicit the input of interested parties in the formation and development of its regulations. Therefore the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare by establishing public participation guidelines that promote public involvement in the development, amendment, or repeal of an agency's regulation. By soliciting the input of interested parties, the board is better equipped to effectively regulate the occupation or profession. Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or contravene federal or state law or regulation. The last periodic review of this regulation occurred in 2015.

On August 7, 2019, the board reviewed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Stephen Kirschner, Regulatory Operations Administrator, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email hearingaidspec@dpor.virginia.

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Hearing Aid Specialists and Opticians conducted a small business impact review of **18VAC80-20, Hearing Aid Specialists Regulations**, and determined that this regulation

should be retained in its current form. The Board for Hearing Aid Specialists and Opticians is publishing its report of findings dated September 24, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Board for Hearing Aid Specialists and Opticians to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board for Hearing Aid Specialists and Opticians provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive a hearing aid specialist license. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations.

Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent comprehensive regulatory review of the regulation took effect in February of 2017.

On August 8, 2019, the board reviewed the regulation and for the reasons stated in this section determined that the regulation should not be amended or repealed but retained in its current form.

Contact Information: Stephen Kirschner, Regulatory Operations Administrator, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email hearingaidspec@dpor.virginia.

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Hearing Aid Specialists and Opticians conducted a small business impact review of **18VAC80-30, Opticians Regulations**, and determined that this regulation should be retained in its current form. The Board for Hearing Aid Specialists and Opticians is publishing its report of findings dated September 24, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Board for Hearing Aid Specialists and Opticians to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board for Hearing Aid Specialists and Opticians provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive an optician license. The

Periodic Reviews and Small Business Impact Reviews

board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulation.

Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent comprehensive regulatory review of the regulation occurred in 2012.

On August 8, 2019, the board reviewed the regulation and for the reasons stated in this section determined that the regulation should not be amended or repealed but retained in its current form.

Contact Information: Stephen Kirschner, Regulatory Operations Administrator, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email hearingaidspec@dpor.virginia.

Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 826-8863, or email reboard@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.

REAL ESTATE 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 Real Estate 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).

18VAC135-11, Public Participation Guidelines

18VAC135-20, Virginia Real Estate Board Licensing Regulations

18VAC135-50, Fair Housing 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 October 14, 2019, and ends November 4, 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 Christine Martine, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400,

NOTICES OF INTENDED REGULATORY ACTION

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending **12VAC5-381, Regulation for the Licensure of Home Care Organizations**. The purpose of the proposed action is to assess all current regulation content, including the informed consent contract, the qualifications and supervision of licensed and nonlicensed personnel, the complaint procedure for consumers, the provision and coordination of treatment and services provided by the organization, the clinical records kept by the organization, the utilization and quality control review procedures, and the arrangements for the continuing evaluation of the quality of care provided. This action may address comments received during the public comment period for this notice and subsequent stages of this action.

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation 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; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

Statutory Authority: §§ 32.1-12 and 32.1-162.12 of the Code of Virginia.

Public Comment Deadline: November 13, 2019.

Agency Contact: Robert Payne, Director, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23230-4920, telephone (804) 367-2109, FAX (804) 527-4502, or email robert.payne@vdh.virginia.gov.

VA.R. Doc. No. R20-6178; Filed September 23, 2019, 3:45 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending **12VAC30-20, Administration of Medical Assistance Services**. The

purpose of the proposed action is to establish a more formalized process by which to address administrative settlement agreements in a timely fashion. The proposed action will include (i) in 12VAC30-20-550, establishing the process for settlement agreement resolution between a Medicaid provider and the Department of Medical Assistance Services and (ii) amendments to the existing timelines, consistent with the new settlement agreement procedures, for issuing the informal decision in an informal administrative appeal or the recommended decision of the hearing officer in a formal administrative appeal.

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

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

Public Comment Deadline: November 13, 2019.

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

VA.R. Doc. No. R20-5615; Filed September 18, 2019, 12:31 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Dentistry intends to consider amending **18VAC60-25, Regulations Governing the Practice of Dental Hygiene**. The purpose of the proposed action is to adopt the protocol for dental hygienists employed by the Department of Behavioral Health and Developmental Services practicing under remote supervision of a dentist in accordance with Chapter 86 of the 2019 Acts of Assembly. The proposed action would also correct citations and update the protocol for the remote supervision of dental hygienists employed by the Virginia Department of Health.

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

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

Public Comment Deadline: November 13, 2019.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA

Notices of Intended Regulatory Action

23233, telephone (804) 367-4437, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

V.A.R. Doc. No. R20-6044; Filed September 30, 2019, 10:32 a.m.

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 **18VAC85-50, Regulations Governing the Practice of Physician Assistants**. The purpose of the proposed action is to comply with amendments to the Code of Virginia, pursuant to Chapters 92 and 137 of the 2019 Acts of Assembly, that replace practice by a physician assistant under the supervision of a physician or a podiatrist with practice in collaboration and consultation with a patient care team physician or patient care team podiatrist.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2951.1 of the Code of Virginia.

Public Comment Deadline: November 13, 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. R20-6083; Filed September 30, 2019, 10:33 a.m.

BOARD OF PHYSICAL THERAPY

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 Physical Therapy intends to consider amending **18VAC112-20, Regulations Governing the Practice of Physical Therapy**. The purpose of the proposed action is to adopt amendments necessary for participation by Virginia in the Physical Therapy Compact, which allows a physical therapist or physical therapist assistant who has obtained a compact privilege to practice in the Commonwealth without a Virginia license. To comply with compact rules, the proposed amendments require all applicants for licensure to have criminal background checks and all holders of a compact privilege to adhere to the laws and regulations governing practice in Virginia. As permitted by compact rules, the proposed amendments set the fee to obtain and renew a compact privilege in Virginia at \$50, which is similar to the fee charged by other states.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3474 of the Code of Virginia.

Public Comment Deadline: November 13, 2019.

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

V.A.R. Doc. No. R20-6119; Filed September 18, 2019, 1:42 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Final Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: 1VAC20-50. Candidate Qualification (adding 1VAC20-50-40).

Statutory Authority: §§ 24.2-103 and 24.2-506 of the Code of Virginia.

Effective Date: January 1, 2020.

Agency Contact: David Nichols, Director of Election Services, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8952, or email david.nichols@elections.virginia.gov.

Summary:

As required by Chapter 682 of the 2019 Acts of Assembly, the amendment establishes (i) the requirement that entities that review petition signatures capture the names of canceled voters from the petition on a list and retain this list with the candidate's petition page and (ii) that the reviewing entity may provide this information to appropriate authorities.

1VAC20-50-40. Review of canceled voter petition.

A. Pursuant to the requirements of § 24.2-506 B of the Code of Virginia, in the event a petition signer's voter registration status is canceled at the time of processing petition signatures:

1. The petition signer's name and reason for cancellation must be recorded on a list.

2. A list of canceled voter petition signatures must be retained by the reviewing entity with the candidate's petition page.

B. The candidate's petition page and the list of canceled voter petition signatures may be provided to the appropriate authorities pursuant to § 24.2-1016 of the Code of Virginia.

VA.R. Doc. No. R20-6182; Filed September 24, 2019, 4:41 p.m.



TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL AUTHORITY

Final Regulation

Title of Regulation: 3VAC5-50. Retail Operations (amending 3VAC5-50-160).

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Effective Date: November 15, 2019.

Agency Contact: LaTonya D. Hucks-Watkins, Legal Liaison, Virginia Alcoholic Beverage Control Authority, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@abc.virginia.gov.

Summary:

The amendments (i) permit advertising of happy hour provided the advertisement does not tend to induce minors or other individuals who cannot legally drink to drink or to encourage persons to drink in excess, (ii) remove superfluous provisions that appear in other authority regulations, and (iii) add a reminder that the regulation is subject to and shall be adhered to in a manner consistent with all other authority regulations.

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

3VAC5-50-160. Happy hour and related promotions; definitions; exceptions.

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

1. "Happy hour" means a specified period of time during which alcoholic beverages are sold at prices reduced from the customary price established by a retail licensee.

2. "Drink" means any beverage containing the amount of alcoholic beverages customarily served to a patron as a single serving by a retail licensee.

B. A licensee may advertise its happy hour so long as the advertising does not tend to induce minors or other interdicted individuals to drink or encourage persons to consume to excess.

C. No retail licensee shall engage in any of the following practices:

Regulations

1. Conducting a happy hour between 9 p.m. of each day and 2 a.m. of the following day;

~~2. Allowing a person to possess more than two drinks at any one time during a happy hour, with the exception of flights of wine and beer consisting of samples of not more than five different wines or beers or samples of five different distilled spirits products provided each distilled spirits sample contains no more than one half ounce of distilled spirits;~~

~~3.~~ 2. Increasing the volume of alcoholic beverages contained in a drink without increasing proportionately the customary or established retail price charged for such drink;

4. ~~3.~~ Selling two or more drinks for one price, such as "two for one" or "three for one";

~~5. Selling pitchers of mixed beverages except in accordance with 3VAC5-50-60;~~

~~6. Giving away drinks;~~

~~7.~~ 4. Selling an unlimited number of drinks for one price, such as "all you can drink for \$5.00"; ~~8. Advertising happy hour anywhere other than within the interior of the licensed premises, except that a licensee may use the term "Happy Hour" or "Drink Specials," a list of the alcoholic beverage products featured during a happy hour as well as the time period within which alcoholic beverages are being sold at reduced prices in any otherwise lawful advertisement; or~~

9. 5. Establishing a customary retail price for any drink at a markup over cost significantly less than that applied to other beverages of similar type, quality, or volume.

~~C. D.~~ This regulation section shall not apply to prearranged private parties, functions, or events, not open to the public, where the guests thereof are served in a room [~~or rooms~~] designated and used exclusively for private parties, functions, or events.

E. This section is subject to and shall be adhered to in a manner consistent with all other regulations of the authority.

VA.R. Doc. No. R19-5585; Filed September 18, 2019, 11:53 a.m.



TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A

11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-252. Pertaining to the Taking of Striped Bass (amending 4VAC20-252-80 through 4VAC20-252-110, 4VAC20-252-135).**

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

Effective Date: September 25, 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 (i) lower the recreational striped bass possession limits and change the recreational striped bass size limits in the Chesapeake Bay area and (ii) establish maximum gill net mesh size requirements for commercial striped bass in the Chesapeake Bay and coastal areas.

4VAC20-252-80. Bay spring/summer striped bass recreational fishery.

A. The open season for the Bay spring/summer striped bass recreational fishery shall be May 16 through June 15 inclusive.

B. The area open for this fishery shall be the Chesapeake Bay and its tributaries.

C. The minimum size limit for this fishery shall be 20 inches total length, and the maximum size limit for this fishery shall be 28 inches total length.

D. The possession limit for this fishery shall be ~~two~~ one fish per person.

4VAC20-252-90. Bay fall striped bass recreational fishery.

A. The open season for the bay fall striped bass recreational fishery shall be October 4 through December 31, inclusive.

B. The area open for this fishery shall be the Chesapeake Bay and its tributaries.

C. The minimum size limit for this fishery shall be 20 inches total length.

D. The maximum size limit for this fishery shall be ~~28~~ 36 inches total length; ~~however, the maximum size limit shall only apply to one fish of the possession limit.~~

E. The possession limit for this fishery shall be ~~two~~ one fish per person.

4VAC20-252-100. Potomac River tributaries summer/fall striped bass recreational fishery.

A. The open season for the Potomac River tributaries summer/fall striped bass fishery shall correspond to the open

summer/fall season as established by the Potomac River Fisheries Commission for the mainstem Potomac River; ~~except as provided in subsection D of this section.~~

B. The area open for this fishery shall be the Potomac River tributaries.

C. The minimum size limit for this fishery shall be 20 inches total length.

~~D. The maximum size limit for this fishery shall be 28 inches total length from~~ From May 16 through June 15 the maximum size limit for this fishery shall be 28 inches total length.

E. From June 16 through December 31 the maximum size limit for this fishery shall be 36 inches total length.

F. The possession limit for this fishery shall be ~~two~~ one fish per person.

4VAC20-252-110. Coastal striped bass recreational fishery.

A. The open seasons for the coastal striped bass recreational fishery shall be January 1 through March 31 and May 16 through December 31, inclusive.

B. The area open for this fishery shall be the coastal area as defined in this chapter.

C. The minimum size limit for this fishery shall be 28 inches total length.

D. The maximum size limit for this fishery shall be 36 inches total length.

E. The possession limit for this fishery shall be one fish per person per day.

4VAC20-252-135. Gill net mesh size and tending restrictions: exemptions.

A. Any registered commercial fisherman who is permitted to harvest striped bass from the coastal area in accordance with 4VAC20-252-130 A and C and sets or fishes any gill net in the coastal area shall be prohibited from using a gill net mesh size greater than nine inches in stretched mesh.

B. Any registered commercial fisherman who is permitted to harvest striped bass from the coastal area in accordance with 4VAC20-252-130 A and C and sets or fishes any gill net in the coastal area shall be exempt from the maximum gill net mesh size requirements during November and December as described in 4VAC20-430-65 A and B.

~~B.~~ C. Any registered commercial fisherman who is permitted to harvest striped bass from the coastal area in accordance with 4VAC20-252-130 A and C and sets or fishes any gill net seven inches or greater in stretched mesh in the coastal area shall be exempt from the tending requirements described in 4VAC20-430-65 E and F during the months of November and December.

~~C.~~ D. Any registered commercial fisherman who is permitted to harvest striped bass from the coastal area in accordance with 4VAC20-252-130 A and C shall display an optic yellow flag issued by the commission while fishing for striped bass in the coastal area and while transiting the coastal area before and after a striped bass fishing trip. This flag shall be prominently displayed on the starboard side of the vessel.

E. Any registered commercial fisherman who is permitted to harvest striped bass from the Chesapeake Bay area in accordance with 4VAC20-252-130 A and C and sets or fishes any gill net in the Chesapeake Bay area shall be prohibited from using a gill net greater than seven inches in stretched mesh with the exception of restricted areas as defined in 4VAC20-751-20.

VA.R. Doc. No. R20-6144; Filed September 25, 2019, 10:23 a.m.

Emergency Regulation

Title of Regulation: 4VAC20-510. Pertaining to Amberjack and Cobia (amending 4VAC20-510-25).

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Effective Dates: September 25, 2019, through October 24, 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.

Preamble:

The amendment establishes a closure date for the commercial cobia fishery on October 1, 2019.

4VAC20-510-25. Commercial fishery possession limits and season.

A. It shall be unlawful for any person fishing commercially to possess more than two amberjack or more than two cobia at any time, except as described in 4VAC20-510-33. Any amberjack or cobia caught after the possession limit has been reached shall be returned to the water immediately. When fishing from any boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of valid commercial fisherman registration licensees on board multiplied by two, except there is a maximum vessel limit of six cobia per vessel per day. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

B. In ~~2018~~ 2019 it shall be unlawful for any person fishing commercially to harvest or possess any cobia after September 30.

VA.R. Doc. No. R20-6183; Filed September 25, 2019, 8:11 a.m.

Regulations

Final Regulation

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

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

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

Effective Date: September 25, 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:

For summer flounder commercially harvested offshore (federal waters) and landed in Virginia, the amendments set for fall 2019 (i) the landing dates as October 1 through November 15 and November 16 through December 31 and (ii) the possession and landing limits as 10,000 pounds.

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

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

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

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

C. From March 1 through April 19, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the combined total of the Virginia landing limit described in subdivision 2 of this

subsection and the amount of the legal North Carolina or New Jersey landing limit or trip limit.

2. Land in Virginia more than a total of 10,000 pounds of summer flounder.

3. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

~~D. From October 1 through December 31~~ November 15, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the combined total of the Virginia landing limit described in subdivision 2 of this subsection and the amount of the legal North Carolina or New Jersey landing limit or trip limit.

2. Land in Virginia more than a total of ~~7,000~~ 10,000 pounds of summer flounder.

3. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

E. From November 16 through December 31, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the total of the Virginia landing limit described in subdivision 2 of this subsection and the amount of the legal North Carolina or New Jersey landing limit or trip limit.

2. Land in Virginia more than a total of 10,000 pounds of summer flounder.

3. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

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

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

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

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

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

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

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

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

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

VA.R. Doc. No. R20-6184; Filed September 25, 2019, 8:40 a.m.

TITLE 8. EDUCATION

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Final Regulation

REGISTRAR'S NOTICE: The State Council of Higher Education for Virginia is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 4 of the Code of Virginia, which exempts regulations relating to grants of state or federal funds or property.

Title of Regulation: **8VAC40-180. Virginia Foster Care Tuition Grant Regulations (adding 8VAC40-180-10 through 8VAC40-180-50).**

Statutory Authority: § 23.1-601 of the Code of Virginia.

Effective Date: October 1, 2019.

Agency Contact: Beverly Rebar, Senior Associate for Academic and Legislative Affairs, State Council of Higher Education for Virginia, 101 North 14th Street, 9th Floor, Monroe Building, Richmond, VA 23219, telephone (804) 371-0571, or email beverlyrebar@schev.edu.

Summary:

Pursuant to § 23.1-601 of the Code of Virginia, the regulatory action establishes provisions for implementation and administration of a financial aid program to assist foster care students to attend college, including definitions, application procedures, eligibility criteria for initial and renewal awards, and information about award amounts and restrictions.

CHAPTER 180
VIRGINIA FOSTER CARE TUITION GRANT
REGULATIONS

8VAC40-180-10. Definitions.

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

"Award" means a grant from state or institutional funds authorized for the Virginia Foster Care Tuition Grant.

"Baccalaureate public institution of higher education" means Christopher Newport University, George Mason University,

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James Madison University, Longwood University, the University of Mary Washington, Norfolk State University, Old Dominion University, Radford University, the University of Virginia, the University of Virginia's College at Wise as a division of the University of Virginia, Virginia Commonwealth University, Virginia Military Institute, Virginia Polytechnic Institute and State University, Virginia State University, and The College of William and Mary in Virginia.

"Comprehensive community college" or "community college" means an associate-degree-granting public institution of higher education in Virginia governed by the State Board of Community Colleges.

"Cost of attendance" means the sum of tuition, required fees, room, board, books and supplies, and other education-related expenses as determined by a participating institution for purposes of awarding federal Title IV student financial assistance.

"Eligible program" means a degree or certificate program of at least one academic year in length or a noncredit workforce credential program in a comprehensive community college. As used in this section, "academic year" means the enrollment period which normally extends from late August to May or early June that is normally comprised of two semesters (fall and spring) or three quarters (fall, winter, and spring).

"Expected family contribution" or "EFC" means a measure of a student's family's financial strength and is calculated according to federal aid methodology and used to determine eligibility for need-based federal Title IV aid. The institution may exercise professional judgment to adjust the student's EFC, as permitted under federal law, based on factors that affect the family's ability to pay. For students eligible for a state award but the federal processor has not calculated the student's EFC, the institution shall calculate the student's EFC using the appropriate federal EFC worksheet.

"Financial need" means any positive difference between a student's cost of attendance and the student's expected family contribution.

"Free Application for Federal Student Aid" or "FAFSA" means the needs analysis form submitted to the United States Department of Education, which is completed annually by students applying for federal Title IV student financial assistance and need-based financial aid programs sponsored by the Commonwealth of Virginia and that result in the calculation of the expected family contribution.

"Full-time student for more than five years" means that the recipient must not have completed in excess of 120 semester hours or its equivalent.

"Gift aid" means grants, scholarships, tuition waivers, or other forms of aid that do not need to be repaid and excludes loans or work-study.

"Half-time enrollment" means enrolling into a minimum of six credit hours for semester-based terms or its equivalent.

"Participating institution" means any comprehensive community college, any other associate-degree-granting public institution of higher education, or baccalaureate public institution of higher education.

"Program" means the Virginia Foster Care Tuition Grant program.

"Satisfactory academic progress" means acceptable progress towards completion of an approved course of study, as defined by the institution for the purposes of eligibility under § 668 of the Federal Compilation of Student Financial Aid Regulations. For purposes of this definition, "approved course of study" means a curriculum of courses at the undergraduate level leading to a first bachelor's degree. "Approved course of study" does not include religious training or theological education in programs in the 39.xxxx series, as classified in the National Center for Education Statistics' Classification of Instructional Programs (CIP).

"Semester" means a division of an academic year approximately 15 to 16 weeks in length from the first day of classes through the last day of exams for the fall and spring enrollment periods.

"Term" means the fall semester or quarter, winter quarter, spring semester or quarter, or summer session.

"Tuition and mandatory fees" means the tuition and mandatory education and general (E&G) fees and mandatory non-E&G fees charged by the institution.

8VAC40-180-20. Application procedures and eligibility criteria for an initial award.

