VIRGINIA REGISTER OF REGULATIONS

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VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

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

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

PUBLICATION SCHEDULE AND DEADLINES

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

November 2019 through December 2020

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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
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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 LONG-TERM CARE ADMINISTRATORS

Agency Decision

Title of Regulation: **18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators.**

Statutory Authority: §§ 54.1-2400 and 54.1-3102 of the Code of Virginia.

Name of Petitioner: Bertha Simmons.

Nature of Petitioner's Request: 1) Allow an administrator-in-training who is an acting administrator to count more than 40 hours per week on the monthly report for training.

2) Allow some of the credit hours in an administrator-in-training program in assisted living to also count for training for nursing home licensure.

Agency Decision: No action.

Statement of Reason for Decision: The board recently convened a large stakeholder group to review all aspects of requirements for assisted living facility administrators to develop strategies to improve both the quality of the administrator-in-training experience and the number of persons who may qualify for licensure. There are a number of policy options and actions under consideration, and the board has requested that additional information be brought to its next meeting on December 17, 2019. At that meeting, the petition will be considered by the board, and the board will vote to include the matters addressed in the petitions in the policy options to be addressed with those presented from the stakeholder workgroup. Therefore, the board will not specifically take action on the petition but will discuss further in the context of its overall review of administrator-in-training requirements.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Long-Term Care Administrators, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4595, or email corie.wolf@dhp.virginia.gov.

VA.R. Doc. No. R19-33 Filed October 2, 2019, 8:36 a.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Agency Decision

Title of Regulation: **24VAC35-60. Ignition Interlock Regulations.**

Statutory Authority: § 18.2-270.2 of the Code of Virginia.

Name of Petitioner: Cynthia Ellen Hites.

Nature of Petitioner's Request: "I, Cynthia Ellen Hites, as a citizen of the Commonwealth of Virginia, pursuant to § 2.2-4007 of the Code of Virginia, do humbly submit this petition for the following amendment of Virginia Administrative Code 24VAC35-60-50. Currently, Virginia statute 24VAC35-60-50 D, 9 reads: 'D. Service providers may charge offenders for ignition interlock services at rates up to, but not to exceed, the following:... 9. $50 for violation resets, when the violation is determined to be the fault of the offender.' As the law exists, in the event of 'mouth alcohol,' machine malfunction, or one of the host of non-ethanol readings expected by interlock companies for compounds in personal hygiene products, ignition interlock providers can withhold citizens' ability to utilize their personal vehicle until they provide the interlock company $50. This is tantamount to extortion. Until all evidence can be considered in a court of law, a violation cannot be determined. Due to this fact, a violation reset fee cannot be collected until a 'violation' can be determined by a judge. I propose that 24VAC35-60-50, within section D, #9, which allows a $50 reset fee to be collected by ignition interlock providers, be removed in its entirety. Currently, ASAP case managers are precluded from considering or accepting any evidence aside from the devices' failed readings. Employing circular logic, Section IV of the VASAP Process and Procedures Manual states: 'Under no circumstances shall the ASAP accept any other means of clearing a failing BAC registered on an interlock device other than the device itself. This includes, but is not limited to preliminary breath test machines, urine screens, etc...' When a petition was filed in 2018 to allow case managers to consider additional evidence when citing a violation, VASAP's Richard Foy responded with the following statements: 'The petitioner is suggesting that ASAP case managers...accept and consider additional evidence submitted by the client to include such things as urine screens, blood tests, preliminary breath tests, and police or other eyewitness testimony. All of that is to be considered prior to determining whether an ignition interlock violation occurred. Doing this would raise some questions and concerns. That's something the court would consider, and VASAP is not going to be comfortable in considering those results because it tends to put us in a judicial role. We believe any additional information...would be best presented to the court in a non-compliance hearing...'

Ignition interlock machines use inherently non-ethanol specific electrochemical fuel cell technology. This means an ethanol violation may be suspected by a case manager, but all evidence must be considered to determine an ethanol violation, and only a judge can make that determination upon preponderance of the evidence. Commissioners, please amend this statute and remove #9 from 24VAC35-60-50, section D. It's wholly unfair to charge Virginians a 'violation' reset fee prior to conviction. Very Sincerely, Cynthia Hites."

Agency Decision: Request denied.

Statement of Reason for Decision: The Commission on the Virginia Alcohol Safety Action Program denied the petitioner's request. The current procedures followed by ASAPs and ignition interlock vendors are in compliance with state regulations and do not require modification.

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

VA.R. Doc. No. R19-27 Filed October 3, 2019, 11:18 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Air Pollution Control Board conducted a small business impact review of **9VAC5-20, General Provisions**, and determined that this regulation should be retained in its current form. The State Air Pollution Control Board is publishing its report of findings dated September 18, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation continues to be needed. It provides sources with the most cost-effective means of fulfilling ongoing state and federal requirements that protect air quality. No comments were received during the public comment period.