A. In order to apply for the program, the student must:

- 1. Submit the Free Application for Federal Student Aid by the participating institution's priority filing date or deadline and complete the verification process, if applicable;**
- 2. Be accepted into an associate-degree-granting public institution of higher education or baccalaureate public institution of higher education; and**
- 3. Ensure that a document on official Department of Social Services letterhead providing dates in foster care, and if applicable, an adoption assistance agreement verifying special needs adoption, is sent to the institution's financial aid office.**

B. To be eligible for an award, the student must:

- 1. Be a foster child as supported by documentation from the Department of Social Services that includes either (i)**

dates in foster care or (ii) assistance received for a special needs adoption. For the purposes of this chapter, "foster child" means one who was in foster care at the time they received their high school diploma or general education diploma (GED); in the custody of a social service agency or a special needs adoption at the time they received their high school diploma or GED; or was formerly in foster care when turning age 18 years and subsequently received a high school diploma or GED;

2. Have at least half-time enrollment in an eligible program;

3. Be a domiciliary resident of Virginia. For the purposes of this chapter, "domiciliary resident of Virginia" means a student who is determined by a participating institution to meet the eligibility requirements specified by § 23.1-502 et seq. of the Code of Virginia;

4. Maintain satisfactory academic progress;

5. Have not been previously enrolled as a full-time student for more than five years;

6. Not hold a bachelor's degree; and

7. Demonstrate financial need.

8VAC40-180-30. Amount of awards and award restrictions.

A. Community colleges must provide awards, when combined with other gift aid, sufficient to cover, at a minimum, tuition and mandatory fees.

B. Richard Bland College and baccalaureate public institutions of higher education may provide awards, when combined with other gift aid, sufficient to cover at a minimum tuition and mandatory fees.

C. Awards are subject to the following restrictions:

1. The award when combined with other gift aid may not exceed the student's cost of attendance.

2. The award when combined with other tuition-only awards may not exceed the student's tuition and mandatory fees. For the purposes of this chapter, "tuition-only awards" means any grants, scholarships, tuition waivers, or any other form of aid that does not need to be repaid that are designated by the source of the aid to be applied only to tuition and mandatory fees.

3. If an award recipient's enrollment is below half time as of the institution's census date, eligibility for the grant is lost and must be refunded to the institution.

D. A student who receives an award and who during a term withdraws from the institution that made the award must surrender the balance of the award. In determining the earned portion of the award that the student may retain, the institution shall apply the percentage of earned aid resulting

from the federal return to Title IV formula to the student's award amount.

E. A student who has a change in enrollment, such as adding or dropping one or more courses, must have his award reevaluated by the institution to ensure that the award conforms with the restrictions under subsection C of this section.

8VAC40-180-40. Use of funds.

Funding for this program may be designated from either institutional appropriations of the Virginia Student Financial Assistance Program or institutional funds.

8VAC40-180-50. Renewability of awards.

Community colleges must provide for renewal awards. Richard Bland College and baccalaureate public institutions of higher education may provide for renewal awards. To be eligible for a renewal award, the student must:

1. Meet satisfactory academic progress standards;

2. Complete the FAFSA or FAFSA renewal form as appropriate;

3. Have at least half-time enrollment in an eligible program;

4. Have not been previously enrolled as a full-time student for more than five years;

5. Not have a prior bachelor's degree;

6. Demonstrate financial need; and

7. Meet additional criteria as determined by the participating institution. Such requirements may include a minimum grade point average, continuous enrollment, or full-time enrollment.

VA.R. Doc. No. R20-6124; Filed September 19, 2019, 3:36 p.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Emergency Regulation

Title of Regulation: 12VAC30-20. Administration of Medical Assistance Services (amending 12VAC30-20-540, 12VAC30-20-550, 12VAC30-20-560).

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

Effective Dates: November 14, 2019, through May 13, 2021.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services,

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600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmass.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 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.

Chapter 2, Item 303 V 2 and clause (vii) of Item 303 JJ 1 of the 2018 Acts of Assembly, Special Session I, and Chapter 854 of the 2019 Acts of Assembly (appropriation acts) direct the Department of Medical Assistance Services (DMAS) to amend the State Plan for Medical Assistance to implement amendments related to appeals administered by and for DMAS in order to establish a more formalized process by which to address administrative settlement agreements in a timely fashion. Item 303 JJ 2 authorizes DMAS to promulgate emergency regulations to implement these changes.

In 12VAC30-20-550, the amendments (i) establish the process for a settlement agreement resolution between a Medicaid provider and DMAS and (ii) adjust the time periods set forth in the existing informal and formal appeal provisions for consistency with the procedures. The amendments affect the timelines for issuing the informal decision in an informal administrative appeal or a recommended decision of the hearing officer in a formal administrative appeal.

12VAC30-20-540. Informal appeals.

A. Notice of informal appeal.

1. Providers appealing the termination or denial of their Medicaid agreement pursuant to § 32.1-325 E of the Code of Virginia shall file a written notice of informal appeal with the DMAS Appeals Division within 15 days of the provider's receipt of the notice of termination or denial.
2. Providers appealing adjustments to a cost report shall file a written notice of informal appeal with the DMAS Appeals Division within 90 days of the provider's receipt of the notice of program reimbursement. The written notice of informal appeal shall identify the issues, adjustments, or items that the provider is appealing.
3. Providers appealing all other DMAS decisions shall file a written notice of informal appeal with the DMAS Appeals Division within 30 days of the provider's receipt of the decision. The written notice of informal appeal shall identify each adjustment, patient, service date, or other disputed matter that the provider is appealing.

B. Administrative dismissals.

1. Failure to timely file a written notice of informal appeal with the information required by subdivision A 2 or A 3 of this section shall result in an administrative dismissal.
2. A representative, billing company, or other third-party entity filing a written notice of appeal on behalf of a provider shall submit to DMAS, at the time of filing or upon request, a written authorization to act on the provider's behalf, signed by the provider. The authorization shall reference the specific adverse action ~~or actions~~ being appealed including, if applicable, each patient's name and date of service. Failure to submit a written authorization as specified in this subdivision shall result in an administrative dismissal. This requirement shall not apply to an appeal filed by a Virginia licensed attorney.
3. If a provider has not exhausted any applicable DMAS or contractor reconsideration or review process or contractor's internal appeals process that the provider is required to exhaust before filing a DMAS informal appeal, the provider's written notice of informal appeal shall be administratively dismissed.
4. If DMAS has not issued a decision with appeal rights, the provider's attempt to file a written notice of informal appeal, prior to the issuance of a decision by DMAS that has appeal rights, shall be administratively dismissed.

C. Written case summary.

1. DMAS shall file a written case summary with the DMAS Appeals Division within 30 days of the filing of the provider's notice of informal appeal and shall transmit a complete copy of the case summary to the provider on the same day.
2. For each adjustment, patient, and service date or other disputed matter identified by the provider in its notice of informal appeal, the case summary shall explain the factual basis upon which DMAS relied in taking its action or making its decision and identify any authority or documentation upon which DMAS relied in taking its action or making its decision.
3. Failure to file a written case summary with the DMAS Appeals Division within 30 days of the filing of the written notice of informal appeal shall result in dismissal in favor of the provider.
4. The provider shall have 12 days following the due date of the case summary to file with the DMAS Appeals Division and transmit to the author of the case summary a written notice of all alleged deficiencies in the case summary that the provider knows, or reasonably should know, exist. Failure of the provider to timely file a written notice of deficiency with the DMAS Appeals Division shall be deemed a waiver of all deficiencies, alleged or otherwise, with the case summary.

5. Upon timely receipt of the provider's notice of deficiency, DMAS shall have 12 days to address the alleged deficiency ~~or deficiencies~~. If DMAS does not address the alleged deficiency or does not address the alleged deficiency to the provider's satisfaction, the alleged deficiency ~~or deficiencies~~ shall become an issue to be addressed by the informal appeals agent as part of the informal appeal decision.

6. The informal appeals agent shall make a determination as to each deficiency that is alleged by the provider as set forth in this subsection. In making that determination, the informal appeals agent shall determine whether the alleged deficiency is such that it could not reasonably be determined from the case summary the factual basis and authority for the DMAS action, relating to the alleged deficiency, so as to require a dismissal in favor of the provider on the issue ~~or issues~~ to which the alleged deficiency pertains.

D. Conference.

1. The informal appeals agent shall conduct the conference within 90 days from the filing of the notice of informal appeal. If DMAS, the provider, and the informal appeals agent agree, the conference may be conducted by way of written submissions. If the conference is conducted by way of written submissions, the informal appeals agent shall specify the time within which the provider may file written submissions, not to exceed 90 days from the filing of the notice of informal appeal. Only written submissions filed within the time specified by the informal appeals agent shall be considered.

2. The conference may be recorded at the discretion of the informal appeals agent and solely for the convenience of the informal appeals agent. Because the conference is not an adversarial or evidentiary proceeding, no other recordings or transcriptions shall be permitted. Any recordings made for the convenience of the informal appeals agent shall not be released to DMAS or to the provider.

3. Upon completion of the conference, the informal appeals agent shall specify the time within which the provider may file additional documentation or information, if any, not to exceed 30 days. Only documentation or information filed within the time specified by the informal appeals agent shall be considered.

E. Informal appeals decision. The informal appeal decision shall be issued within 180 days of receipt of the notice of informal appeal unless the provider and DMAS have mutually agreed in writing to stay the timeframe for issuing the informal decision pursuant to 12VAC30-20-550.

F. Remand. Whenever an informal appeal is required pursuant to a remand by court order, final agency decision, agreement of the parties, or otherwise, all time periods set

forth in this section shall begin to run effective with the date that the document containing the remand is date-stamped by the DMAS Appeals Division in Richmond, Virginia.

12VAC30-20-550. (Reserved.) Settlement agreements.

A. Providers who have filed an administrative appeal under 12VAC30-20-540 or 12VAC30-20-560 may submit a proposal to DMAS to settle the appeal.

B. A proposal for a settlement shall be submitted in writing by the provider or the provider's counsel to the DMAS Appeals Division Director. The proposal shall include the justification for the settlement and the terms proposed to settle the case. The Appeals Division Director shall refer the proposal to a DMAS appeal representative authorized by the Office of the Attorney General under § 2.2-509 of the Code of Virginia to represent DMAS in administrative proceedings.

C. Stay of decision deadlines.

1. Receipt of a settlement proposal from a provider in accordance with subsection B of this section shall not require the DMAS appeal representative to engage in settlement negotiations or agree to stay the deadline for the informal appeal decision or for the formal appeal recommended decision of the hearing officer (collectively, the decision deadline). The DMAS appeal representative and the provider may jointly agree in writing to stay the decision deadline for a period of up to 60 days to facilitate settlement discussions. The date of the written agreement of the parties to stay the decision deadline shall be the start date for calculating the length of the stay. Written notice of the agreement to stay the decision deadline and the length of stay shall be provided to the Appeals Division Director on the start date. During the stay, the time period to issue the informal appeal decision or the formal appeal recommended decision shall not run; however, all other interim deadlines remain applicable.

2. If the parties mutually agree in writing to a proposed resolution within the agreed upon stay period described in subdivision C 1 of this section, then the stay shall be extended for such additional time as may be necessary for review and approval of the settlement in accordance with § 2.2-514 of the Code of Virginia.

3. A stay may be removed by a party to the appeal for any reason, including the following:

a. The parties do not agree to a full settlement within the agreed upon stay period described in subdivision C 1 of this section;

b. One party advises the other and the Appeals Division Director in writing that it no longer agrees for the stay to continue; or

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c. The parties reach a proposed settlement, but the proposed settlement is not approved in accordance with § 2.2-514 of the Code of Virginia.

If the stay is removed, the stay shall be communicated in writing between the parties and written notice provided to the Appeals Division Director. The time period to issue the informal appeal decision or the formal appeal recommended decision shall resume on the day the notice is provided to the Appeals Division Director.

12VAC30-20-560. Formal appeals.

A. A provider appealing a DMAS informal appeal decision shall file a written notice of formal appeal with the DMAS Appeals Division within 30 days of the provider's receipt of the informal appeal decision. The notice of formal appeal shall identify each adjustment, patient, service date, or other disputed matter that the provider is appealing. Failure to file a written notice of formal appeal in the detail specified within 30 days of receipt of the informal appeal decision shall result in dismissal of the appeal. Pursuant to § 2.2-4019 A of the Code of Virginia, DMAS shall ascertain the fact basis for decisions through informal proceedings unless the parties consent in writing to waive such a conference or proceeding to go directly to a formal hearing, and therefore only issues that were addressed pursuant to § 2.2-4019 of the Code of Virginia shall be addressed in the formal appeal, unless DMAS and the provider consent to waive the informal fact-finding process under § 2.2-4019 A of the Code of Virginia.

B. Documentary evidence, objections to documentary evidence, opening briefs, and reply briefs.

1. Documentary evidence, objections to documentary evidence, opening briefs, and reply briefs shall be filed with the DMAS Appeals Division on the date specified in this subsection. The hearing officer shall only consider those documents or pleadings that are filed within the required timeline. Simultaneous with filing, the filing party shall transmit a copy to the other party and to the hearing officer.

a. All documentary evidence upon which DMAS or the provider relies shall be filed within 21 days of the filing of the notice of formal appeal.

b. Any objections to the admissibility of documentary evidence shall be filed within seven days of the filing of the documentary evidence. The hearing officer shall rule on any such objections within seven days of the filing of the objections.

c. The opening brief shall be filed by DMAS and the provider within 30 days of the completion of the hearing.

d. Any reply brief from DMAS or the provider shall be filed within 10 days of the filing of the opening brief to which the reply brief responds.

2. If there has been an extension to the time for conducting the hearing pursuant to subsection C of this section, the hearing officer is authorized to alter the due dates for filing opening and reply briefs to permit the hearing officer to be in compliance with the due date for the submission of the recommended decision as required by § 32.1-325.1 B of the Code of Virginia and subsection E of this section.

C. The hearing officer shall conduct the hearing within 45 days from the filing of the notice of formal appeal, unless the hearing officer, DMAS, and the provider all mutually agree to extend the time for conducting the hearing. Notwithstanding the foregoing, the due date for the hearing officer to submit the recommended decision to the DMAS director, as required by § 32.1-325.1 B of the Code of Virginia and subsection E of this section, shall not be extended or otherwise changed.

D. Hearings shall be transcribed by a court reporter retained by DMAS.

E. The hearing officer shall submit a recommended decision to the DMAS director with a copy to the provider within 120 days of the filing of the formal appeal notice, unless the provider and DMAS have mutually agreed in writing to stay the timeframe for issuing the recommended decision pursuant to 12VAC30-20-550. If the hearing officer does not submit a recommended decision within 120 days of the filing of the notice of formal appeal or the period specified under 12VAC30-20-550, then DMAS shall give written notice to the hearing officer and the Executive Secretary of the Supreme Court that a recommended decision is due.

F. Upon receipt of the hearing officer's recommended decision, the DMAS director shall notify DMAS and the provider in writing that any written exceptions to the hearing officer's recommended decision shall be filed with the DMAS Appeals Division within 14 days of receipt of the DMAS director's letter. Only exceptions filed within 14 days of receipt of the DMAS director's letter shall be considered.

G. The DMAS director shall issue the final agency decision within 60 days of receipt of the hearing officer's recommended decision in accordance with § 32.1-325.1 B of the Code of Virginia.

VA.R. Doc. No. R20-5615; Filed September 18, 2019, 12:31 p.m.



TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Final Regulation

REGISTRAR'S NOTICE: The Board of Housing and Community Development 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 Board of Housing and Community Development will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 13VAC5-112. Enterprise Zone Grant Program Regulation (amending 13VAC5-112-460).

Statutory Authority: § 59.1-541 of the Code of Virginia.

Effective Date: November 13, 2019.

Agency Contact: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TTY (804) 371-7089, or email kyle.flanders@dhcd.virginia.gov.

Summary:

Pursuant to Chapters 119 and 496 of the 2019 Acts of Assembly, the amendment increases to three the number of times the Governor may renew an enterprise zone designation.

Part VIII

Procedures and Requirements for Zone Designations

13VAC5-112-460. Procedures for zone application and designation.

A. Upon recommendation of the Director of the Department of Housing and Community Development, the Governor may designate up to 30 enterprise zones in accordance with the provisions of this section. Such designations are to be done in coordination with the expiration of existing zones designated under earlier Enterprise Zone Program provisions or the termination of designations pursuant to 13VAC5-112-510, 13VAC5-112-520, and 13VAC5-112-530 D.

B. Applications for zone designation will be solicited by the department on a competitive basis in accordance with the following procedures and requirements:

1. An application for zone designation must be submitted on Form EZ-1 to the Director, Virginia Department of Housing and Community Development, 600 East Main Street, Suite 300, Richmond, Virginia 23219, on or before the submission deadline established by the department.
2. Each applicant jurisdiction must hold at least one public hearing on the application for zone designation prior to submission of the application to the department. Notification of the public hearing is to be in accordance with § 15.2-2204 of the Code of Virginia, relating to advertising of public hearings. An actual copy of the advertisement must be included in the application.

3. In order to be considered in the competitive zone designation process, an application from a jurisdiction must include all the requested information, be accompanied by a resolution of the local governing body, and be signed by the chief administrator or the clerk to county board of supervisors where there is no chief administrator. The chief administrator or clerk, in signing the application, must certify that the applicant jurisdiction held the public hearing required in subdivision 2 of this subsection.

C. Within 60 days following the application submission deadline, the department shall review and the director shall recommend to the Governor those applications that meet a minimum threshold standard as set by the department and are competitively determined to have the greatest potential for accomplishing the purposes of the program.

D. Enterprise zones designated pursuant to § 59.1-542 of the Code of Virginia will be designated for an initial 10-year period except as provided for in 13VAC5-112-510 and 13VAC5-112-520. Upon recommendation of the director of the department, the Governor may renew zones for up to ~~two~~ three five-year renewal periods.

E. A local governing body whose application for zone designation is denied shall be notified and provided with the reasons for denial.

VA.R. Doc. No. R20-6166; Filed September 25, 2019, 8:40 a.m.



TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The following amendments are exempt from the Virginia Administrative Process Act pursuant to § 2.2-4002 C of the Code of Virginia, which provides that minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Act, Chapter 41 (§ 2.2-4100 et seq.) of Title 2.2 of the Code of Virginia, made by the Virginia Code Commission pursuant to § 30-150 of the Code of Virginia, shall be exempt from the provisions of the Virginia Administrative Process Act.

Title of Regulation: 14VAC5-395. Rules Governing Settlement Agents (amending 14VAC5-395-10, 14VAC5-395-20, 14VAC5-395-30, 14VAC5-395-70, 14VAC5-395-75, 14VAC5-395-80).

Statutory Authority: §§ 12.1-13 and 55.1-1012 of the Code of Virginia.

Effective Date: October 14, 2019.

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Agency Contact: Raquel Pino, Insurance Policy Advisor, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9944, or email raquel.pino@scc.virginia.gov.

Summary:

The amendments update citations to the Code of Virginia due to the recodification of Title 55 to the Title 55.1 in the 2019 Session of the General Assembly.

14VAC5-395-10. Applicability.

This chapter implements Chapter ~~27.3~~ ~~(§ 55-525.16~~ 10 (§ 55.1-1000 et seq.) of Title ~~55~~ 55.1 of the Code of Virginia and applies to all title insurance agents, title insurance agencies, and title insurance companies providing escrow, closing, or settlement services involving the purchase of or lending on the security of any real property in the Commonwealth of Virginia.

14VAC5-395-20. Definitions.

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

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

"Bureau" means the State Corporation Commission Bureau of Insurance.

"Business entity" means a partnership, limited partnership, limited liability company, corporation, or other legal entity other than a sole proprietorship, professional corporation, or professional limited liability company.

"Chapter ~~27.3~~ 10" means Chapter ~~27.3~~ ~~(§ 55-525.16~~ 10 (§ 55.1-1000 et seq.) of Title ~~55~~ 55.1 of the Code of Virginia.

"Designated licensed producer" means an individual who (i) possesses a valid license to sell, solicit, or negotiate contracts of title insurance in the Commonwealth; (ii) is appointed; (iii) is an officer, director, or employee of the business entity; and (iv) is responsible for the business entity's compliance with the insurance laws, rules, and regulations of this Commonwealth.

"Employee" means an individual (i) whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person and (ii) whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.

"Escrow, closing, or settlement services" means the administrative and clerical services required to carry out the terms of contracts affecting real estate. These services include (i) placing orders for title insurance; (ii) receiving and issuing receipts for money received from the parties; (iii) ordering

loan checks and payoffs; (iv) ordering surveys and inspections; (v) preparing settlement statements or Closing Disclosure forms; (vi) determining that all closing documents conform to the parties' contract requirements; (vii) setting the closing appointment; (viii) following up with the parties to ensure that the transaction progresses to closing; (ix) ascertaining that the lenders' instructions have been satisfied; (x) conducting a closing conference at which the documents are executed; (xi) receiving and disbursing funds; (xii) completing form documents and instruments selected by and in accordance with instructions of the parties to the transaction; (xiii) handling or arranging for the recording of documents; (xiv) sending recorded documents to the lender; (xv) sending the recorded deed and the title policy to the buyer; and (xvi) reporting federal income tax information for the real estate sale to the Internal Revenue Service.

"Lay real estate settlement agent" means a person who (i) is not licensed as an attorney under Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1 of the Code of Virginia, (ii) is not a party to the real estate transaction, (iii) provides escrow, closing or settlement services in connection with a transaction related to any real estate in this Commonwealth, and (iv) is listed as the settlement agent on the settlement statement or Closing Disclosure for the transaction.

"Settlement agent" means a person, other than a party to the real estate transaction, who provides escrow, closing, or settlement services in connection with a transaction related to real estate in the Commonwealth and who is listed as the settlement agent on the settlement statement or Closing Disclosure for the transaction. Any person, other than a party to the transaction, who conducts the settlement conference and receives or handles money shall be deemed a "settlement agent" subject to the applicable requirements of Chapter ~~27.3~~ 10 and this chapter.

"Title insurance agency" or "title insurance agent" means any individual or business entity licensed in the Commonwealth, pursuant to Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2 of the Code of Virginia, as a title insurance agent and appointed by a title insurance company licensed in the Commonwealth who shall perform all of the following services (for which liability arises) relevant to the issuance of title insurance policies, subject to the underwriting directives and guidelines of the agent's title insurance company. These services shall include (i) the evaluation of the title search to determine the insurability of the title; (ii) a determination of whether or not underwriting objections have been cleared; (iii) the actual issuance of a title commitment or binder and endorsements; and (iv) the actual issuance of the policy ~~or policies~~ and endorsements on behalf of the title insurance company. A title insurance agent holding funds in escrow shall promptly deposit the funds in a trust account in a financial institution authorized to do business in this Commonwealth. This trust account shall be separate from all other accounts held by the agent.

"Title insurance company" means any company licensed to transact, or transacting, title insurance in this Commonwealth.

14VAC5-395-30. Registration.

A. Every settlement agent shall register with the bureau in accordance with the provisions of ~~§ 55-525.30~~ § 55.1-1014 of the Code of Virginia.

B. At the time of application for registration, a settlement agent other than a title insurance company shall provide to the bureau (i) its certificate of authorization or charter of a domestic limited liability company or corporation, or certificate of registration or certificate of authority of a foreign limited liability company or corporation, as applicable; (ii) an original surety bond; and (iii) the name of the designated licensed producer.

C. Within 30 days of registration a settlement agent shall furnish to the bureau:

1. Legal name;
2. Any fictitious or assumed names;
3. Principal place of business address;
4. Addresses of all other business locations;
5. Telephone numbers;
6. Escrow account numbers and financial institution addresses;
7. Employee and independent contractor list;
8. Website ~~or websites~~;
9. Affiliated entities; and
10. Such other information as the bureau may require.

14VAC5-395-70. Reporting requirements.

A. Every settlement agent shall make all escrow, closing, or settlement records available promptly upon request for examination by the bureau without notice during normal business hours.

B. A settlement agent shall maintain documentation that supports all entries on the settlement statement or Closing Disclosure.

C. A settlement agent shall promptly respond to a bureau request for books, records, documentation, or other information in connection with the bureau's investigation, enforcement, or examination of the settlement agent's compliance with applicable laws and regulations. If no time period is specified by the bureau, a written response as well as any requested books, records, documentation, or information shall be delivered by the settlement agent to the bureau not later than 30 days from the date of such request.

D. Within 30 days following the occurrence of any of the following events, a settlement agent other than a title insurance company shall report to the bureau if:

1. Any bankruptcy, reorganization, or receivership proceedings are filed by or against the settlement agent.
2. Any governmental authority enters a final disposition in a regulatory, administrative, or enforcement action against the settlement agent.
3. Any governmental authority revokes or suspends the settlement agent's registration, license, or other license for a similar business.
4. Based on allegations by any governmental authority that the settlement agent violated any law or regulation applicable to the conduct of its licensed business, the settlement agent enters into, or otherwise agrees to the entry of, a settlement or consent order, decree, or agreement with or by such governmental authority.
5. The settlement agent surrenders its license in another state.
6. The settlement agent is denied a license in another state.
7. The settlement agent or any of its members, partners, directors, officers, principals, employees, or independent contractors is convicted of a felony.
8. Any funds held by the settlement agent are (i) seized by or on behalf of any court or governmental instrumentality or (ii) forfeited to or on behalf of any court or governmental instrumentality. The term "forfeited" shall not include the escheatment of funds in accordance with The Uniform Disposition of Unclaimed Property Act (~~§ 55-210.1~~ § 55.1-2500 et seq. of Title ~~55-55.1~~ of the Code of Virginia) or the interpleading of funds to a court of competent jurisdiction.

E. A settlement agent shall immediately notify the bureau following the loss of (i) a designated licensed producer, (ii) required insurance coverage, or (iii) required bond coverage.

F. A settlement agent or former settlement agent other than a title insurance company shall provide the following information to the bureau within 10 days after such person's title insurance license is surrendered, terminated, suspended, or revoked or has lapsed by operation of law, or the licensed and registered business is otherwise closed: (i) the names, addresses, telephone numbers, fax numbers, and email addresses of a designated contact person; (ii) the location of the settlement agent's or former settlement agent's records; and (iii) any additional information that the bureau may reasonably require. A settlement agent or former settlement agent other than a title insurance company shall maintain current information with the bureau until all escrow funds are disbursed and all title policies are issued.

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G. Sixty days prior to ceasing business, a settlement agent shall provide notice to the bureau of its intent to cease conducting settlements and the anticipated date of business termination.

H. The reports required by this section shall be in the format and contain such additional information as the bureau may reasonably require. The bureau may also require additional reports that it deems necessary.

14VAC5-395-75. Operating requirements.

A settlement agent shall comply with the following requirements:

1. A settlement agent shall continuously maintain the requirements and standards for licensure and registration.
2. A settlement agent shall reconcile its escrow accounts monthly.
3. A settlement agent shall not provide any information to the bureau or a consumer that is false, misleading, or deceptive.
4. A settlement agent shall not charge duplicative or padded fees for escrow, closing, or settlement services.
5. A settlement agent shall not engage in any activity that directly or indirectly results in an evasion of the provisions of Chapter ~~27.3~~ 10 or this chapter.
6. Any person, other than a party to the transaction, who conducts the settlement conference and receives or handles money, including possessing wire transfer authority, shall be deemed a "settlement agent" subject to the applicable requirements of Chapter ~~27.3~~ 10 and this chapter.
7. A designated licensed producer shall be appointed by the same title insurance company as its employer settlement agent.
8. A settlement agent shall not use or accept the services of a title insurance agent who is an independent contractor unless the title insurance agent is licensed and appointed. A settlement agent that permits an independent contractor to conduct one or more settlement conferences on behalf of the settlement agent shall ensure that the independent contractor is properly insured and bonded as required by Chapter ~~27.3~~ 10 and this chapter.
9. A settlement agent that uses the services of a title insurance agent who is an independent contractor shall be considered the legal principal of the independent contractor and shall be liable for any violations of Chapter ~~27.3~~ 10 or this chapter committed by the independent contractor, including unintentional conduct, within the scope of engagement.
10. A former settlement agent shall remain subject to the provisions of Chapter ~~27.3~~ 10 and this chapter in connection with all settlements that the settlement agent

performed while licensed and registered, notwithstanding the occurrence of any of the following events:

- a. The settlement agent's license is surrendered, terminated, suspended, or revoked or has lapsed by operation of law; or
- b. The settlement agent ceases conducting settlements.

11. If a settlement agent or former settlement agent disposes of records containing a consumer's personal financial information or copies of a consumer's identification documents, such records and copies shall be disposed of in a secure manner.

14VAC5-395-80. Enforcement.

Failure to comply with any provision of Chapter ~~27.3~~ 10 or this chapter may result in penalties, license revocation or suspension, the entry of a cease and desist order, restitution, or other enforcement action.

VA.R. Doc. No. R20-6168; Filed September 20, 2019, 11:39 a.m.



TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Final Regulation

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

Titles of Regulations: **16VAC25-60. Administrative Regulation for the Virginia Occupational Safety and Health Program (amending 16VAC25-60-130).**

16VAC25-85. Recording and Reporting Occupational Injuries and Illnesses (amending 16VAC25-85-1904.10).

16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.6, 16VAC25-90-1910.120, 16VAC25-90-1910.1001, Appendices D, E, H to 16VAC25-90-1910.1001, 16VAC25-90-1910.1017, 16VAC25-90-1910.1018, Appendices A, C to 16VAC25-90-1910.1018, 16VAC25-90-1910.1025, 16VAC25-90-1910.1026, 16VAC25-90-1910.1027, Appendix D to 16VAC25-90-1910.1027, 16VAC25-90-1910.1028, 16VAC25-90-1910.1029, Appendices A, B to 16VAC25-90-1910.1029, 16VAC25-90-1910.1030, 16VAC25-90-1910.1043, Appendices B-1, B-11, B-111, C, D to

16VAC25-90-1910.1043, 16VAC25-90-1910.1044, 16VAC25-90-1910.1045, 16VAC25-90-1910.1047, 16VAC25-90-1910.1048, Appendix D to 16VAC25-90-1910.1048, 16VAC25-90-1910.1050, 16VAC25-90-1910.1051, Appendix F to 16VAC25-90-1910.1051, 16VAC25-90-1910.1052, Appendix B to 16VAC25-90-1910.1052, 16VAC25-90-1910.1053).

16VAC25-100. Federal Identical Shipyard Employment Standards (amending 16VAC25-100-1915.5, 16VAC25-100-1915.80, 16VAC25-100-1915.1001, Appendices D, E, I to 16VAC25-100-1915.1001, 16VAC25-100-1915.1026).

16VAC25-175. Federal Identical Construction Industry Standards (amending 16VAC25-175-1926.6, 16VAC25-175-1926.50, 16VAC25-175-1926.55, 16VAC25-175-1926.60, 16VAC25-175-1926.62, 16VAC25-175-1926.64, 16VAC25-175-1926.104, 16VAC25-175-1926.200, 16VAC25-175-1926.201, 16VAC25-175-1926.250, 16VAC25-175-1926.800, 16VAC25-175-1926.1000, 16VAC25-175-1926.1001, 16VAC25-175-1926.1002, 16VAC25-175-1926.1003, 16VAC25-175-1926.1101, Appendices D, E, I to 16VAC25-175-1926.1101, 16VAC25-175-1926.1126, 16VAC25-175-1926.1127, 16VAC25-175-1926.1129, 16VAC25-175-1926.1153; repeal 16VAC25-175-1926.202, 16VAC25-175-1926.203, Appendix A to Subpart W).

Statutory Authority: § 40.1-22 of the Code of Virginia; Occupational Safety and Health Act of 1970 (P.L. 91-596).

Effective Date: November 15, 2019.

Agency Contact: Holly Trice, Senior Staff Attorney, Department of Labor and Industry, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 786-2641, FAX (804) 371-6524, or email holly.trice@doli.virginia.gov.

Summary:

In a final rule, Standards Improvement Project - IV (SIP-IV), federal Occupational Safety and Health Administration (OSHA) makes 14 revisions to existing standards in the recordkeeping, general industry, maritime, and construction standards. SIP-IV removes or revises outdated, duplicative, unnecessary, and inconsistent requirements in OSHA's safety and health standards in 29 CFR.

More specifically, SIP-IV:

1. Revises § 1904.10(b)(6) of 29 CFR Part 104 (Occupational Injuries and Illness Recordkeeping and Reporting Standards) to assist employers in complying with requirements for recording hearing loss by adding a cross reference to § 1904.5.

2. Makes three revisions to Subpart Z (Toxic and Hazardous Substances) of Parts 1910, 1915, and 1926 as follows:

a. Remove the requirement that employers provide periodic chest X-rays (CXR) to screen for lung cancer from Inorganic Arsenic (§ 1910.1018), Coke Oven Emissions (§ 1910.1029), and Acrylonitrile (§ 1910.1045). OSHA is not removing (i) the requirement for a baseline CXR in these or any other standards or (ii) the CXR requirements in standards where CXR is used for purposes other than screening for lung cancer.

b. Allow but not require use of digital "CXRs" in the medical surveillance provisions of Inorganic Arsenic (§ 1910.1018), Coke Oven Emissions (§ 1910.1029), Acrylonitrile (§ 1910.1045), Asbestos (§§ 1910.1001, 1915.1001, 1926.1101), and Cadmium (§§ 1910.1027 and 1926.1127) and allows other reasonably-sized standard X-ray films, such as the 16-inch by 17-inch size, to be used in addition to the 14-inch by 17-inch film specified in some standards.

c. Update terminology and references to (i) replace "roentgenogram" with "X-ray"; (ii) eliminate references to semiannual exams for certain employees in the Coke Oven Emissions appendices (§ 1910.1029, Appendix A(VI) and Appendix B(II)(A)) as these exams were eliminated in the second SIP rulemaking (70 FR 1112); (iii) in Appendix E of each of its three asbestos standards (§§ 1910.1001, 1915.1001, and 1926.1101), update terminology and clarify that classification must be in accordance with the International Labour Organization (ILO) classification system according to the Guidelines for the use of the ILO International Classification of Radiographs of Pneumoconioses (revised edition 2011); and (iv) specify that only ILO standard digital chest radiographic images are to be used to classify digital CXRs and that digital CXRs are not to be printed out as hard copies and then classified.

3. Makes four revisions to update lung function testing requirements found in Subpart Z (Toxic and Hazardous Substances) of Part 1910, Cotton Dust Standard (§ 1910.1043) including the following:

a. In § 1910(h)(2)(iii), require an evaluation of forced expiratory volume (FEV1), forced vital capacity (FVC), and FEV1/FVC against the lower limit of normal and percent predicted values to fully characterize possible pulmonary impairment in exposed workers, which is consistent with generally accepted current practices and supported by the National Institute of Occupational Safety and Health (NIOSH).

b. Remove the old Knudson values from Appendix C, reserve Appendix C for future use, and modify § 1910.1043(n)(1) to specify that only Appendices B and D are mandatory.

c. Change two subheaders in The Respiratory Questionnaire for Non-Textile Workers for the Cotton

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Industry (Appendix B-II to § 1910.1043), section "B. Occupational History Table," column titled "Tenure of Employment" to read as follows: "FROM (year)" and "TO (year)"; the "Tenure of Employment" column contains boxes in which dates of employment are entered.

d. Make changes to reflect the most recent spirometry recommendations from American Thoracic Society/European Respiratory Society (ATS/ERS) (Miller et al., 2005) in Appendix D to § 1910.1043, which sets standards for spirometric measurements of pulmonary function.

4. Removes the term "feral cat" from the definitions in § 1915.80.

5. Revises § 1926.50 to update the 911 service posting requirements consistent with the current status of land-line and wireless telephone technologies.

6. Makes several minor clarifications to § 1926.55, including changing the phrase "threshold limit values" (TLV) to "permissible exposure limits" (PELs), removing confusing phrases, and fixing grammatical errors.

7. Replaces the entire regulatory text for the Process Safety Management of Highly Hazardous Chemicals (PSM) Standard for Construction at § 1926.64 with a cross reference to the identical general industry standard at § 1910.119.

8. Revises the minimum breaking strength in the safety belts, lifelines, and lanyards standard at § 1926.104(c) from 5,400 to 5,000 pounds to conform with the breaking strength requirements in the Fall Protection Standard at § 1926.502(d)(9).

9. Revises Subpart G of Part 1926:

a. Update the version of Part 6 of the Manual on Uniform Traffic Control Devices (MUTCD) that is incorporated by reference to the November 4, 2009, MUTCD (2009 Edition), including Revision 1 and Revision 2, both dated May 2012 (74 FR 66730, 77 FR 28455, and 77 FR 28460).

b. Revise §§ 1926.200 through 1926.203 to (i) delete references in §§ 1926.200(g)(2) and 1926.201(a) to the 1988 Edition and Millennium Edition of the MUTCD and insert references to the 2009 Edition, (ii) revise the regulatory text of § 1926.200 (g)(1) and (2) to eliminate confusion regarding OSHA's interpretation of the existing text; (iii) delete § 1926.202 because it duplicates the requirements in the revisions to § 1926.200(g); and (iv) delete § 1926.203 because the revisions to § 1926.202 make § 1926.203 unnecessary.

10. Revises § 1926.250(a)(2) to exclude all single-family residential structures and woodframed multifamily

residential structures from the requirement of posting maximum safe load limits of floors in storage areas.

11. Revises Subpart S (Underground Construction, Caissons, Cofferdams, and Compressed Air) of Part 1926 to update § 1926.800(k)(10)(ii) for mobile diesel powered equipment used in "other than gassy operations" underground by requiring compliance only with § 57.5067, pertaining to underground metal and nonmetal mines, instead of §§ 75.1909, 75.1910, and 75.1911(a) through (i), pertaining to underground coal mines.

12. Revises Subpart W (Rollover Protective Structures; Overhead Protection) of Part 1926 by removing the provisions that specify the test procedures and performance requirements found in §§ 1926.1000, 1926.1001, 1926.1002, and 1926.1003 and replacing those provisions with references to the underlying consensus standards from which they were derived. (ISO 3471:2008, ISO 5700:2013, ISO 27850:2013.)

13. Revises Subpart Z of Part 1926 by removing and reserving § 1926.1129, which regulated exposure to Coke Oven Emissions in Construction; coke oven work is only found in general industry.

14. Makes multiple revisions to paragraphs and appendices in Parts 1910, 1915, and 1926 to remove Social Security number collection requirements.

In this regulatory action, the board is adopting this final rule and revising 16VAC25-60-130 D to update the reference to Part 6 of the MUTCD to the November 4, 2009 MUTCD, including Revision 1 and Revision 2, both dated May 2012.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1904 (Recording and Reporting Occupational Injuries and Illnesses), 29 CFR Part 1910 (Occupational Safety and Health Standards), 29 CFR 1915 (Shipyard Employment Standards), and 29 CFR Part 1926 (Construction Industry Standards) are declared documents generally available to the public and appropriate for incorporation by reference. For this reason, these documents will not be printed in the Virginia Register of Regulations. A copy of each document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Statement of Final Agency Action: On September 17, 2019, the Safety and Health Codes Board adopted Phase IV of federal OSHA's final rule for the Standards Improvement Project, as published in 84 FR 21416 through 84 FR 21598 on May 14, 2019, with an effective date of November 15, 2019.

Federal Terms and State Equivalents: When the regulations as set forth in the Standards Improvement Project-Phase IV are

applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
May 14, 2019	November 15, 2019

16VAC25-60-130. Construction industry standards.

A. The occupational safety or health standards adopted as rules or regulations by the Virginia Safety and Health Codes Board either directly, or by reference, from 29 CFR Part 1926 shall apply by their own terms to all employers and employees engaged in either construction work or construction related activities covered by the Virginia State Plan for Occupational Safety and Health.

B. The employer shall comply with the manufacturer's specifications and limitations applicable to the operation, training, use, installation, inspection, testing, repair and maintenance of all machinery, vehicles, tools, materials and equipment, unless specifically superseded by a more stringent corresponding requirement in 29 CFR Part 1926. The use of any machinery, vehicle, tool, material or equipment that is not in compliance with any applicable requirement of the manufacturer is prohibited, and shall either be identified by the employer as unsafe by tagging or locking the controls to render them inoperable or be physically removed from its place of use or operation.

C. For the purposes of the applicability of such Part 1926 standards, the key criteria utilized to make such a decision shall be the activities taking place at the worksite, not the primary business of the employer. Construction work shall generally include any building, altering, repairing, improving, demolishing, painting or decorating any structure, building, highway, or roadway and any draining, dredging, excavation, grading or similar work upon real property. Construction also generally includes work performed in traditional construction trades such as carpentry, roofing, masonry work, plumbing, trenching and excavating, tunneling, and electrical work. Construction does not include maintenance, alteration or repair of mechanical devices, machinery, or equipment, even when the mechanical device, machinery or equipment is part of a pre-existing structure.

D. The employer shall comply with the Virginia Department of Transportation (VDOT) Work Area Protection Manual in lieu of the federal Manual on Uniform Traffic Control Devices (Part VI of the MUTCD, ~~1988~~ 2009 Edition, Revision ~~3~~ 1 dated May 2012 and Revision 2 dated May 2012, or Part VI of the MUTCD, Millennium Edition -

referenced in 16VAC25-175-1926.200 through ~~16VAC25-175-1926.202~~ and 16VAC25-175-1926.201) when working under a contract for construction, repair, or maintenance between the employer and the Commonwealth; agencies, authorities, or instrumentalities of the Commonwealth; or any political subdivision or public body of the Commonwealth when such contract stipulates employer compliance with the VDOT Work Area Protection Manual in effect at the time of contractual agreement.

E. Certain standards of 29 CFR Part 1910 have been determined by federal OSHA to be applicable to construction and have been adopted for this application by the board.

F. The standards adopted from 29 CFR Part 1910.19 and 29 CFR Part 1910.20 containing respectively, special provisions regarding air contaminants and requirements concerning access to employee exposure and medical records shall apply to construction work as well as general industry.

VA.R. Doc. No. R20-6163; Filed September 23, 2019, 10:21 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Emergency Regulation

Title of Regulation: **18VAC60-25. Regulations Governing the Practice of Dental Hygiene (amending 18VAC60-25-40).**

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

Effective Dates: October 1, 2019, through March 31, 2021.

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

Preamble:

Section 2.2-4011 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.