The regulation's level of complexity is appropriate to ensure that the regulated entity is able to meet its legal mandate as efficiently and cost-effectively as possible. This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

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

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

Contact Information: Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4319, or email gary.graham@deq.virginia.gov.

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 Department of Environmental Quality is conducting a periodic review and small business impact review of **9VAC5-190, Variance for Merck Stonewall Plant**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 28, 2019, and ends November 18, 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 the contact listed at the end of this notice.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Contact Information: Gary Graham, Regulatory Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4319, or email gary.graham@deq.virginia.gov.

VIRGINIA WASTE MANAGEMENT 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 Virginia Waste Management Board is conducting a periodic review and small business impact review of **9VAC20-160, Voluntary Remediation Regulations**. 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 9VAC20-160, which is published in this issue of the Virginia Register, serves as the announcement of the periodic review.

Contact Information: Michelle Callahan, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4104, or email michelle.callahan@deq.virginia.gov.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Contractors conducted a small business impact review of **18VAC50-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board for Contractors is publishing its report of findings dated September 27, 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 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 ensure contracting businesses and each individual certified or licensed as a tradesman, gas fitter, certified elevator mechanic, backflow prevention device worker, and water well systems provider have met minimum competencies.

No complaints or comments were received during the public comment period, and 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 most recent periodic review of the regulation occurred in 2015. On September 24, 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: Eric L. Olson, Executive Director, Board for Contractors, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractor@dpor.virginia.gov.

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Contractors conducted a small business impact review of **18VAC50-22, Board for Contractors Regulations**, and determined that this regulation should be retained in its current form. The Board for Contractors is publishing its report of findings dated September 27, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 54.1-201 of the Code of Virginia gives authority to the Board for Contractors 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 Contractors provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals and firms that meet specific criteria set forth in the statutes and regulations are eligible to receive a license or training provider or course approval. 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 24, 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: Eric L. Olson, Executive Director, Board for Contractors, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractor@dpor.virginia.gov.

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Contractors conducted a small business impact review of **18VAC50-30, Individual License and Certification Regulations**, and determined that this regulation should be retained in its current form. The Board for Contractors is publishing its report of findings dated September 27, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 54.1-201 of the Code of Virginia gives authority to the Board for Contractors 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 Contractors 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 license, certification, and training provider or course approval. 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 24, 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: Eric L. Olson, Executive Director, Board for Contractors, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractor@dpor.virginia.gov.

BOARD OF COUNSELING

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board of Counseling conducted a small business impact review of **18VAC115-15, Delegation of Informal Fact-Finding to an Agency Subordinate**, and determined that this regulation should be amended.

The fast-track regulatory action for 18VAC115-15, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: 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.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Professional and Occupational Regulation conducted a small business impact review of **18VAC120-30, Regulations Governing Polygraph Examiners**, and determined that this regulation should be retained in its current form. The Department of Professional and Occupational Regulation is publishing its report of findings dated September 27, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Section 54.1-1802.1 of the Code of Virginia requires that the Director of the Department of Professional and Occupational Regulation "promulgate regulations necessary for the reasonable administration of this chapter in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) Such regulations shall include, but not be limited to, the establishment of minimum qualifications for the operators of polygraphs and other detection devices." Repeal of the regulation would remove the current public protections provided by the regulation. The director, through the licensing program, provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals and firms that meet specific criteria set forth in the statutes and regulations are eligible to receive a license or approval as a polygraph school. The director is also tasked with ensuring that 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 16, 2019, the director 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: Eric L. Olson, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-7226, FAX (866) 430-1033, or email polygraph@dpor.virginia.gov.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

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, **22VAC40-90, Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers** is undergoing a periodic review. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 28, 2019, and ends November 18, 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 the contact listed at the end of this notice.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the

public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Contact Information: Judith McGreal, Program Development Consultant, Division of Licensing Programs, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7132, or email judith.mcgreal@dss.virginia.gov.