Pursuant to Chapter 86 of the 2019 Acts of Assembly, the amendments (i) adopt a protocol for dental hygienists employed by the Department of Behavioral Health and Developmental Services practicing under remote supervision of a dentist, (ii) update the protocol for remote

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supervision of dental hygienists employed by the Virginia Department of Health, and (iii) correct a citation.

Part II

Practice of Dental Hygiene

18VAC60-25-40. Scope of practice.

A. Pursuant to § 54.1-2722 of the Code, a licensed dental hygienist may perform services that are educational, diagnostic, therapeutic, or preventive under the direction and indirect, ~~or general,~~ remote supervision of a licensed dentist.

B. The following duties of a dentist shall not be delegated:

1. Final diagnosis and treatment planning;
2. Performing surgical or cutting procedures on hard or soft tissue, except as may be permitted by subdivisions C 1 and D 1 of this section;
3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist who meets the requirements of 18VAC60-25-100 C may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;
4. Authorization of work orders for any appliance or prosthetic device or restoration that is to be inserted into a patient's mouth;
5. Operation of high speed rotary instruments in the mouth;
6. Administration of deep sedation or general anesthesia and moderate sedation;
7. Condensing, contouring, or adjusting any final, fixed, or removable prosthodontic appliance or restoration in the mouth with the exception of packing and carving amalgam and placing and shaping composite resins by dental assistants II with advanced training as specified in 18VAC60-30-120;
8. Final positioning and attachment of orthodontic bonds and bands; and
9. Final adjustment and fitting of crowns and bridges in preparation for final cementation.

C. The following duties shall only be delegated to dental hygienists under direction and may only be performed under indirect supervision:

1. Scaling, root planing, or gingival curettage of natural and restored teeth using hand instruments, slow-speed rotary instruments, ultrasonic devices, and nonsurgical lasers with any sedation or anesthesia administered.
2. Performing an initial examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets, or other abnormal conditions for assisting the dentist in the diagnosis.

3. Administering nitrous oxide or local anesthesia by dental hygienists qualified in accordance with the requirements of 18VAC60-25-100.

D. The following duties shall only be delegated to dental hygienists and may be performed under indirect supervision or may be delegated by written order in accordance with § 54.1-2722 D of the Code to be performed under general supervision:

1. Scaling, root planning, or gingival curettage of natural and restored teeth using hand instruments, slow-speed rotary instruments, ultrasonic devices, and nonsurgical lasers with or without topical oral anesthetics.
2. Polishing of natural and restored teeth using air polishers.
3. Performing a clinical examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets, or other abnormal conditions for further evaluation and diagnosis by the dentist.
4. Subgingival irrigation or subgingival and gingival application of topical Schedule VI medicinal agents pursuant to § 54.1-3408 J of the Code.
5. Duties appropriate to the education and experience of the dental hygienist and the practice of the supervising dentist, with the exception of those listed as nondelegable in subsection B of this section and those restricted to indirect supervision in subsection C of this section.

E. The following duties may only be delegated under the direction and direct supervision of a dentist to a dental assistant II:

1. Performing pulp capping procedures;
2. Packing and carving of amalgam restorations;
3. Placing and shaping composite resin restorations with a slow speed handpiece;
4. Taking final impressions;
5. Use of a non-epinephrine retraction cord; and
6. Final cementation of crowns and bridges after adjustment and fitting by the dentist.

F. A dental hygienist employed by the Virginia Department of Health may provide educational and preventative dental care under remote supervision, as defined in ~~§ 54.1-2722 D~~ § 54.1-2722 E of the Code, of a dentist employed by the Virginia Department of Health and in accordance with the ~~protocol adopted by the Commissioner of Health~~ Protocol adopted by Virginia Department of Health (VDH) for Dental Hygienists to Practice in an Expanded Capacity under Remote Supervision by Public Health Dentists, September 2012 May 2019, which is hereby incorporated by reference.

G. A dental hygienist employed by the Virginia Department of Behavioral Health and Developmental Services (DBHDS) may provide educational and preventative dental care under remote supervision, as defined in § 54.1-2722 E of the Code, of a dentist employed by DBHDS and in accordance with the Protocol for Virginia Department of Behavioral Health and Developmental Services (DBHDS) Dental Hygienists to Practice in an Expanded Capacity under Remote Supervision by DBHDS Dentists, May 2019, which is hereby incorporated by reference.

DOCUMENTS INCORPORATED BY REFERENCE
(18VAC60-25)

~~Protocol adopted by Virginia Department of Health for Dental Hygienists to Practice in an Expanded Capacity under Remote Supervision by Public Health Dentists, September 2012~~

[Protocol adopted by Virginia Department of Health \(VDH\) for Dental Hygienists to Practice in an Expanded Capacity under Remote Supervision by Public Health Dentists, May 2019](#)

[Protocol for Virginia Department of Behavioral Health and Developmental Services \(DBHDS\) Dental Hygienists to Practice in an Expanded Capacity under Remote Supervision by DBHDS Dentists, May 2019](#)

VA.R. Doc. No. R20-6044; Filed September 30, 2019, 10:32 a.m.

BOARD OF MEDICINE

Emergency Regulation

Title of Regulation: 18VAC85-50. Regulations Governing the Practice of Physician Assistants (amending 18VAC85-50-10, 18VAC85-50-35, 18VAC85-50-40, 18VAC85-50-57, 18VAC85-50-101, 18VAC85-50-110, 18VAC85-50-115, 18VAC85-50-117, 18VAC85-50-140, 18VAC85-50-160, 18VAC85-50-181).

Statutory Authority: §§ 54.1-2400 and 54.1-2951.1 of the Code of Virginia.

Effective Dates: October 1, 2019, through March 31, 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.

Chapters 92 and 137 of the 2019 Acts of Assembly establish the role of "patient care team podiatrist" as a provider of management and leadership to physician assistants in the care of patients as part of a patient care team and modify the supervision requirements for physician assistants by establishing a patient care team model.

This emergency action replaces practice by a physician assistant under the supervision of a physician or a podiatrist with practice in collaboration and consultation with a patient care team physician or patient care team podiatrist.

Part I
General Provisions

18VAC85-50-10. Definitions.

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

"Board."

"Collaboration."

"Consultation."

"Patient care team physician."

"Patient care team podiatrist."

"Physician assistant."

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

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

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

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

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

~~"Supervision" means the supervising physician has on-going, regular communication with the physician assistant on the care and treatment of patients, is easily available, and can~~

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~~be physically present or accessible for consultation with the physician assistant within one hour.~~

18VAC85-50-35. Fees.

Unless otherwise provided, the following fees shall not be refundable:

1. The initial application fee for a license, payable at the time application is filed, shall be \$130.
2. The biennial fee for renewal of an active license shall be \$135 and for renewal of an inactive license shall be \$70, payable in each odd-numbered year in the birth month of the licensee. For 2019, the fee for renewal of an active license shall be \$108, and the fee for renewal of an inactive license shall be \$54.
3. The additional fee for late renewal of licensure within one renewal cycle shall be \$50.
4. A restricted volunteer license shall expire 12 months from the date of issuance and may be renewed without charge by receipt of a renewal application that verifies that the physician assistant continues to comply with provisions of § 54.1-2951.3 of the Code of Virginia.
5. ~~The fee for review and approval of a new protocol submitted following initial licensure shall be \$15.~~
6. 5. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.
7. 6. The fee for a duplicate license shall be \$5.00, and the fee for a duplicate wall certificate shall be \$15.
8. 7. The fee for a returned check shall be \$35.
9. 8. The fee for a letter of good standing or verification to another jurisdiction shall be \$10.
10. 9. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$15 for each renewal cycle.

Part II

Requirements for Practice as a Physician's Assistant

18VAC85-50-40. General requirements.

A. No person shall practice as a physician assistant in the Commonwealth of Virginia except as provided in this chapter.

B. All services rendered by a physician assistant shall be performed only ~~under the continuous supervision of~~ in accordance with a practice agreement with a doctor of medicine, osteopathy, or podiatry licensed by this board to practice in the Commonwealth.

18VAC85-50-57. Discontinuation of employment.

If for any reason the physician assistant discontinues working ~~in the employment and under the supervision of a licensed practitioner with a patient care team physician or podiatrist~~, a new practice agreement shall be entered into in order for the physician assistant either to be reemployed by the same practitioner or to accept new employment with another ~~supervising physician~~ patient care team physician or podiatrist.

Part IV

Practice Requirements

18VAC85-50-101. Requirements for a practice agreement.

A. Prior to initiation of practice, a physician assistant and his ~~supervising patient care team~~ physician or podiatrist shall enter into a written or electronic practice agreement that spells out the roles and functions of the assistant and is consistent with provisions of § 54.1-2952 of the Code of Virginia.

1. The ~~supervising patient care team~~ physician or podiatrist shall be a doctor of medicine, osteopathy, or podiatry licensed in the Commonwealth who has accepted responsibility for ~~the supervision~~ of the service that a physician assistant renders.

2. Any such practice agreement shall take into account such factors as the physician assistant's level of competence, the number of patients, the types of illness treated by the physician or podiatrist, the nature of the treatment, special procedures, and the nature of the physician or podiatrist availability in ensuring direct physician or podiatrist involvement at an early stage and regularly thereafter.

3. The practice agreement shall also provide an evaluation process for the physician assistant's performance, including a requirement specifying the time period, proportionate to the acuity of care and practice setting, within which the ~~supervising physician or podiatrist~~ shall review the record of services rendered by the physician assistant.

4. The practice agreement may include requirements for periodic site visits by ~~supervising licensees who supervise and direct the patient care team physician or podiatrist~~ collaborate and consult with physician assistants who provide services at a location other than where the ~~licensee~~ physician or podiatrist regularly practices.

B. The board may require information regarding the ~~level degree of supervision with which the supervising collaboration and consultation by the patient care team physician plans to supervise the physician assistant for selected tasks or podiatrist~~ supervising patient care team physician or podiatrist. The board may also require the ~~supervising patient care team~~ physician or podiatrist to document the physician assistant's competence in performing such tasks.

C. If the role of the physician assistant includes prescribing drugs and devices, the written practice agreement shall include those schedules and categories of drugs and devices that are within the scope of practice and proficiency of the supervising patient care team physician or podiatrist.

D. If the initial practice agreement did not include prescriptive authority, there shall be an addendum to the practice agreement for prescriptive authority.

E. If there are any changes in supervision consultation and collaboration, authorization, or scope of practice, a revised practice agreement shall be entered into at the time of the change.

18VAC85-50-110. Responsibilities of the supervisor patient care team physician or podiatrist.

The supervising physician patient care team physician or podiatrist shall:

1. Review the clinical course and treatment plan for any patient who presents for the same acute complaint twice in a single episode of care and has failed to improve as expected. The supervising physician or podiatrist shall be involved with any patient with a continuing illness as noted in the written or electronic practice agreement for the evaluation process.
2. Be responsible for all invasive procedures.
 - a. Under supervision, a physician assistant may insert a nasogastric tube, bladder catheter, needle, or peripheral intravenous catheter, but not a flow-directed catheter, and may perform minor suturing, venipuncture, and subcutaneous intramuscular or intravenous injection.
 - b. All other invasive procedures not listed in subdivision 2 a of this section must be performed under supervision with the physician in the room unless, after directly observing the performance of a specific invasive procedure three times or more, the supervising patient care team physician or podiatrist attests on the practice agreement to the competence of the physician assistant to perform the specific procedure without direct observation and supervision.
3. Be responsible for all prescriptions issued by the physician assistant and attest to the competence of the assistant to prescribe drugs and devices.
4. Be available at all times to collaborate and consult with the physician assistant.

18VAC85-50-115. Responsibilities of the physician assistant.

A. The physician assistant shall not render independent health care and shall:

1. Perform only those medical care services that are within the scope of the practice and proficiency of the supervising

patient care team physician or podiatrist as prescribed in the physician assistant's practice agreement. When a physician assistant is ~~to be supervised by an alternate supervising physician working~~ outside the scope of specialty of the supervising patient care team physician or podiatrist, then the physician assistant's functions shall be limited to those areas not requiring specialized clinical judgment, unless a separate practice agreement has been executed for that alternate supervising patient care team physician or podiatrist.

2. Prescribe only those drugs and devices as allowed in Part V (18VAC85-50-130 et seq.) of this chapter.

3. Wear during the course of performing his duties identification showing clearly that he is a physician assistant.

B. An alternate supervising patient care team physician or podiatrist shall be a member of the same group, professional corporation, or partnership of any licensee who supervises is the patient care team physician or podiatrist for a physician assistant or shall be a member of the same hospital or commercial enterprise with the supervising patient care team physician or podiatrist. Such alternating supervising physician or podiatrist shall be a physician or podiatrist licensed in the Commonwealth who has accepted responsibility for the ~~supervision of the~~ service that a physician assistant renders.

C. If, due to illness, vacation, or unexpected absence, the supervising patient care team physician or podiatrist or alternate supervising physician or podiatrist is unable to supervise the activities of his physician assistant, such supervising patient care team physician or podiatrist may temporarily delegate the responsibility to another doctor of medicine, osteopathic medicine, or podiatry.

Temporary coverage may not exceed four weeks unless special permission is granted by the board.

D. With respect to physician assistants employed by institutions, the following additional regulations shall apply:

1. No physician assistant may render care to a patient unless the physician or podiatrist responsible for that patient has signed the practice agreement to act as supervising patient care team physician or podiatrist for that physician assistant.
2. Any such practice agreement as described in subdivision 1 of this subsection shall delineate the duties which said patient care team physician or podiatrist authorizes the physician assistant to perform.
3. ~~The physician assistant shall, as soon as circumstances may dictate, report an acute or significant finding or change in clinical status to the supervising physician concerning the examination of the patient. The physician~~

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~~assistant shall also record his findings in appropriate institutional records.~~

E. Practice by a physician assistant in a hospital, including an emergency department, shall be in accordance with § 54.1-2952 of the Code of Virginia.

18VAC85-50-117. Authorization to use fluoroscopy.

A physician assistant working under ~~the supervision of a practice agreement with~~ a licensed doctor of medicine or osteopathy specializing in the field of radiology is authorized to use fluoroscopy for guidance of diagnostic and therapeutic procedures provided such activity is specified in his protocol and he has met the following qualifications:

1. Completion of at least 40 hours of structured didactic educational instruction and at least 40 hours of supervised clinical experience as set forth in the Fluoroscopy Educational Framework for the Physician Assistant created by the American Academy of Physician Assistants (AAPA) and the American Society of Radiologic Technologists (ASRT); and
2. Successful passage of the American Registry of Radiologic Technologists (ARRT) Fluoroscopy Examination.

18VAC85-50-140. Approved drugs and devices.

A. The approved drugs and devices which the physician assistant with prescriptive authority may prescribe, administer, or dispense manufacturer's professional samples shall be in accordance with provisions of § 54.1-2952.1 of the Code of Virginia:

B. The physician assistant may prescribe only those categories of drugs and devices included in the practice agreement. The ~~supervising patient care team~~ physician or ~~podiatrist~~ retains the authority to restrict certain drugs within these approved categories.

C. The physician assistant, pursuant to § 54.1-2952.1 of the Code of Virginia, shall only dispense manufacturer's professional samples or administer controlled substances in good faith for medical or therapeutic purposes within the course of his professional practice.

18VAC85-50-160. Disclosure.

A. Each prescription for a Schedule II through V drug shall bear the name of the ~~supervising patient care team~~ physician or ~~podiatrist~~ and of the physician assistant.

B. The physician assistant shall disclose to the patient that he is a licensed physician assistant, and also the name, address and telephone number of the ~~supervising patient care team~~ physician or ~~podiatrist~~. Such disclosure shall either be included on the prescription or be given in writing to the patient.

18VAC85-50-181. Pharmacotherapy for weight loss.

A. A practitioner shall not prescribe amphetamine, Schedule II, for the purpose of weight reduction or control.

B. A practitioner shall not prescribe controlled substances, Schedules III through VI, for the purpose of weight reduction or control in the treatment of obesity, unless the following conditions are met:

1. An appropriate history and physical examination are performed and recorded at the time of initiation of pharmacotherapy for obesity by the prescribing physician, and the physician reviews the results of laboratory work, as indicated, including testing for thyroid function;
2. If the drug to be prescribed could adversely affect cardiac function, the physician shall review the results of an electrocardiogram performed and interpreted within 90 days of initial prescribing for treatment of obesity;
3. A diet and exercise program for weight loss is prescribed and recorded;
4. The patient is seen within the first 30 days following initiation of pharmacotherapy for weight loss, by the prescribing physician or a licensed practitioner with prescriptive authority working under the supervision of the prescribing physician, at which time a recording shall be made of blood pressure, pulse, and any other tests as may be necessary for monitoring potential adverse effects of drug therapy; and
5. The treating physician shall direct the follow-up care, including the intervals for patient visits and the continuation of or any subsequent changes in pharmacotherapy. Continuation of prescribing for treatment of obesity shall occur only if the patient has continued progress toward achieving or maintaining a target weight and has no significant adverse effects from the prescribed program.

C. If specifically authorized in his practice agreement with a ~~supervising patient care team~~ physician, a physician assistant may perform the physical examination, review tests, and prescribe Schedules III through VI controlled substances for treatment of obesity as specified in subsection B of this section.

V.A.R. Doc. No. R20-6083; Filed September 30, 2019, 10:33 a.m.

BOARD OF OPTOMETRY

Final Regulation

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-5, 18VAC105-20-70; adding 18VAC105-20-48, 18VAC105-20-49).**

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

Effective Date: November 13, 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.

Summary:

The amendments to regulations for optometrists prescribing controlled substances include (i) provisions for the management of acute pain that require prescribing a dosage not to exceed seven days and include requirements for the evaluation of the patient and limitations on quantity; (ii) requirements for prescribing an opioid beyond seven days to include a reevaluation of the patient, check of the Prescription Monitoring Program, and specific information in the patient record; and (iii) if a TPA-certified optometrist finds an opioid prescription for chronic pain is necessary, a requirement to refer the patient to a physician or comply with Board of Medicine regulations for managing chronic pain. The amendments replace emergency regulations currently in effect.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

18VAC105-20-5. Definitions.

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

"Acute pain" means pain that occurs within the normal course of a disease or condition for which controlled substances may be prescribed for no more than three months.

"Board" means the Virginia Board of Optometry.

"Chronic pain" means nonmalignant pain that goes beyond the normal course of a disease or condition for which controlled substances may be prescribed for a period greater than three months.

"Controlled substance" means drugs listed in the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) in Schedules II through V.

"MME" means morphine milligram equivalent.

"NBEO" means the National Board of Examiners in Optometry.

"Prescription Monitoring Program" means the electronic system within the Department of Health Professions that monitors the dispensing of certain controlled substances.

"TPA" means therapeutic pharmaceutical agents.

"TPA certification" means authorization by the Virginia Board of Optometry for an optometrist to treat diseases and

abnormal conditions of the human eye and its adnexa and to prescribe and administer certain therapeutic pharmaceutical agents.

18VAC105-20-48. Prescribing an opioid for acute pain.

A. Nonpharmacologic and non-opioid treatment for pain shall be given consideration prior to treatment with opioids. If an opioid is considered necessary for the treatment of acute pain, a TPA-certified optometrist shall follow the regulations for prescribing and treating with opioids.

B. Prior to initiating treatment with a controlled substance containing an opioid for a complaint of acute pain, a TPA-certified optometrist shall perform a health history and physical examination appropriate to the complaint, query the Prescription Monitoring Program as set forth in § 54.1-2522.1 of the Code of Virginia, and conduct an assessment of the patient's history and risk of substance abuse.

C. Initiation of opioid treatment for all patients with acute pain shall include the following:

1. A prescription for an opioid shall be a short-acting opioid in the lowest effective dose for the fewest number of days, not to exceed seven days as determined by the manufacturer's directions for use, unless extenuating circumstances are clearly documented in the patient record.

2. A TPA-certified optometrist shall carefully consider and document in the patient record the reasons to exceed 50 MME per day.

3. A prescription for naloxone should be considered for any patient when any risk factor of prior overdose, substance misuse, or concomitant use of benzodiazepine is present.

D. If another prescription for an opioid is to be written beyond seven days, a TPA-certified optometrist shall:

1. Reevaluate the patient and document in the patient record the continued need for an opioid prescription; and

2. Check the patient's prescription history in the Prescription Monitoring Program.

E. The patient record shall include a description of the pain, a presumptive diagnosis for the origin of the pain, an examination appropriate to the complaint, a treatment plan, and the medication prescribed (including date, type, dosage, strength, and quantity prescribed).

F. Due to a higher risk of fatal overdose when opioids are prescribed for a patient also taking benzodiazepines, sedative hypnotics, tramadol, or carisoprodol, a TPA-certified optometrist shall only co-prescribe these substances when there are extenuating circumstances and shall document in the patient record a tapering plan to achieve the lowest possible effective doses if these medications are prescribed.

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18VAC105-20-49. Prescribing an opioid for chronic pain.

If a TPA-certified optometrist treats a patient for whom an opioid prescription is necessary for chronic pain, he shall either:

1. Refer the patient to a doctor of medicine or osteopathic medicine who is a pain management specialist; or
2. Comply with regulations of the Board of Medicine, 18VAC85-21-60 through 18VAC85-21-120, if he chooses to manage the chronic pain with an opioid prescription.

18VAC105-20-70. Requirements for continuing education.

A. Each license renewal shall be conditioned upon submission of evidence to the board of 20 hours of continuing education taken by the applicant during the previous license period. A licensee who completes more than 20 hours of continuing education in a year shall be allowed to carry forward up to 10 hours of continuing education for the next annual renewal cycle.

1. The 20 hours may include up to two hours of recordkeeping for patient care, including coding for diagnostic and treatment devices and procedures or the management of an optometry practice, provided that such courses are not primarily for the purpose of augmenting the licensee's income or promoting the sale of specific instruments or products.

2. For optometrists who are certified in the use of therapeutic pharmaceutical agents, at least 10 of the required continuing education hours shall be in the areas of ocular and general pharmacology; diagnosis and treatment of the human eye and its adnexa, including treatment with new pharmaceutical agents, ~~or~~ new or advanced clinical devices, techniques, modalities, or procedures; or pain management.

3. At least 10 hours shall be obtained through real-time, interactive activities, including in-person or electronic presentations, provided that during the course of the presentation, the licensee and the lecturer may communicate with one another.

4. A licensee may also include up to two hours of training in cardiopulmonary resuscitation (CPR).

5. Two hours of the 20 hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

B. Each licensee shall attest to fulfillment of continuing education hours on the required annual renewal form. All

continuing education shall be completed prior to the renewal deadline unless an extension or waiver has been granted by the Continuing Education Committee. A request for an extension or waiver shall be received prior to the renewal deadline of each year.

C. All continuing education courses shall be offered by an approved sponsor or accrediting body listed in subsection G of this section. Courses that are not approved by a board-recognized sponsor in advance shall not be accepted for continuing education credit. For those courses that have a post-test requirement, credit will only be given if the optometrist receives a passing grade as indicated on the certificate.

D. Licensees shall maintain continuing education documentation for a period of not less than three years. A random audit of licensees may be conducted by the board which will require that the licensee provide evidence substantiating participation in required continuing education courses within 14 days of the renewal date.

E. Documentation of hours shall clearly indicate the name of the continuing education provider and its affiliation with an approved sponsor or accrediting body as listed in subsection G of this section. Documents that do not have the required information shall not be accepted by the board for determining compliance. Correspondence courses shall be credited according to the date on which the post-test was graded as indicated on the continuing education certificate.

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

G. An approved continuing education course or program, whether offered by correspondence, electronically, or in person, shall be sponsored, accredited, or approved by one of the following:

1. The American Optometric Association and its constituent organizations.
2. Regional optometric organizations.
3. State optometric associations and their affiliate local societies.
4. Accredited colleges and universities providing optometric or medical courses.
5. The American Academy of Optometry and its affiliate organizations.
6. The American Academy of Ophthalmology and its affiliate organizations.
7. The Virginia Academy of Optometry.
8. Council on Optometric Practitioner Education (COPE).
9. State or federal governmental agencies.

- 10. College of Optometrists in Vision Development.
- 11. The Accreditation Council for Continuing Medical Education of the American Medical Association for Category 1 credit.
- 12. Providers of training in cardiopulmonary resuscitation (CPR).
- 13. Optometric Extension Program.

H. In order to maintain approval for continuing education courses, providers or sponsors shall:

- 1. Provide a certificate of attendance that shows the date, location, presenter or lecturer, content hours of the course, and contact information of the provider or sponsor for verification. The certificate of attendance shall be based on verification by the sponsor of the attendee's presence throughout the course, either provided by a post-test or by a designated monitor.
- 2. Maintain documentation about the course and attendance for at least three years following its completion.

I. Falsifying the attestation of compliance with continuing education on a renewal form or failure to comply with continuing education requirements may subject a licensee to disciplinary action by the board, consistent with § 54.1-3215 of the Code of Virginia.

VA.R. Doc. No. R18-5205; Filed September 18, 2019, 11:13 a.m.

BOARD OF PHARMACY
Proposed Regulation

Title of Regulation: 18VAC110-50. Regulations Governing Wholesale Distributors, Manufacturers, and Warehouseurs (adding 18VAC110-50-55).

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

Public Hearing Information:

December 9, 2019 - 9:05 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Board Room 2, Richmond, VA 23233

Public Comment Deadline: December 13, 2019.

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

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia. The specific authority to promulgate regulations for delivery of medical devices is in Chapters 241 and 242 of the 2018 Acts of Assembly, which added § 54.1-3415.1 of the Code of Virginia.

Purpose: The primary purpose of the proposed action is to implement legislative action that allows a permitted manufacturer, wholesale distributor, warehouseur, nonresident warehouseur, third-party logistics provider, or nonresident third-party logistics provider, or registered nonresident manufacturer or nonresident wholesale distributor to deliver Schedule VI prescription devices directly to an ultimate user's or consumer's residence in accordance with an agreement signed with a medical equipment supplier or a medical director.

The goal is to facilitate provision of Schedule VI devices more economically and efficiently by allowing delivery to the ultimate user or consumer without a party in the middle of the transaction having to physically possess and store the devices and ensuring existence of an order or request from a prescriber for the safety and integrity of prescription devices and the protection of the patient or ultimate user. The medical equipment supplier may have a valid order from a prescriber that is conveyed to a wholesale distributor or other entity with whom there is an agreement. Before passage of Chapters 241 and 242 of the 2018 Acts of Assembly, the distributor or other entity did not have legal authority to deliver directly to the consumer. Likewise, the director of a home health agency may now request that oxygen be delivered directly to a consumer's residence, rather than the agency possessing and storing the oxygen with a subsequent delivery to the consumer or patient.

Substance: Board requirements for delivery of Schedule VI devices are intended to implement the provisions of § 54.1-3415.1 of the Code of Virginia, which requires an agreement between the delivering party and a medical equipment supplier or a medical director. The agreement can cover multiple entities under shared ownership so it does not become burdensome but does ensure existence of an order or request from a prescriber.

Issues: The advantage to the public is direct delivery of Schedule VI devices from an entity without delays and costs associated with interim deliveries. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 241 of the 2018 Acts of Assembly,¹ the Board of Pharmacy (Board) proposes to permanently allow certain regulated entities to deliver Schedule VI medical devices directly to a consumer on behalf of an equipment supplier. These changes have already been implemented under an emergency regulation.²

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

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Estimated Economic Impact. Pursuant to the 2018 General Assembly mandate, the Board proposes to permanently set out the requirements for delivery of Schedule VI devices directly to an ultimate user or consumer on behalf of a medical equipment supplier upon a valid order from a prescriber or upon request from the medical director of home health agency, nursing home, assisted living facility, or hospice.

Schedule VI devices are complex or invasive devices that have the potential for harm if incorrectly used (e.g., nebulizer, ostomy bags, catheters, etc.). Prior to the emergency regulation, direct delivery of these devices to the ultimate user was not permitted. A medical supplier would have to first obtain the possession of the device then deliver it to the ultimate user. Under the new language, a medical supplier can enter into agreements with its sources and have the device directly delivered to the patient. This change eliminates the need to store the equipment at the medical equipment supplier and an extra step in the purchase process. Thus, the change has the potential to reduce storage/delivery costs and speed up the delivery. However, according to the Department of Health Professions (DHP), some suppliers had already been facilitating direct delivery and are unlikely to be affected other than coming into compliance under the new language.

Businesses and Entities Affected. Currently, there are 28 manufacturers, 81 wholesale distributors, 98 warehouse, 5 third-party logistics providers, 134 nonresident manufacturers, 673 nonresident wholesale distributors, and 237 medical suppliers regulated by the Board. DHP has no estimate on the number of entities that may take advantage of the new delivery model permitted by the proposed changes.

Localities Particularly Affected. No locality is expected to be particularly affected.

Projected Impact on Employment. The proposed amendments eliminate the need to store Schedule VI devices at the medical suppliers' location and may reduce the demand for labor associated with that type of storage.

Effects on the Use and Value of Private Property. The proposed changes may benefit some medical equipment suppliers in terms of reduced storage/delivery costs which would positively affect their asset values.

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. How many of the medical equipment suppliers are small business is not known. However, the

proposed amendments may reduce the storage/delivery costs for some medical equipment suppliers as discussed above.

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

<http://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+CHAP0241>

<https://townhall.virginia.gov/1/ViewStage.cfm?stageid=8333>

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

Summary:

Chapters 241 and 242 of the 2018 Acts of Assembly, which enacted § 54.1-3415.1 of the Code of Virginia, establish the requirements for delivery of Schedule VI devices directly to an ultimate user or consumer on behalf of a medical equipment supplier upon a valid order from a prescriber or upon request from the medical director of a home health agency, nursing home, assisted living facility, or hospice. The proposed action adds 18VAC110-50-55 to implement Chapters 241 and 242.

18VAC110-50-55. Delivery of Schedule VI devices.

A. In accordance with the provisions of subsection A of § 54.1-3415.1 of the Code of Virginia, a manufacturer, nonresident manufacturer, wholesale distributor, nonresident wholesaler distributor, third-party logistics provider, nonresident third-party logistics provider, warehouse, or nonresident warehouse licensed, permitted, or registered in Virginia may deliver Schedule VI prescription devices directly to an ultimate user or consumer on behalf of a medical equipment supplier.

1. Such delivery shall only occur in accordance with an agreement between a delivering entity named in this subsection and a medical equipment supplier in compliance with law and regulation.

2. The agreement shall be between an individual delivering entity or multiple delivering entities under shared ownership and an individual medical equipment supplier or multiple medical equipment suppliers under shared ownership. The agreement shall be applicable to all ultimate users or consumers receiving services from the

medical equipment supplier who require delivery of Schedule VI prescription devices.

3. The medical equipment supplier shall represent to the delivering entity that it has complied with the provisions of § 54.1-3415.1 of the Code of Virginia regarding the existence of a valid order from a prescriber for the delivery of a Schedule VI prescription device to an ultimate user or consumer. Validation of orders of prescribers shall be the responsibility of the medical equipment supplier upon request of the board or delivering entity.

B. In accordance with the provisions of subsection B of § 54.1-3415.1 of the Code of Virginia, a manufacturer, nonresident manufacturer, wholesale distributor, nonresident wholesaler distributor, third-party logistics provider, nonresident third-party logistics provider, warehouse, or nonresident warehouse licensed, permitted, or registered in Virginia may deliver Schedule VI prescription devices directly to an ultimate user's or consumer's residence to be administered by persons authorized to administer such devices, provided that (i) such delivery is made on behalf of a medical director of a home health agency, nursing home, assisted living facility, or hospice who has requested the distribution of the Schedule VI prescription device and directs the delivery of such device to the ultimate user's or consumer's residence and (ii) the medical director on whose behalf such Schedule VI prescription device is being delivered has entered into an agreement with the manufacturer, nonresident manufacturer, wholesale distributor, nonresident wholesale distributor, warehouse, nonresident warehouse, third-party logistics provider, or nonresident third-party logistics provider for such delivery.

1. Such delivery shall only occur in accordance with an agreement between a delivering entity authorized in this subsection and a medical director of a home health agency, nursing home, assisted living facility, or hospice and in compliance with law and regulation.

2. The agreement shall be between an individual delivering entity or multiple delivering entities under shared ownership and the medical director of an individual home health agency, nursing home, assisted living facility, or hospice, or multiple such entities under shared ownership. The agreement shall be applicable to all ultimate users or consumers of the home health agency, nursing home, assisted living facility, or hospice who require delivery of Schedule VI prescription devices.

3. The home health agency, nursing home, assisted living facility, or hospice shall represent to the delivering entity that it has complied with provisions of § 54.1-3415.1 of the Code of Virginia regarding the existence of a request from a prescriber for the delivery of a Schedule VI prescription device to an ultimate user or consumer. Validation of the request from a prescriber shall be the responsibility of the

home health agency, nursing home, assisted living facility, or hospice upon request of the board or delivering entity.

C. The agreement, as required by subdivisions A 1 and B 1 of this section, shall be in written or electronic format and shall be retained in a format available upon request to the board at all times the agreement is in effect and for two years after the date the agreement is terminated or concluded.

D. An agreement shall not contain any patient specific or patient health information that would be subject to the provisions of the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191.

VA.R. Doc. No. R19-5526; Filed September 18, 2019, 11:59 a.m.

BOARD OF PHYSICAL THERAPY

Emergency Regulation

Title of Regulation: 18VAC112-20. Regulations Governing the Practice of Physical Therapy (amending 18VAC112-20-10, 18VAC112-20-27, 18VAC112-20-60, 18VAC112-20-65, 18VAC112-20-90, 18VAC112-20-130, 18VAC112-20-140, 18VAC112-20-200; adding 18VAC112-20-82).

Statutory Authority: §§ 54.1-2400 and 54.1-3474 of the Code of Virginia.

Effective Dates: January 1, 2020, through June 30, 2021.

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

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 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 are necessary for Virginia to participate in the Physical Therapy Compact, which allows a physical therapist or physical therapist assistant who has obtained a compact privilege to practice in the Commonwealth without a Virginia license. To comply with compact rules, the amendments require all applicants for licensure to have criminal background checks and all holders of a compact privilege to adhere to the laws and regulations governing practice in Virginia. As permitted by the compact rules, the amendments set the fee in Virginia at \$50, which is similar to the fee charged by other states.

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Part I General Provisions

18VAC112-20-10. Definitions.

In addition to the words and terms defined in §§ 54.1-3473 and 54.1-3486 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Active practice" means a minimum of 160 hours of professional practice as a physical therapist or physical therapist assistant within the 24-month period immediately preceding renewal. Active practice may include supervisory, administrative, educational, or consultative activities or responsibilities for the delivery of such services.

"Approved program" means an educational program accredited by the Commission on Accreditation in Physical Therapy Education of the American Physical Therapy Association.

"Assessment tool" means option or any other self-directed assessment tool approved by FSBPT.

"CLEP" means the College Level Examination Program.

"Compact" means the Physical Therapy Licensure Compact (§ 54.1-3485 of the Code of Virginia).

"Contact hour" means 60 minutes of time spent in continuing learning activity exclusive of breaks, meals, or vendor exhibits.

"Direct supervision" means a physical therapist or a physical therapist assistant is physically present and immediately available and is fully responsible for the physical therapy tasks or activities being performed.

"Discharge" means the discontinuation of interventions in an episode of care that have been provided in an unbroken sequence in a single practice setting and related to the physical therapy interventions for a given condition or problem.

"Evaluation" means a process in which the physical therapist makes clinical judgments based on data gathered during an examination or screening in order to plan and implement a treatment intervention, provide preventive care, reduce risks of injury and impairment, or provide for consultation.

"FCCPT" means the Foreign Credentialing Commission on Physical Therapy.

"FSBPT" means the Federation of State Boards of Physical Therapy.

"General supervision" means a physical therapist shall be available for consultation.

"National examination" means the examinations developed and administered by the Federation of State Boards of

Physical Therapy and approved by the board for licensure as a physical therapist or physical therapist assistant.

"Physical Therapy Compact Commission" or "commission" means the national administrative body whose membership consists of all states that have enacted the compact.

"Reevaluation" means a process in which the physical therapist makes clinical judgments based on data gathered during an examination or screening in order to determine a patient's response to the treatment plan and care provided.

"Support personnel" means a person who is performing designated routine tasks related to physical therapy under the direction and supervision of a physical therapist or physical therapist assistant within the scope of this chapter.

"TOEFL" means the Test of English as a Foreign Language.

"Trainee" means a person seeking licensure as a physical therapist or physical therapist assistant who is undergoing a traineeship.

"Traineeship" means a period of active clinical practice during which an applicant for licensure as a physical therapist or physical therapist assistant works under the direct supervision of a physical therapist approved by the board.

"TSE" means the Test of Spoken English.

"Type 1" means continuing learning activities offered by an approved organization as specified in 18VAC112-20-131.

"Type 2" means continuing learning activities which may or may not be offered by an approved organization but shall be activities considered by the learner to be beneficial to practice or to continuing learning.

18VAC112-20-27. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Licensure by examination.

1. The application fee shall be \$140 for a physical therapist and \$100 for a physical therapist assistant.

2. The fees for taking all required examinations shall be paid directly to the examination services.

C. Licensure by endorsement. The fee for licensure by endorsement shall be \$140 for a physical therapist and \$100 for a physical therapist assistant.

D. Licensure renewal and reinstatement.

1. The fee for active license renewal for a physical therapist shall be \$135 and for a physical therapist assistant shall be \$70 and shall be due by December 31 in each even-numbered year.

2. The fee for an inactive license renewal for a physical therapist shall be \$70 and for a physical therapist assistant

shall be \$35 and shall be due by December 31 in each even-numbered year.

3. A fee of \$50 for a physical therapist and \$25 for a physical therapist assistant for processing a late renewal within one renewal cycle shall be paid in addition to the renewal fee.

4. The fee for reinstatement of a license that has expired for two or more years shall be \$180 for a physical therapist and \$120 for a physical therapist assistant and shall be submitted with an application for licensure reinstatement.

E. Other fees.

1. The fee for an application for reinstatement of a license that has been revoked shall be \$1,000; the fee for an application for reinstatement of a license that has been suspended shall be \$500.

2. The fee for a duplicate license shall be \$5, and the fee for a duplicate wall certificate shall be \$15.

3. The fee for a returned check shall be \$35.

4. The fee for a letter of good ~~standing/verification~~ standing or verification to another jurisdiction shall be \$10.

5. The application fee for direct access certification shall be \$75 for a physical therapist to obtain certification to provide services without a referral.

6. The state fee for obtaining or renewing a compact privilege to practice in Virginia shall be \$50.

18VAC112-20-60. Requirements for licensure by examination.

Every applicant for initial licensure by examination shall submit:

1. Documentation of having met the educational requirements specified in 18VAC112-20-40 or 18VAC112-20-50;

2. The required application, fees, and credentials to the board, including a criminal history background check as required by § 54.1-3484 of the Code of Virginia; and

3. Documentation of passage of the national examination as prescribed by the board.

18VAC112-20-65. Requirements for licensure by endorsement.

A. A physical therapist or physical therapist assistant who holds a current, unrestricted license in the United States, its territories, the District of Columbia, or Canada may be licensed in Virginia by endorsement.

B. An applicant for licensure by endorsement shall submit:

1. Documentation of having met the educational requirements prescribed in 18VAC112-20-40 or

18VAC112-20-50. In lieu of meeting such requirements, an applicant may provide evidence of clinical practice consisting of at least 2,500 hours of patient care during the five years immediately preceding application for licensure in Virginia with a current, unrestricted license issued by another ~~U.S.~~ United States jurisdiction;

2. The required application, fees, and credentials to the board, including a criminal history background check as required by § 54.1-3484 of the Code of Virginia;

3. A current report from the Healthcare Integrity and Protection Data Bank (~~HIPDB~~);

4. Evidence of completion of 15 hours of continuing education for each year in which the applicant held a license in another ~~U.S.~~ United States jurisdiction, or 60 hours obtained within the past four years;

5. Documentation of passage of an examination equivalent to the Virginia examination at the time of initial licensure or documentation of passage of an examination required by another state at the time of initial licensure in that state; and

6. Documentation of active practice in physical therapy in another ~~U.S.~~ United States jurisdiction for at least 320 hours within the four years immediately preceding his application for licensure. A physical therapist who does not meet the active practice requirement shall:

a. Successfully complete 320 hours in a traineeship in accordance with requirements in 18VAC112-20-140; or

b. Document that he attained at least Level 2 on the FSBPT assessment tool within the two years preceding application for licensure in Virginia and successfully complete 160 hours in a traineeship in accordance with the requirements in 18VAC112-20-140.

C. A physical therapist assistant seeking licensure by endorsement who has not actively practiced physical therapy for at least 320 hours within the four years immediately preceding his application for licensure shall successfully complete 320 hours in a traineeship in accordance with the requirements in 18VAC112-20-140.

18VAC112-20-82. Requirements for a compact privilege.

To obtain a compact privilege to practice physical therapy in Virginia, a physical therapist or physical therapist assistant licensed in a remote state shall comply with the rules adopted by the Physical Therapy Compact Commission in effect at the time of application to the commission.

18VAC112-20-90. General responsibilities.

A. The physical therapist shall be responsible for managing all aspects of the physical therapy care of each patient and shall provide:

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1. The initial evaluation for each patient and its documentation in the patient record;
2. Periodic reevaluation, including documentation of the patient's response to therapeutic intervention; and
3. The documented status of the patient at the time of discharge, including the response to therapeutic intervention. If a patient is discharged from a health care facility without the opportunity for the physical therapist to reevaluate the patient, the final note in the patient record may document patient status.

B. The physical therapist shall communicate the overall plan of care to the patient or ~~his~~ the patient's legally authorized representative and shall also communicate with a referring doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery; nurse practitioner; or physician assistant to the extent required by § 54.1-3482 of the Code of Virginia.

C. A physical therapist assistant may assist the physical therapist in performing selected components of physical therapy intervention to include treatment, measurement, and data collection, but not to include the performance of an evaluation as defined in 18VAC112-20-10.

D. A physical therapist assistant's visits to a patient may be made under general supervision.

E. A physical therapist providing services with a direct access certification as specified in § 54.1-3482 of the Code of Virginia shall utilize the Direct Access Patient Attestation and Medical Release Form prescribed by the board or otherwise include in the patient record the information, attestation and written consent required by subsection B of § 54.1-3482 of the Code of Virginia.

F. A physical therapist or physical therapist assistant practicing in Virginia on a compact privilege shall comply with all applicable laws and regulations pertaining to physical therapy practice in Virginia.

18VAC112-20-130. Biennial renewal of license.

A. A physical therapist and physical therapist assistant who intends to continue practice shall renew his license biennially by December 31 in each even-numbered year and pay to the board the renewal fee prescribed in 18VAC112-20-27.

B. A licensee whose licensure has not been renewed by the first day of the month following the month in which renewal is required shall pay a late fee as prescribed in 18VAC112-20-27.

C. In order to renew an active license, a licensee shall be required to:

1. Complete a minimum of 160 hours of active practice in the preceding two years; and
2. Comply with continuing competency requirements set forth in 18VAC112-20-131.

D. In order to renew a compact privilege to practice in Virginia, the holder shall comply with the rules adopted by the Physical Therapy Compact Commission in effect at the time of the renewal.

18VAC112-20-140. Traineeship requirements.

A. The traineeship shall be approved by the board and under the direction and supervision of a licensed physical therapist.

B. Supervision and identification of trainees:

1. There shall be a limit of two physical therapists assigned to provide supervision for each trainee.
2. The supervising physical therapist shall countersign patient documentation (i.e., notes, records, charts) for services provided by a trainee.
3. The trainee shall wear identification designating them as a "physical therapist trainee" or a "physical therapist assistant trainee."

C. Completion of traineeship.

1. The physical therapist supervising the trainee shall submit a report to the board at the end of the required number of hours on forms supplied by the board.
2. If the traineeship is not successfully completed at the end of the required hours, as determined by the supervising physical therapist, the president of the board or his designee shall determine if a new traineeship shall commence. If the president of the board determines that a new traineeship shall not commence, then the application for licensure shall be denied.
3. The second traineeship may be served under a different supervising physical therapist and may be served in a different organization than the initial traineeship. If the second traineeship is not successfully completed, as determined by the supervising physical therapist, then the application for licensure shall be denied.

D. A traineeship shall not be approved for an applicant who has not completed a criminal background check for initial licensure pursuant to § 54.1-3484 of the Code of Virginia.

18VAC112-20-200. Advertising ethics.

A. Any statement specifying a fee, whether standard, discounted, or free, for professional services that does not include the cost of all related procedures, services, and products ~~which~~ that, to a substantial likelihood, will be necessary for the completion of the advertised service as it would be understood by an ordinarily prudent person shall be deemed to be deceptive or misleading, or both. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of prices for specifically described services shall not be deemed to be deceptive or misleading.

B. Advertising a discounted or free service, examination, or treatment and charging for any additional service, examination, or treatment that is performed as a result of and within 72 hours of the initial office visit in response to such advertisement is unprofessional conduct unless such professional services rendered are as a result of a bona fide emergency. This provision may not be waived by agreement of the patient and the practitioner.

C. Advertisements of discounts shall disclose the full fee that has been discounted. The practitioner shall maintain documented evidence to substantiate the discounted fees and shall make such information available to a consumer upon request.

D. A licensee or holder of a compact privilege shall not use the term "board certified" or any similar words or phrase calculated to convey the same meaning in any advertising for his practice unless he holds certification in a clinical specialty issued by the American Board of Physical Therapy Specialties.

E. A licensee or holder of a compact privilege of the board shall not advertise information that is false, misleading, or deceptive. For an advertisement for a single practitioner, it shall be presumed that the practitioner is responsible and accountable for the validity and truthfulness of its content. For an advertisement for a practice in which there is more than one practitioner, the name of the practitioner ~~or practitioners~~ responsible and accountable for the content of the advertisement shall be documented and maintained by the practice for at least two years.

F. Documentation, scientific and otherwise, supporting claims made in an advertisement shall be maintained and available for the board's review for at least two years.

V.A.R. Doc. No. R20-6119; Filed September 18, 2019, 1:42 p.m.

BOARD OF COUNSELING

Final Regulation

Title of Regulation: 18VAC115-70. Regulations Governing the Registration of Peer Recovery Specialists (adding 18VAC115-70-10 through 18VAC115-70-90).

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Effective Date: November 13, 2019.

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

Summary:

Pursuant to Chapters 418 and 426 of the 2017 Acts of Assembly, the new regulation (i) establishes the fees required for registration and renewal of registration; (ii)

specifies the qualification for registration, which is evidence of meeting the requirements set out in regulations of the Department of Behavioral Health and Developmental Services; (iii) requires that to maintain registration, a registrant complete eight hours of continuing education with a minimum of two hours devoted to ethics; (iv) sets standards of practice to include practicing within the specialist's competency area, practicing in a manner that does not endanger public health and safety, maintaining confidentiality, and avoiding dual relationships that would impair objectivity and increase risk of client exploitation; and (v) makes violations of standards of practice or of applicable law or regulation grounds for disciplinary action by the board.

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

CHAPTER 70

REGULATIONS GOVERNING THE REGISTRATION OF PEER RECOVERY SPECIALISTS

Part I

General Provisions

18VAC115-70-10. Definitions.

"Applicant" means a person applying for registration as a peer recovery specialist.

"Board" means the Virginia Board of Counseling.

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

"Mental health professional" means a person who by education and experience is professionally qualified and licensed in Virginia to provide counseling interventions designed to facilitate an individual's achievement of human development goals and remediate mental, emotional, or behavioral disorders and associated distresses that interfere with mental health and development.

"Peer recovery specialist" means a person who by education and experience is professionally qualified in accordance with 12VAC35-250 to provide collaborative services to assist individuals in achieving sustained recovery from the effects of mental illness or addiction, or both.

"Registered peer recovery specialist" or "registrant" means a person who by education and experience is professionally qualified in accordance with 12VAC35-250 and registered by the board to provide collaborative services to assist individuals in achieving sustained recovery from the effects of mental illness or addiction, or both. A registered peer recovery specialist shall provide such services as an employee or independent contractor of DBHDS, a provider licensed by the DBHDS, a practitioner licensed by or holding a permit issued from the Department of Health Professions, or a facility licensed by the Department of Health.

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18VAC115-70-20. Fees required by the board.

A. The board has established the following fees applicable to the registration of peer recovery specialists:

<u>Registration</u>	<u>\$30</u>
<u>Renewal of registration</u>	<u>\$30</u>
<u>Late renewal</u>	<u>\$20</u>
<u>Reinstatement of a lapsed registration</u>	<u>\$60</u>
<u>Duplicate certificate of registration</u>	<u>\$10</u>
<u>Returned check</u>	<u>\$35</u>
<u>Reinstatement following revocation or suspension</u>	<u>\$500</u>

B. Unless otherwise provided, fees established by the board shall not be refundable.

18VAC115-70-30. Current name and address.

Each registrant shall furnish the board the registrant's current name and address of record. Any change of name or address of record or public address if different from the address of record, shall be furnished to the board within 60 days of such change. It shall be the duty and responsibility of each registrant to inform the board of the registrant's current address.

Part II

Requirements for Registration and Renewal

18VAC115-70-40. Requirements for registration as a peer recovery specialist.

A. An applicant for registration shall submit:

1. A completed application on forms provided by the board and any applicable fee as prescribed in 18VAC115-70-20; and
2. A current report from the National Practitioner Data Bank (NPDB).

B. An applicant for registration as a peer recovery specialist shall provide evidence of meeting all requirements for peer recovery specialists set by DBHDS in 12VAC35-250-30.

18VAC115-70-50. Annual renewal of registration.

All registrants shall renew their registration on or before June 30 of each year. Along with the renewal form, the registrant shall submit the renewal fee as prescribed in 18VAC115-70-20.

18VAC115-70-60. Continued competency requirements for renewal of peer recovery specialist registration.

A. Registered peer recovery specialists shall be required to have completed a minimum of eight contact hours of continuing education for each annual registration renewal. A

minimum of [~~one~~ two] of these hours shall be in courses that emphasize ethics.

Registered peer recovery specialists shall complete continuing competency activities that focus on increasing knowledge or skills in one or more of the following areas:

1. Current body of mental health or substance abuse knowledge;
2. Promoting services, supports, and strategies for the recovery process;
3. Crisis intervention;
4. Values for role of peer recovery specialist;
5. Basic principles related to health and wellness;
6. Stage appropriate pathways in recovery support;
7. Ethics and boundaries;
8. Cultural sensitivity and practice;
9. Trauma and impact on recovery;
10. Community resources; or
11. Delivering peer services within agencies and organizations.

B. The following organizations, associations, or institutions are approved by the board to provide continuing education:

1. Federal, state, or local governmental agencies, public school systems, or licensed health [or mental health] facilities.
2. [A national or state recovery-oriented association or organization recognized by the profession.
3. A national behavioral health organization or certification body recognized by the board.
4. An agency or organization holding approval by DBHDS as a certifying body for peer recovery specialists.
5.] The American Association for Marriage and Family Therapy and its state affiliates.
- [~~3~~ 6.] The American Association of State Counseling Boards.
- [4. 7.] The American Counseling Association and its state and local affiliates.
- [~~5~~ 8.] The American Psychological Association and its state affiliates.
- [~~6~~ 9.] The Commission on Rehabilitation Counselor Certification.
- [~~7~~ 10.] NAADAC, the Association for Addiction Professionals and its state and local affiliates.
- [~~8~~ 11.] National Association of Social Workers.

[~~9.~~ 12.] National Board for Certified Counselors.

[~~10. A national behavioral health organization or certification body recognized by the board.~~

~~11.~~ 13.] Individuals or organizations that have been approved as continuing competency sponsors by the American Association of State Counseling Boards or a counseling board in another state.

[~~12. An agency or organization approved by DBHDS.~~

14. Regionally accredited colleges or universities.]

C. Attestation of completion of continuing education is not required for the first renewal following initial registration in Virginia.

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

E. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the registrant such as temporary disability, mandatory military service, or officially declared disasters upon written request from the registrant prior to the renewal date.

F. All registrants shall maintain original documentation of official transcripts showing credit hours earned or certificates of participation for a period of three years following renewal.

G. The board may conduct an audit of registrants to verify compliance with the requirement for a renewal period. Upon request, a registrant shall provide documentation as follows:

1. Official transcripts showing credit hours earned; or

2. Certificates of participation.

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

Part III

Standards of Practice; Disciplinary Actions; Reinstatement

18VAC115-70-70. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board.

B. Persons registered by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare.

2. Be able to justify all services rendered to clients as necessary.

3. Practice only within the competency area for which they are qualified by training or experience.

4. Report to the board known or suspected violations of the laws and regulations governing the practice of registered peer recovery specialists.

5. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services and make appropriate consultations and referrals based on the best interest of clients.

6. Stay abreast of new developments, concepts, and practices that are necessary to providing appropriate services.

7. Document the need for and steps taken to terminate services when it becomes clear that the client is not benefiting from the relationship [or the client has decided to discontinue the relationship].

C. In regard to confidentiality and client records, persons registered by the board shall:

1. Not willfully or negligently breach the confidentiality between a practitioner and a client. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

2. Disclose client records to others only in accordance with applicable law.

3. Maintain client records securely, inform all employees of the requirements of confidentiality, and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality.

4. Maintain timely, accurate, legible, and complete written or electronic records for each client, to include dates of service and identifying information to substantiate [~~treatment~~ the recovery, resiliency, and wellness] plan, client progress, and termination.

D. In regard to dual relationships, persons registered by the board shall:

1. Not engage in dual relationships with clients or former clients that are harmful to the client's well-being, that would impair the practitioner's objectivity and professional judgment, or that would increase the risk of client exploitation. This prohibition includes such activities as providing services to close friends, former sexual partners, employees, or relatives or engaging in business relationships with clients.

2. Not engage in sexual intimacies or romantic relationships with current clients. For at least five years after cessation or termination of professional services, practitioners shall not engage in sexual intimacies or romantic relationships with a client or those included in

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collateral therapeutic services. Because sexual or romantic relationships are potentially exploitative, the practitioner shall bear the burden of demonstrating that there has been no exploitation. A client's consent to, initiation of, or participation in sexual behavior or involvement with a practitioner does not change the nature of the conduct nor lift the regulatory prohibition.

3. Recognize conflicts of interest and inform all parties of obligations, responsibilities, and loyalties to third parties.

E. Upon learning of evidence that indicates a reasonable probability that another mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, is or may be guilty of a violation of standards of conduct as defined in statute or regulation, persons registered by the board shall advise their clients of the client's right to report such misconduct to the Department of Health Professions in accordance with § 54.1-2400.4 of the Code of Virginia.

18VAC115-70-80. Grounds for revocation, suspension, restriction, or denial of registration.

In accordance with subdivision 7 of § 54.1-2400 of the Code of Virginia, the board may revoke, suspend, restrict, or decline to issue or renew a registration based upon the following conduct:

1. Conviction of a felony or of a misdemeanor involving moral turpitude or violation of or aid to another in violating any provision of Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia, any other statute applicable to the practice of registered peer recovery specialists, or any provision of this chapter;

2. Procuring, attempting to procure, or maintaining a registration by fraud or misrepresentation;

3. Conducting one's practice in such a manner so as to make it a danger to the health and welfare of one's clients or to the public, or if one is unable to practice with reasonable skill and safety to clients by reason of illness or abusive use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition;

4. Violating or abetting another person in the violation of any provision of any statute applicable to the practice of peer recovery specialists or [qualified] mental health professionals or any provision of this chapter;

5. Performance of functions outside the board-registered area of competency;

6. Performance of an act likely to deceive, defraud, or harm the public;

7. Intentional or negligent conduct that causes or is likely to cause injury to a client;

8. Action taken against a health or mental health license, certification, registration, or application in Virginia or other jurisdiction;

9. Failure to cooperate with an employee of the Department of Health Professions in the conduct of an investigation; or

10. Failure to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia or elder abuse or neglect as required in § 63.2-1606 of the Code of Virginia.

18VAC115-70-90. Late renewal and reinstatement.

A. A person whose registration has expired may renew it within one year after its expiration date by paying the late renewal fee and the registration fee as prescribed in 18VAC115-70-20 for the year in which the registration was not renewed and by providing documentation of completion of continuing education as prescribed in 18VAC115-70-60.

B. A person who fails to renew registration after one year or more shall:

1. Apply for reinstatement;

2. Pay the reinstatement fee for a lapsed registration; and

3. Submit evidence of current certification as a peer recovery specialist as prescribed by DBHDS in 12VAC35-250-30.

C. A person whose registration has been suspended or who has been denied reinstatement by board order, having met the terms of the order, may submit a new application and fee for reinstatement of registration as prescribed in 18VAC115-70-20. Any person whose registration has been revoked by the board may, three years subsequent to such board action, submit a new application and fee for reinstatement of registration as prescribed in 18VAC115-70-20. The board in its discretion may, after an administrative proceeding, grant the reinstatement sought in this subsection.

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 (18VAC115-70)

The following form is available online only at <https://www.license.dhp.virginia.gov/apply/>:

Registered Peer Recovery Specialists Application and Instructions

VA.R. Doc. No. R18-5240; Filed September 18, 2019, 11:12 a.m.

Final Regulation

Title of Regulation: **18VAC115-80. Regulations Governing the Registration of Qualified Mental Health Professionals (adding 18VAC115-80-10 through 18VAC115-80-110).**

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Effective Date: November 13, 2019.

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

Summary:

Pursuant to Chapters 418 and 426 of the 2017 Acts of Assembly, the new regulation (i) establishes the fees required for registration and renewal of registration; (ii) specifies the education and experience necessary to qualify for registration, which includes a requirement of eight hours of continuing education with a minimum of one hour in ethics; (iii) sets standards of practice for qualified mental health professionals to include practicing within their competency area, practicing in a manner that does not endanger public health and safety, maintaining confidentiality, and avoiding dual relationships that would impair objectivity and increase risk of client exploitation; and (iv) makes violation of standards of practice or of applicable law or regulation grounds for disciplinary action by the board.

The proposed section "grandfathering" individuals who had been practicing before December 31, 2018, was not adopted for the final regulation.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

CHAPTER 80

REGULATIONS GOVERNING THE REGISTRATION OF QUALIFIED MENTAL HEALTH PROFESSIONALS

Part I

General Provisions

18VAC115-80-10. Definitions.

"Accredited" means a school that is listed as accredited on the U.S. Department of Education College Accreditation database found on the U.S. Department of Education website. If education was obtained outside the United States, the board may accept a report from a credentialing service that deems the degree and coursework is equivalent to a course of study at an accredited school.

"Applicant" means a person applying for registration as a qualified mental health professional.

"Board" means the Virginia Board of Counseling.

"Collaborative mental health services" means those rehabilitative supportive services that are provided by a qualified mental health professional, as set forth in a service plan under the direction of and in collaboration with either a mental health professional licensed in Virginia or a person under supervision that has been approved by the Board of Counseling, Board of Psychology, or Board of Social Work as a prerequisite for licensure.

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

"Face-to-face" means the physical presence of the individuals involved in the supervisory relationship or the use of technology that provides real-time, visual, and audio contact among the individuals involved.

"Mental health professional" means a person who by education and experience is professionally qualified and licensed in Virginia to provide counseling interventions designed to facilitate an individual's achievement of human development goals and remediate mental, emotional, or behavioral disorders and associated distresses that interfere with mental health and development.

"Qualified mental health professional" or "QMHP" means a person who by education and experience is professionally qualified and registered by the board to provide collaborative mental health services for adults or children. A QMHP shall not engage in independent or autonomous practice. A QMHP shall provide such services as an employee or independent contractor of DBHDS, the Department of Corrections, or a provider licensed by DBHDS.

"Qualified mental health professional-adult" or "QMHP-A" means a registered QMHP who is trained and experienced in providing mental health services to adults who have a mental illness. A QMHP-A shall provide such services as an employee or independent contractor of DBHDS, the Department of Corrections, or a provider licensed by DBHDS.

"Qualified mental health professional-child" or "QMHP-C" means a registered QMHP who is trained and experienced in providing mental health services to children or adolescents up to the age of 22 who have a mental illness. A QMHP-C shall provide such services as an employee or independent contractor of DBHDS, the Department of Corrections, or a provider licensed by DBHDS.

"Registrant" means a QMHP registered with the board.

18VAC115-80-20. Fees required by the board.

A. The board has established the following fees applicable to the registration of qualified mental health professionals:

Registration	\$50
Renewal of registration	\$30

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<u>Late renewal</u>	<u>\$20</u>
<u>Reinstatement of a lapsed registration</u>	<u>\$75</u>
<u>Duplicate certificate of registration</u>	<u>\$10</u>
<u>Returned check</u>	<u>\$35</u>
<u>Reinstatement following revocation or suspension</u>	<u>\$500</u>

B. Unless otherwise provided, fees established by the board shall not be refundable.

18VAC115-80-30. Current name and address.

Each registrant shall furnish the board his current name and address of record. Any change of name or address of record or public address if different from the address of record shall be furnished to the board within 60 days of such change. It shall be the duty and responsibility of each registrant to inform the board of his current address.

Part II Requirements for Registration

18VAC115-80-40. Requirements for registration as a qualified mental health professional-adult.

A. An applicant for registration shall submit:

1. A completed application on forms provided by the board and any applicable fee as prescribed in 18VAC115-80-20; [and]
2. A current report from the National Practitioner Data Bank (NPDB) [; and
3. Verification of any other mental health or health professional license, certification, or registration ever held in another jurisdiction].

B. An applicant for registration as a QMHP-A shall provide evidence of:

1. A master's degree in psychology, social work, counseling, substance abuse, or marriage and family therapy [, as verified by an official transcript,] from an accredited college or university with an internship or practicum of at least 500 hours of experience with persons who have mental illness;
2. A master's or bachelor's degree in human services or a related field [, as verified by an official transcript,] from an accredited college with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section;
3. A bachelor's degree [, as verified by an official transcript,] from an accredited college in an unrelated field that includes at least 15 semester credits or 22 quarter hours in a human services field and with no less than 3,000

hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section;

4. A registered nurse licensed in Virginia with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section; or

5. A licensed occupational therapist with [an internship or practicum of at least 500 hours with persons with mental illness or] no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section.

C. Experience required for registration.

1. To be registered as a QMHP-A, an applicant who does not have a master's degree as set forth in subdivision B 1 of this section shall provide documentation of experience in providing direct services to individuals as part of a population of adults with mental illness in a setting where mental health treatment, practice, observation, or diagnosis occurs. The services provided shall be appropriate to the practice of a QMHP-A and under the supervision of a licensed mental health professional or a person under supervision that has been approved by the Board of Counseling, Board of Psychology, or Board of Social Work as a prerequisite for licensure. Supervision obtained in another United States jurisdiction shall be provided by a mental health professional licensed in Virginia or licensed in that jurisdiction.

2. Supervision shall consist of face-to-face training in the services of a QMHP-A until the supervisor determines competency in the provision of such services, after which supervision may be indirect in which the supervisor is either on-site or immediately available for consultation with the person being trained.

3. Hours obtained in a bachelor's or master's level internship or practicum in a human services field may be counted toward completion of the required hours of experience.

4. A person receiving supervised training to qualify as a QMHP-A may register with the board. A trainee registration shall expire five years from its date of issuance.

18VAC115-80-50. Requirements for registration as a qualified mental health professional-child.

A. An applicant for registration shall submit:

1. A completed application on forms provided by the board and any applicable fee as prescribed in 18VAC115-80-20; [and]

2. A current report from the National Practitioner Data Bank (NPDB) [; and

3. Verification of any other mental health or health professional license, certification, or registration ever held in another jurisdiction].

B. An applicant for registration as a QMHP-C shall provide evidence of:

1. A master's degree in psychology, social work, counseling, substance abuse, or marriage and family therapy [, as verified by an official transcript,] from an accredited college or university with an internship or practicum of at least 500 hours of experience with persons who have mental illness;

2. A master's or bachelor's degree in a human services field or in special education [, as verified by an official transcript,] from an accredited college with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section;

3. A registered nurse licensed in Virginia with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section;
or

4. A licensed occupational therapist with [an internship or practicum of at least 500 hours with persons with mental illness or] no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section.

C. Experience required for registration.

1. To be registered as a QMHP-C, an applicant who does not have a master's degree as set forth in subdivision B 1 of this section shall provide documentation of 1,500 hours of experience in providing direct services to individuals as part of a population of children or adolescents with mental illness in a setting where mental health treatment, practice, observation, or diagnosis occurs. The services provided shall be appropriate to the practice of a QMHP-C and under the supervision of a licensed mental health professional or a person under supervision that has been approved by the Board of Counseling, Board of Psychology, or Board of Social Work as a prerequisite for licensure. Supervision obtained in another United States jurisdiction shall be provided by a mental health professional licensed in Virginia or licensed in that jurisdiction.

2. Supervision shall consist of face-to-face training in the services of a QMHP-C until the supervisor determines competency in the provision of such services, after which supervision may be indirect in which the supervisor is

either on-site or immediately available for consultation with the person being trained.

3. Hours obtained in a bachelor's or master's level internship or practicum in a human services field may be counted toward completion of the required hours of experience.

4. A person receiving supervised training to qualify as a QMHP-C may register with the board. A trainee registration shall expire five years from its date of issuance.

18VAC115-80-60. [~~Registration of qualified mental health professionals with prior experience~~ Reserved]

~~[Until December 31, 2018, persons who have been employed as QMHPs prior to December 31, 2017, may be registered with the board by submission of a completed application, payment of the application fee, and submission of an attestation from an employer that they met the qualifications for a QMHP A or a QMHP C during the time of employment. Such persons may continue to renew their registrations without meeting current requirements for registration provided they do not allow their registrations to lapse or have board action to revoke or suspend, in which case they shall meet the requirements for reinstatement.]~~

Part III

Renewal of Registration

18VAC115-80-70. Annual renewal of registration.

All registrants shall renew their registrations on or before June 30 of each year. Along with the renewal form, the registrant shall submit the renewal fee as prescribed in 18VAC115-80-20.

18VAC115-80-80. Continued competency requirements for renewal of registration.

A. Qualified mental health professionals shall be required to have completed a minimum of eight contact hours of continuing education for each annual registration renewal. Persons who hold registration both as a QMHP-A and QMHP-C shall only be required to complete eight contact hours. A minimum of one of these hours shall be in a course that emphasizes ethics.

B. Qualified mental health professionals shall complete continuing competency activities that focus on increasing knowledge or skills in areas directly related to the services provided by a QMHP.

C. The following organizations, associations, or institutions are approved by the board to provide continuing education, provided the hours are directly related to the provision of mental health services:

- 1. Federal, state, or local governmental agencies, public school systems, licensed health facilities, or an agency licensed by DBDHS; and

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2. Entities approved for continuing education by a health regulatory board within the Department of Health Professions.

D. Attestation of completion of continuing education is not required for the first renewal following initial registration in Virginia.

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

F. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the registrant, such as temporary disability, mandatory military service, or officially declared disasters, upon written request from the registrant prior to the renewal date.

G. All registrants shall maintain original documentation of official transcripts showing credit hours earned or certificates of participation for a period of three years following renewal.

H. The board may conduct an audit of registrants to verify compliance with the requirement for a renewal period. Upon request, a registrant shall provide documentation as follows:

1. Official transcripts showing credit hours earned; or
2. Certificates of participation.

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

Part IV

Standards of Practice, Disciplinary Action, and Reinstatement

18VAC115-80-90. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board.

B. Persons registered by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare.
2. Practice only within the competency area for which they are qualified by training or experience and shall not provide clinical mental health services for which a license is required pursuant to Chapters 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.), and 37 (§ 54.1-3700 et seq.) of the Code of Virginia.
3. Report to the board known or suspected violations of the laws and regulations governing the practice of qualified mental health professionals.

4. Neither accept nor give commissions, rebates, or other forms of remuneration for the referral of clients for professional services and make appropriate consultations and referrals based on the interest of patients or clients.

5. Stay abreast of new developments, concepts, and practices that are necessary to providing appropriate services.

C. In regard to confidentiality and client records, persons registered by the board shall:

1. Not willfully or negligently breach the confidentiality between a practitioner and a client. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

2. Disclose client records to others only in accordance with applicable law.

3. Maintain client records securely, inform all employees of the requirements of confidentiality, and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality.

4. Maintain timely, accurate, legible, and complete written or electronic records for each client, to include dates of service and identifying information to substantiate treatment plan, client progress, and termination.

D. In regard to dual relationships, persons registered by the board shall:

1. Not engage in dual relationships with clients or former clients that are harmful to the client's well-being, that would impair the practitioner's objectivity and professional judgment, or that would increase the risk of client exploitation. This prohibition includes such activities as providing services to close friends, former sexual partners, employees, or relatives or engaging in business relationships with clients.

2. Not engage in sexual intimacies or romantic relationships with current clients. For at least five years after cessation or termination of professional services, practitioners shall not engage in sexual intimacies or romantic relationships with a client or those included in collateral therapeutic services. Because sexual or romantic relationships are potentially exploitative, the practitioner shall bear the burden of demonstrating that there has been no exploitation. A client's consent to, initiation of, or participation in sexual behavior or involvement with a practitioner does not change the nature of the conduct nor lift the regulatory prohibition.

3. Recognize conflicts of interest and inform all parties of obligations, responsibilities, and loyalties to third parties.

E. Upon learning of evidence that indicates a reasonable probability that another mental health service provider, as

defined in § 54.1-2400.1 of the Code of Virginia, is or may be guilty of a violation of standards of conduct as defined in statute or regulation, persons registered by the board shall advise their clients of the client's right to report such misconduct to the Department of Health Professions in accordance with § 54.1-2400.4 of the Code of Virginia.

18VAC115-80-100. Grounds for revocation, suspension, restriction, or denial of registration.

In accordance with subdivision 7 of § 54.1-2400 of the Code of Virginia, the board may revoke, suspend, restrict, or decline to issue or renew a registration based upon the following conduct:

1. Conviction of a felony, or of a misdemeanor involving moral turpitude, or violation of or aid to another in violating any provision of Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia, any other statute applicable to the practice of qualified mental health professionals, or any provision of this chapter;
2. Procuring, attempting to procure, or maintaining a registration by fraud or misrepresentation;
3. Conducting one's practice in such a manner so as to make it a danger to the health and welfare of one's clients or to the public, or if one is unable to practice with reasonable skill and safety to clients by reason of illness or abusive use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition;
4. Violating or abetting another person in the violation of any provision of any statute applicable to the practice of qualified mental health professionals or any regulation in this chapter;
5. Performance of functions outside the board-registered area of competency;
6. Performance of an act likely to deceive, defraud, or harm the public;
7. Intentional or negligent conduct that causes or is likely to cause injury to a client;
8. Action taken against a health or mental health license, certification, registration, or application in Virginia or other jurisdiction;
9. Failure to cooperate with an employee of the Department of Health Professions in the conduct of an investigation; or
10. Failure to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia or elder abuse or neglect as required in § 63.2-1606 of the Code of Virginia.

18VAC115-80-110. Late renewal and reinstatement.

A. A person whose registration has expired may renew it within one year after its expiration date by paying the late renewal fee and the registration fee as prescribed in 18VAC115-80-20 for the year in which the registration was not renewed and by providing documentation of completion of continuing education as prescribed in 18VAC115-80-80.

B. A person who fails to renew registration after one year or more shall:

1. Apply for reinstatement;
2. Pay the reinstatement fee for a lapsed registration; and
3. Submit evidence of completion of 20 hours of continuing education consistent with requirements of 18VAC115-80-80.

C. A person whose registration has been suspended or who has been denied reinstatement by board order, having met the terms of the order, may submit a new application and fee for reinstatement of registration as prescribed in 18VAC115-80-20. Any person whose registration has been revoked by the board may, three years subsequent to such board action, submit a new application and fee for reinstatement of registration as prescribed in 18VAC115-80-20. The board in its discretion may, after an administrative proceeding, grant the reinstatement sought in this subsection.

NOTICE: The following forms used in administering the regulation are not being published. The forms are available in electronic online form only at the listed website. Questions regarding agency forms should be directed to the agency contact.

FORMS (18VAC115-80)

The following forms are available online only at <https://www.license.dhp.virginia.gov/apply/>:

- Qualified Mental Health Profession-Adult, Application and Instructions
- Qualified Mental Health Profession-Child, Application and Instructions
- [~~Qualified Mental Health Profession-Adult, Grandfathering Application and Instructions~~
- Qualified Mental Health Profession-Child, Grandfathering Application and Instructions]
- Supervised Trainee, Application and Instructions
- [[Verification of Supervised Experience for a Qualified Mental Health Profession-Adult \(eff. 10/2018\)](#)
- [Verification of supervised experience for a Qualified Mental Health Profession-Child \(eff. 10/2018\)](#)

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[Verification of Internship/Practicum for a Qualified Mental Health Profession \(eff. 7/2018\)](#)]

VA.R. Doc. No. R18-5242; Filed September 18, 2019, 11:13 a.m.

BOARD OF SOCIAL WORK

Final Regulation

Title of Regulation: 18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-105).

Statutory Authority: §§ 54.1-2400 and 54.1-3708 of the Code of Virginia.

Effective Date: November 13, 2019.

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

Summary:

The amendments increase the continuing education hours required for license renewal pertaining to ethics or the standards of practice to a minimum of six hours every two years for licensed clinical social workers and a minimum of three hours every two years for licensed social workers. The only change to the proposed regulation is the update of required forms.

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

18VAC140-20-105. Continued competency requirements for renewal of an active license.

A. Licensed clinical social workers shall be required to have completed a minimum of 30 contact hours of continuing education. LBSWs and LMSWs shall be required to have completed a minimum of 15 contact hours of continuing education prior to licensure renewal in even years. Courses or activities shall be directly related to the practice of social work or another behavioral health field. A minimum of ~~two~~ six of those hours for licensed clinical social workers and a minimum of three of those hours for licensed social workers must pertain to ethics or the standards of practice for the behavioral health professions or to laws governing the practice of social work in Virginia. Up to two continuing education hours required for renewal may be satisfied through delivery of social work services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services, as verified by the department or clinic. Three hours of volunteer service is required for one hour of continuing education credit.

1. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior

to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

2. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee such as temporary disability, mandatory military service, or officially declared disasters upon written request from the licensee prior to the renewal date.

B. Hours may be obtained from a combination of board-approved activities in the following two categories:

1. Category I. Formally Organized Learning Activities. A minimum of 20 hours for licensed clinical social workers or 10 hours for licensed social workers shall be documented in this category, which shall include one or more of the following:

a. Regionally accredited university or college academic courses in a behavioral health discipline. A maximum of 15 hours will be accepted for each academic course.

b. Continuing education programs offered by universities or colleges accredited by the Council on Social Work Education.

c. Workshops, seminars, conferences, or courses in the behavioral health field offered by federal, state or local social service agencies, public school systems, or licensed health facilities and licensed hospitals.

d. Workshops, seminars, conferences, or courses in the behavioral health field offered by an individual or organization that has been certified or approved by one of the following:

(1) The Child Welfare League of America and its state and local affiliates.

(2) The National Association of Social Workers and its state and local affiliates.

(3) The National Association of Black Social Workers and its state and local affiliates.

(4) The Family Service Association of America and its state and local affiliates.

(5) The Clinical Social Work Association and its state and local affiliates.

(6) The Association of Social Work Boards.

(7) Any state social work board.

2. Category II. Individual Professional Activities. A maximum of 10 of the required 30 hours for licensed clinical social workers or a maximum of five of the required 15 hours for licensed social workers may be earned in this category, which shall include one or more of the following:

- a. Participation in an Association of Social Work Boards item writing workshop. (Activity will count for a maximum of two hours.)
- b. Publication of a professional social work-related book or initial preparation or presentation of a social work-related course. (Activity will count for a maximum of 10 hours.)
- c. Publication of a professional social work-related article or chapter of a book, or initial preparation or presentation of a social work-related in-service training, seminar, or workshop. (Activity will count for a maximum of five hours.)
- d. Provision of a continuing education program sponsored or approved by an organization listed under Category I. (Activity will count for a maximum of two hours and will only be accepted one time for any specific program.)
- e. Field instruction of graduate students in a Council on Social Work Education-accredited school. (Activity will count for a maximum of two hours.)
- f. Serving as an officer or committee member of one of the national professional social work associations listed under subdivision B 1 d of this section or as a member of a state social work licensing board. (Activity will count for a maximum of two hours.)
- g. Attendance at formal staffings at federal, state, or local social service agencies, public school systems, or licensed health facilities and licensed hospitals. (Activity will count for a maximum of five hours.)
- h. Individual or group study including listening to audio tapes, viewing video tapes, or reading; professional books or articles. (Activity will count for a maximum of five hours.)

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 (18VAC140-20)

~~[Instructions and Application for Registration of Supervision Post Graduate Degree Supervised Experience for LCSW (rev. 6/11).~~

~~Social Worker Licensure Application (rev. 8/07).~~

~~Clinical Social Worker Licensure Application (rev. 8/08).~~

~~Verification of Clinical Supervision (rev. 1/11).~~

~~Verification of Supervised Field Placement/Practicum (rev. 6/11).~~

~~Out of State Licensure Verification (rev. 8/07).~~

~~Licensure Verification of Out of State Supervisor (rev. 8/07).~~

~~Form for Reporting Social Work Attendance at Formal Staffing (rev. 8/07).~~

~~Form for Reporting Social Work Independent Study (rev. 8/07).~~

~~General Information Electronic application instructions for Licensure by Examination as a Licensed Baccalaureate Social Worker (LBSW), with Application Instructions (rev. 8/07).~~

~~General Information Electronic application instructions for Licensure by Endorsement as a Licensed Baccalaureate Social Worker (LBSW), with Application Instructions (rev. 8/07).~~

~~General Information Electronic application instructions for Licensure by Examination as a Licensed Clinical Social Worker (LCSW) and Application Instructions (rev. 4/11).~~

~~General Information Electronic application instructions for Licensure by Endorsement as a Licensed Clinical Social Worker (LCSW) and Application Instructions (rev. 4/11).~~

~~Instructions and Application for Registration of Supervision for LSW (rev. 9/09).~~

~~Application for Registration of Supervision — Post-Bachelor's Degree Supervised Experience for LSW (rev. 9/09).~~

~~Clinical Social Worker Reinstatement Application for LCSW, LMSW, LBSW (rev. 4/08).~~

~~Social Work Reinstatement Application (rev. 4/08).~~

~~Clinical Social Worker Licensure Application — Reinstatement Following Disciplinary Action for LCSW, LMSW, LBSW (rev. 4/08).~~

~~Continuing Education Summary Form (rev. 8/07).~~

[Verification of Clinical Supervision \(rev. 8/2016\)](#)

[Request for Termination of Supervision \(rev. 11/2015\)](#)

[Application for Initial and Add or Change Registration of Supervision toward LCSW licensure, online form available at https://www.dhp.virginia.gov/social/social_forms.htm](https://www.dhp.virginia.gov/social/social_forms.htm)

[Application for Licensure by Examination and Endorsement as a Licensed Clinical Social Worker, online form available at https://www.dhp.virginia.gov/social/social_forms.htm](https://www.dhp.virginia.gov/social/social_forms.htm)

[Electronic Application Instructions for Licensure by Examination as a Licensed Baccalaureate Social Worker \(LBSW\) \(rev. 8/2019\)](#)

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[Electronic Application Instructions for Licensure by Endorsement as a Licensed Baccalaureate Social Worker \(LBSW\) \(rev. 8/2019\)](#)

[Electronic Application Instructions for Licensure by Examination as a Licensed Master's Social Worker \(LMSW\) \(rev. 8/2019\)](#)

[Electronic application instructions for Licensure by Endorsement as a Licensed Master's Social Worker \(LMSW\) \(rev. 8/2019\)](#)

[Electronic Application Instructions for Licensure by Examination as a Licensed Clinical Social Worker \(LCSW\) \(rev. 8/2019\)](#)

[Electronic application instructions for Licensure by Endorsement as a Licensed Clinical Social Worker \(LCSW\) \(rev. 8/2019\)](#)

[Instructions and Application for Registration of Supervision for LSW \(rev. 9/2015\)](#)

[Reinstatement Application for LCSW, LMSW, LBSW \(rev. 12/2013\)](#)

[Reinstatement Following Disciplinary Action for LCSW, LMSW, LBSW \(rev. 12/2013\)](#)

[Social Work Name-Address Change Form \(rev. 5/2018\)](#)

[Request for Inactive Status of Current Social Work License \(rev. 7/2017\)](#)

[Request for Change of Status - Inactive to Active \(rev. 7/2017\)](#)

[Request for Verification of Virginia License \(rev. 7/2017\)](#)

[Request for Late Renewal \(rev. 6/2017\) \]](#)

VA.R. Doc. No. R18-5436; Filed September 24, 2019, 9:36 a.m.

EXECUTIVE ORDER NUMBER FORTY-THREE (2019)

Expanding Access to Clean Energy and Growing the Clean Energy Jobs of the Future

Importance of the Issue

The energy industry serves as the backbone of the Commonwealth's economy. Individuals, communities, and businesses need energy systems that are both reliable and affordable. At the same time, Virginia is beginning the transition to a more modern electric grid that will incorporate technological advances and meet the changing needs of customers.

Yet Virginia's policy structures have historically focused on the traditional power sector model of large, centralized power stations and conventional transmission and distribution infrastructure. In the coming years, renewable energy technologies and distributed energy resources such as rooftop solar, smart meters, and battery storage are likely to make up an ever-increasing share of our energy system. Similarly, it is anticipated that larger portions of the economy, such as transportation, building heating, and some industrial processes will rely increasingly on electricity.

As Virginia begins to shift to a more modern electric grid that is reliable, affordable, resilient, and environmentally responsible, the Commonwealth must continue to prioritize the transition to cleaner sources of energy, like wind, solar, and energy efficiency through an equitable approach to benefit all Virginians. The policies that we implement must be both forward-looking and adaptive to enable the energy transformations that are beginning. We must also ensure that the modernization of our electric grid is done in a way that prioritizes carbon free sources of electricity to reduce our environmental impact and mitigate the impacts of climate change.

Climate change is an urgent and pressing challenge for Virginia. As recent storms, heat waves, and flooding events have reminded us, climate disruption poses potentially devastating risk to Virginia. The electric power sector represents approximately 30% of the carbon dioxide emissions in Virginia and is central to our efforts to address the problem. The reports from the United Nations Intergovernmental Panel on Climate Change and Fourth National Climate Assessment make clear that swift decarbonization and a transition to clean energy is required to meet the urgency of the challenge.¹

Clean energy advancements offer an opportunity to address and prevent energy inequities facing Virginia's most vulnerable populations, including low-income communities and communities of color. Low-income households pay proportionately more than the average household for energy costs and often experience negative long-term effects on their health and welfare.² Research from the American Council for an Energy-Efficient Economy states that "the overwhelming majority of single family and multifamily low-income

households (those with income at or below 80% of area median income), minority households, low-income households residing in multifamily buildings, and renting households experienced higher energy burdens than the average household in the same city."³ Clean energy innovation and energy efficiency strategies can alleviate this burden, lower energy bills, and provide access to clean energy for all Virginians. No segment of the population should bear disproportionately high or adverse effects from pollution and climate disturbance, and as we increase investments in clean energy, equity must be part of the framework. The U.S. Environmental Protection Agency describes equitable development as "an approach for meeting the needs of underserved communities through policies and programs that reduce disparities while fostering places that are healthy and vibrant."⁴

Virginia is well positioned to be a center of economic activity for this clean energy transition, and having this economic activity will help us capture the economic and health benefits from the clean economy for all Virginians. The clean energy sector has the power to create new business opportunities, expand customer access to renewable energy, and spark the high-demand jobs of the 21st century. Today, Virginia has more than 3,000 megawatts (MW) of solar currently in service or under development.⁵ In the last year, the number of solar jobs in Virginia has increased by nearly ten percent to 3,890 jobs.⁶ Additionally, the Commonwealth is home to 78,670 individuals who work in the energy efficiency sector, with 2,049 jobs added in the last year.⁷ The continued growth of clean energy investment in the Commonwealth has the potential to bring about long-term sustainable economic development while also mitigating the impacts of climate change through reduced carbon dioxide emissions.

With these two principles in mind – the need to support policies that enable the modernization of our electric grid and the potential for significant new job growth in the clean energy sector – the Commonwealth must establish ambitious goals and work with stakeholders across the industry to identify areas of growth.

Executive Action

Accordingly, by virtue of the authority vested in me as Chief Executive by Article V of the Constitution of Virginia and under the laws of the Commonwealth, I hereby direct all executive branch agencies, authorities, departments, and all institutions of higher education, to every extent practicable, to operate in accordance with the following guidelines:

A. The Director of Department of Mines, Minerals and Energy (DMME), in consultation with the Secretary of Commerce and Trade, the Secretary of Natural Resources, and the Director of the Department of Environmental Quality (DEQ), shall develop a plan of action to produce thirty percent of Virginia's electricity from renewable energy sources by 2030 and one hundred percent of Virginia's electricity from carbon-free sources by 2050. The plan shall include the following resource considerations:

1. Solar and Onshore Wind Energy: Solar and onshore wind energy are competitively priced energy resources that have the potential to provide significant economic development and job creation opportunities across the Commonwealth. Pursuant to energy legislation I signed last year (Senate Bill 966), Virginia has a statewide goal of achieving 5,500 MW of wind and solar energy by 2028. At least 3,000 MW of this target should be under development by 2022. In furtherance of this goal, Dominion Energy has committed to annually procure up to 500 MW of utility-scale solar and onshore wind projects through a competitive procurement process. Dominion has also committed to annual procurements of smaller-scale solar energy, including rooftop solar, through a competitive procurement process that will be issued annually beginning in 2019. These procurements will start at 50 MW and will scale up to 150 MW by January of 2022. Appalachian Power also initiated a competitive procurement process for 200 MW of utility-scale solar projects in Virginia, with projects to be operational by the end of 2021. In order to make certain these utility-scale and smaller-scale projects move forward, DMME's plan must provide recommendations on actions to ensure the utilities meet these procurement targets and meet the requirement that all such projects are procured competitively, with at least twenty-five percent of such projects procured through power-purchase agreement (PPA). Furthermore, the plan shall include any legislative or executive recommendations to reduce barriers to achieving these solar and onshore wind goals.

2. Energy Efficiency: Energy efficiency programs are the lowest cost energy option, producing electricity cost savings, creating jobs and revenue from the energy efficiency service sector, and helping to reduce greenhouse gases and other air pollutants. Virginia has a statewide goal of reducing retail electricity consumption by ten percent by 2022 using 2006 as a baseline. These reductions will come from a combination of sources, including building codes, energy performance contracting, private financing programs, and investments from the Commonwealth's utilities. As part of Senate Bill 966, Dominion Energy will invest \$870 million and Appalachian Power will invest \$140 million in energy efficiency programs over the next decade. The legislation further states that at least 5 percent of these ratepayer-funded programs should be directed toward low-income, elderly, and disabled persons. To meet these spending goals, Dominion Energy should increase spending to \$100 million per year by 2019 and Appalachian Power should increase spending to \$15 million per year by 2019, excluding lost revenue recovery. DMME's plan shall provide recommendations to support implementation of this increased utility investment in energy efficiency programs. DMME shall work with the Virginia Resources Authority, Virginia Small Business Financing Authority, Virginia Housing Development

Authority, and the Virginia Department of Housing and Community Development to include complementary policy options in the plan, such as developing and administering energy financing programs and enhancing building codes.

3. Offshore Wind: The offshore wind industry in the United States is on the cusp of a major boom that could see America become one of the largest offshore wind markets in the world. Virginia currently has a 12 MW demonstration project under construction, which will serve as a research and development project as Virginia moves forward with the development of our larger offshore wind energy area. The larger offshore wind energy area could supply as much as 2,500 MW of offshore wind, and it should be fully developed by 2026. The plan shall include recommendations on the timeline and steps needed to achieve this offshore wind target, including working with Dominion Energy and the U.S. Bureau of Ocean Energy Management to submit the Construction and Operation Plan (COP) by 2021 with construction beginning by 2024.

4. Energy Storage: As the Commonwealth integrates more renewable energy resources, balancing the intermittency of the grid through energy storage will become increasingly important. Senate Bill 966 requires Dominion Energy to develop a 30 MW battery storage pilot program and Appalachian Power to develop a 10 MW battery storage pilot program. Further, pumped hydroelectric storage facilities are now deemed in the public interest, and other sources of utility-scale storage are starting to become commercialized. The Plan shall include integration of storage technologies into the grid and pairing of such storage technologies with renewable generation, including distributed energy resources like rooftop solar.

5. Energy Equity: The plan shall also address issues related to equity and environmental justice so that the clean energy and climate goals outlined in this Order are achieved in a just manner that advances social, energy, and environmental equity. These clean energy resources shall be deployed to maximize the economic and environmental benefit to underserved communities while mitigating any impacts to those communities. The Plan shall include measures that provide communities of color and low- and moderate-income communities access to clean energy and a reduction in their energy burdens.

The Director of DMME shall report monthly to the Secretary of Commerce and Trade on the progress of these efforts, and shall submit the final plan to the Governor by July 1, 2020.

B. The Commonwealth shall procure at least 30 percent of the electricity under the statewide electric contract with Dominion Energy from renewable energy resources by 2022. The Commonwealth has the potential to add significant low-cost solar and wind energy projects that will serve as a hedge against uncertain energy prices while helping to spur job creation opportunities in both the solar and onshore wind market. Virginia currently has an eight percent renewable energy procurement

target that equates to approximately 110 MW of renewable generation. This target is currently accomplished through investment in both utility-scale solar energy facilities and smaller solar energy facilities contracted with third-party renewable energy developers. Since the original eight percent target was established, the price of solar and wind resources in Virginia continues to drop and serves as an important hedge against fluctuating energy and fuel costs. Virginia now has the potential to achieve at least 30 percent of generation from renewable resources through both utility-scale onshore wind and solar investments as well as smaller solar installations accomplished through PPA. To achieve this 30 percent target, the Secretary of Commerce and Trade, DMME, and the Department of General Services (DGS) shall negotiate amendments to the statewide Dominion energy contract to include the additional purchase of energy from utility-scale onshore wind and solar facilities. Additionally, to accommodate the procurement of smaller-scale PPAs, DMME shall annually initiate a competitive procurement process for smaller-scale PPAs at the Commonwealth's existing facilities, with the first competitive procurement issued in the fall of 2019 for at least 10 MW of cumulative distributed solar at state facilities annually. DMME shall work with DGS and all interested facilities in the development of the competitive process. Additionally, for newly-constructed buildings, all executive branch agencies and institutions shall evaluate the use of distributed solar resources during the design and engineering process.

C. The Commonwealth shall reduce electricity consumption across all of the Commonwealth's agencies and institutions through development and execution of a comprehensive Resource Conservation Management Plan (RCMP). DMME shall, in coordination with DGS and DEQ, develop a RCMP as the framework to achieve the state's portion of the goal of reducing retail electricity consumption by ten percent by 2022 using 2006 as a baseline. The RCMP should include recommendations on reducing energy usage through measurement and tracking, operations and maintenance, and capital investment. It should cover both the existing building stock as well as new construction. As part of the RCMP framework, all state agencies and institutions should utilize energy performance contracting (EPC) to reduce energy consumption. EPC is a budget neutral, cost-effective tool that allows state agencies and publicly-owned facilities to reduce their deferred maintenance backlogs without adding any financial burden to the taxpayer. To date, more than 240 EPC projects have been completed by state and local agencies in Virginia, valuing nearly \$900 million in savings for the Commonwealth. DMME has managed the program since 2002, providing robust technical assistance to localities and state agencies considering EPCs. To facilitate additional deployment of EPC, DMME shall produce a ranking of the top facilities that have achieved energy reductions and a list of facilities that most need improvement. DMME shall work with DGS and other agencies and executive branch institutions to double the 2018 total annual level of EPC contracting investment. All executive branch agencies and institutions shall work with DMME to conduct a general energy audit with the goal of implementing an EPC by 2022. For executive branch agencies that have already

employed EPC, overall energy consumption should be re-evaluated to identify areas for further energy efficiency improvements.

D. To ensure that the Commonwealth has the workforce in place to meet the growing needs and technological advancements of the clean energy sector, the Chief Workforce Advisor and the Secretary of Commerce and Trade shall work with stakeholders to develop an energy workforce plan. Such plan shall include an evaluation of current curriculum and training programs, including K-12 curriculum and the potential for pre-employment programs. The plan shall address both awareness of energy sector career opportunities and access to career pathways and programs. The plan shall include specific recommendations for creating pathways out of poverty through careers in renewable energy and energy efficiency. The plan should also leverage existing efforts, including the Virginia Energy Workforce Consortium and Build Virginia.

Effective Date of the Executive Order

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 under the Seal of the Commonwealth of Virginia this 16th day of September, 2019.

/s/ Ralph S. Northam
Governor

¹See Report of the United Nations Intergovernmental Panel on Climate Change, October 2018, available at <https://www.ipcc.ch/sr15/>; Fourth National Climate Assessment, November 2018, available at <https://nca2018.globalchange.gov/downloads/>.

²Lifting the High Energy Burden in America's Largest Cities: How Energy Efficiency Can Improve Low Income and Underserved Communities, April 2016, American Council for an Energy-Efficient Economy, available at: https://assets.ctfassets.net/ntcn17ss1ow9/1UEmqh5159cFaHMqVwHqMy/1e1833cbf370839dbbdf6989ef8b8b4/Lifting_the_High_Energy_Burden_0.pdf.

³See id.

⁴U.S. Environmental Protection Agency, Equitable Development and Environmental Justice, available at: <https://www.epa.gov/environmentaljustice/equitable-development-and-environmental-justice>.

⁵Solar Tracking Data, Department of Mines Minerals and Energy.

⁶National Solar Jobs Census 2018, The Solar Foundation, available at <http://www.thesolarfoundation.org/national/>.

⁷U.S. Energy and Employment Report 2019 - Virginia, National Association of State Energy Officials and Energy Futures Initiative, available at <https://static1.squarespace.com/static/5a98cf80ec4eb7c5cd928c61/t/5c7f425b4785d349f2f021b7/1551843931999/Virginia.pdf>.

EXECUTIVE ORDER NUMBER FORTY-FOUR (2019)

Continuation of the Governor's Advisory Commission on Opioids and Addiction

Importance of the Initiative

The disease of addiction is devastating our communities and taking the lives of too many Virginians. Since 2013, drug overdoses have been the leading cause of unnatural death in the Commonwealth. Nearly 1,500 individuals in Virginia died as a result of drug overdoses just last year. Of those nearly 1,500 fatalities, over 80 percent involved prescription opioid painkillers, heroin, or synthetic opioids like fentanyl. Opioid and heroin abuse continues to pose an immense public health and safety threat to Virginians and remains a public health emergency for the Commonwealth.

In addition to opioids and heroin, data shows that abuse of other potentially deadly drugs, particularly stimulants, is on the rise. In addition to maintaining a focus on opioids, Virginia's leaders must also focus on the biological, psychological, and social factors that foster addiction in an individual so that those factors can be addressed and mitigated. The disease of addiction is not exclusive to any substance and addiction will always find another drug.

Virginia cannot solve these problems through state intervention alone. The knowledge and experiences of providers, peers, local leadership, and other community partners is imperative as we work to reduce the impact of addiction and reduce the number of those who die from it. Under the authority established by Executive Directive Nine (2016), the Governor's Executive Leadership Team on Opioids and Addiction implements strategies, programs, and policies aimed at reducing overdose deaths. It is necessary to look to our partners to strengthen our understanding of the issue and share learned successes. Therefore, I direct relevant secretariats, agencies, health and behavioral health providers and organizations, education professionals, law enforcement, and other stakeholders to continue working together to identify and execute strategies to increase harm reduction opportunities, intensify prevention activities, enhance access to evidence-based treatment, and support individuals in recovery in Virginia.

Key Objectives

This advisory commission shall provide comments to the co-chairs of the Governor's Executive Leadership Team on Opioids and Addiction regarding the development of policies, programs, and other initiatives designed to impact the ongoing drug overdose epidemic in Virginia.

The advisory commission shall meet upon the call of the co-chairs. The co-chairs shall call the advisory commission to meet no less than twice per year. At such meeting, the Executive Leadership Team on Opioids and Addiction shall provide updates and metrics regarding opioid and addiction

initiatives. Therefore, supplemental meetings may be held to review specific topics, initiatives, and programs.

The advisory commission shall provide a final report to the Governor including recommendations to address the opioid and addiction crisis in the Commonwealth.

Continuation of the Opioid and Addiction Commission

Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia under the laws of the Commonwealth, including, but not limited to §§ 2.2-134 and 2.2-135 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby extend the Governor's Advisory Commission on Opioids and Addiction (Opioid and Addiction Commission).

The Opioid and Addiction Commission will serve in a consultative role, in accordance with § 2.2-2100 of the Code of Virginia, and will be responsible for advising the Governor's Executive Leadership Team on Opioids and Addiction and providing guidance on the following initiatives related to addressing the opioid and addiction public health emergency in the Commonwealth:

- a. Building the capacity of Virginia's communities to address the addiction epidemic through community mobilization and coalition development;
- b. Limiting availability of prescription opioids for misuse;
- c. Establishing pathways to treatment and recovery supports in Virginia;
- d. Establishing operational comprehensive harm reduction programs in Virginia; and
- e. Developing model protocols for Medication Assisted Treatment (MAT) for individuals being released from correctional settings that local/regional jails and community services boards can use.

Composition of the Opioid and Addiction Commission

The Opioid and Addiction Commission's membership shall be appointed by the Governor. The Secretaries of Health and Human Resources and Public Safety and Homeland Security will co-chair the Opioid and Addiction Commission. Membership for the Opioid and Addiction Commission will be composed of representatives from the Office of the Attorney General, the General Assembly, and the judiciary, as well as community leaders in prevention, harm reduction, treatment, and recovery, including individuals with lived experiences. The Governor may appoint any other person(s) deemed necessary and proper to carry out the assigned functions.

The Secretariat of Health and Human Resources shall provide a Staff Director to support the Opioid and Addiction Commission. The Secretariats of Public Safety and Homeland

Security and Health and Human Resources shall provide other staff support as necessary. An estimated 100 hours of staff time will be required to support the work of the Opioid and Addiction Commission.

Effective Date

This Executive Order shall be effective upon its signing and, pursuant to §§ 2.2-134 and 2.2-135 of the Code of Virginia, shall remain in full force and effect for a year from its signing, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 25th 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.

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Title of Document: [Public Pay ALF Assessment Manual](#).

Public Comment Deadline: November 13, 2019.

Effective Date: November 14, 2019.

Agency Contact: Charlotte Arbogast, Senior Policy Advisor, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7093, or email charlotte.arbogast@dars.virginia.gov.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Titles of Documents:

[Direct Support Professional \(DSP\) and DSP Supervisor DD Waiver Orientation and Competencies Protocol \(August 30, 2019\)](#).

[2019 Developmental Disabilities \(DD\) DSP and Supervisor Competencies Checklist for DBHDS Licensed Providers](#).

Public Comment Deadline: November 13, 2019.

Effective Date: January 1, 2020.

Agency Contact: Eric Williams, Director, Provider Development, DD Service Division, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond VA 23218-1797, telephone (804) 371-7428, or email eric.williams@dbhds.virginia.gov.

BOARD OF DENTISTRY

Title of Document: [Sanctioning Reference Points Instruction Manual](#).

Public Comment Deadline: November 13, 2019.

Effective Date: November 14, 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.

STATE BOARD OF EDUCATION

Title of Document: [Guidelines for Providing Loan Interest Rate Subsidy Grant Payments for the Virginia Public School Authority Pooled Bond Program \(Revised - September 2019\)](#).

Public Comment Deadline: November 13, 2019.

Effective Date: November 14, 2019.

Agency Contact: Kent Dickey, Deputy Superintendent for Budget, Finance and Operations, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2025, or email kent.dickey@doe.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Title of Document: [Manual for Processing Requests Pursuant to the Virginia Freedom of Information Act \(July 2019\)](#).

Public Comment Deadline: November 13, 2019.

Effective Date: November 14, 2019.

Agency Contact: Natalie Driver Womack, Freedom of Information Officer, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4085, or email natalie.womack@deq.virginia.gov.

BOARD OF NURSING

Titles of Documents:

[Bylaws of the Advisory Board on Massage Therapy Virginia Board of Nursing](#).

[Guidance on Massage Therapy Practice](#).

Public Comment Deadline: November 13, 2019.

Effective Date: November 14, 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.

VIRGINIA WASTE MANAGEMENT BOARD

Title of Document: [Odor Guidance for Solid Waste Management Facilities](#).

Public Comment Deadline: November 13, 2019.

Effective Date: November 14, 2019.

Agency Contact: Kathryn Perszyk, Solid Waste Permitting Coordinator, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (703) 583-3856, or email kathryn.perszyk@deq.virginia.gov.

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Release of the Final 2018 §§ 305(b)/303(d) Water Quality Assessment Integrated Report

The Virginia Department of Environmental Quality (DEQ) will release the Final 2018 §§ 305(b)/303(d) Water Quality Assessment Integrated Report on October 15, 2019.

The Integrated Report combines the § 305(b) Water Quality Assessment and the § 303(d) Report on Impaired Waters. The draft report was available for public comment January 22, 2019, through February 21, 2019. Comments were received from the public and the U.S. Environmental Protection Agency (EPA). EPA approved the final report on September 16, 2019.

The final report, public comment-response document, and map images are available for download at [https://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityAssessments/2018305\(b\)303\(d\)IntegratedReport.aspx](https://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityAssessments/2018305(b)303(d)IntegratedReport.aspx). Copies are available at no charge on CD-ROM (limit one per person) by contacting Cleo Baker by telephone at (804) 698-4191 or via email at cleo.baker@deq.virginia.gov. These CD-ROMs include the entire final report, all appendices, and summary maps developed from the 2018 assessment.

Questions regarding the report can be directed to Sandra Mueller, Office of Water Monitoring and Assessment, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4324, or email sandra.mueller@deq.virginia.gov.

Belcher Solar LLC Withdrawal of Notice of Intent for Small Renewable Energy Project (Solar) - Permit by Rule - Louisa County

Belcher Solar LLC has notified the Department of Environmental Quality of the withdrawal of the notice of intent for the 17 megawatts expansion to the project located in Louisa County previously awarded a permit by rule under registration number 2017-S03. The notice of intent for the expansion was posted to the Virginia Regulatory Town Hall on April 23, 2019, and appeared in the Virginia Register of Regulations on May 13, 2019.

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.

Rochambeau Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) - Permit by Rule - James City County

Rochambeau Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small

renewable energy project (solar) in James City County. The Rochambeau solar project is located on approximately 192 acres of property currently used for agriculture and timber with an approximate address of 4978 Rochambeau Drive, Williamsburg, VA 23188 (37°21'25.75"N, 76°45'33.41"W). The rated capacity of the facility at the point of interconnection will be 19.9 megawatts alternating current.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4319, or email mary.major@deq.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Order for Mondelez Global LLC

An enforcement action has been proposed for Mondelez Global LLC for violations of the State Water Control Law and regulations at the Mondelez Global LLC facility located in Manassas, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Mondelez Global LLC facility. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Benjamin Holland will accept comments by email at benjamin.holland@deq.virginia.gov or by postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from October 15, 2019, until November 14, 2019.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <https://commonwealthcalendar.virginia.gov>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

Filing Material for Publication in the Virginia Register of Regulations: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The

Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

STATE CORPORATION COMMISSION

Title of Regulation: **20VAC5-315. Regulations Governing Net Energy Metering.**

Publication: 36:2 VA.R. 120-129, September 16, 2019.

Corrections to Proposed Regulation:

Page 125, 20VAC5-315-40 A 3, line 4, after "~~or switches~~" strike "are" and add "is" and line 5, after "~~or generators~~" strike "have" and add "has"

VA.R. Doc. No. R20-6101; Filed September 19, 2019, 11:12 a.m.

STATE WATER CONTROL BOARD

Title of Regulation: **9VAC25-151. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity.**

Publication: 35:19 VA.R. 2158-2240, May 13, 2019.

Corrections to Final Regulation:

Page 2185, 9VAC25-151-70 Part I B 8 f (1), line 5, replace "average" with "acreage"

Page 2186, 9VAC25-151-70

Part I B 10, strike "10." and add "11."

Part I B 11, strike "11." and add "12."

Part I B 12, strike "12." and add "13."

Part I B 14, unstrike "~~14.~~" and delete "13."

VA.R. Doc. No. R18-5397; Filed September 30, 2019, 1:14 p.m.