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, **22VAC40-100, Minimum Standards for Licensed Child Caring Institutions** is undergoing a periodic review. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 28, 2019, and ends November 18, 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 the contact listed at the end of this notice.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Contact Information: Tammy Trestrail, Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804)726-7132, or email tammy.trestrail@dss.virginia.gov.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Waste Management Board intends to consider amending **9VAC20-160, Voluntary Remediation Regulations**. This regulation facilitates voluntary cleanup of contaminated sites where remediation is not clearly mandated by the Comprehensive Environmental Response, Compensation, and Liability Act, the Resource Conservation and Recovery Act, the Virginia Waste Management Act, or other applicable authority. The purpose of the proposed action is to change the eligibility requirements to encourage additional sites to participate in the program. Amendments requiring all sites continuing to participate in the program to pay annual fees as well as registration fees are also being considered. (Currently sites that enrolled prior to July 1, 2014, are not assessed annual fees for their continued participation in the program. Sites enrolled on or after July 1, 2014, are subject to a one-time initial registration fee and annual fees to defray costs associated with continued participation in the program.) Additional issues that are identified during the public comment period and the regulatory advisory panel meetings will be addressed during the development of the proposed regulation.

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 terminated, 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: § 10.1-1232 of the Code of Virginia.

Public Comment Deadline: November 27, 2019.

Agency Contact: Michelle Callahan, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4104, or email michelle.callahan@deq.virginia.gov.

VA.R. Doc. No. R20-6078; Filed September 27, 2019, 8:57 a.m.

REGULATIONS

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

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF CONSERVATION AND RECREATION

Notice of Objection to Fast-Track Rulemaking Action

REGISTRAR'S NOTICE: Pursuant to § 2.2-4012.1 of the Code of Virginia, the Department of Conservation and Recreation has filed a notice of objection to the fast-track rulemaking action published in 36:1 VA.R. 47-53 September 2, 2019. If the agency proceeds with the normal promulgation process set out in Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia, the initial publication of the fast-track regulation will serve as the Notice of Intended Regulatory Action.

Title of Regulation: **4VAC5-30. Virginia State Parks Regulations (amending 4VAC5-30-10 through 4VAC5-30-32, 4VAC5-30-50, 4VAC5-30-150, 4VAC5-30-160, 4VAC5-30-170, 4VAC5-30-190, 4VAC5-30-220, 4VAC5-30-230, 4VAC5-30-260, 4VAC5-30-274, 4VAC5-30-276, 4VAC5-30-280, 4VAC5-30-300, 4VAC5-30-370, 4VAC5-30-390 through 4VAC5-30-420; adding 4VAC5-30-95; repealing 4VAC5-30-180).**

Statutory Authority: § 10.1-104 of the Code of Virginia.

The Department of Conservation and Recreation has filed a notice of objection to the fast-track rulemaking action for 4VAC5-30, Virginia State Parks Regulations. The fast-track regulation was published in Volume 36, Issue 1, pages 47-53 of the Virginia Register of Regulations, on September 2, 2019. A 30-day public comment period was provided, and public comment was received through October 2, 2019.

The fast-track regulation was intended to (i) add 4VAC5-30-95 prohibiting public urination or defecation and repeal 4VAC30-180 regarding dressing and undressing, (ii) prohibit the use of generators at campsites and in the campground at all times, (iii) update definitions to reflect current statutory definitions, (iv) update procedures to accurately reflect current technologies, and (v) clarify rules for individuals visiting department properties or using department facilities.

The agency received more than the requisite 10 objections to the amendments. Due to the objections, the agency has discontinued using the fast-track rulemaking process. The agency will proceed with adoption of the amendments using the standard process under Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act (APA) and the publication on September 2, 2019, will serve as a Notice of Intended Regulatory Action in accordance with § 2.2-4012.1 of the Code of Virginia.

Agency Contact: Lisa McGee, Policy and Planning Director, Department of Conservation and Recreation, 600 East Main Street, 24th Floor, Richmond, VA 23219, telephone (804) 786-4378, FAX (804) 786-6141, or email lisa.mcgee@dcr.virginia.gov.

VA.R. Doc. No. R20-4581; Filed October 16, 2019, 17:32 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

FORENSIC SCIENCE BOARD

Proposed Regulation

Title of Regulation: **6VAC40-30. Regulations for the Approval of Field Tests for Detection of Drugs (amending 6VAC40-30-10, 6VAC40-30-30, 6VAC40-30-40, 6VAC40-30-50, 6VAC40-30-70, 6VAC40-30-80).**

Statutory Authority: § 9.1-1110 of the Code of Virginia.

Public Hearing Information:

January 6, 2020 - 9:30 a.m. - Department of Forensic Science, Central Laboratory, 700 North 5th Street, Richmond, VA 23219

Public Comment Deadline: January 8, 2020.

Agency Contact: Amy M. Curtis, Department Counsel, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857, or email amy.curtis@dfs.virginia.gov.

Basis: Section 19.2-188.1 of the Code of Virginia provides that the Department of Forensic Science shall approve field tests for use by law-enforcement officers to enable them to testify to the results obtained in any preliminary hearing regarding whether any substance, the identity of which is at issue in such hearing, is a controlled substance, imitation controlled substance, or marijuana, as defined in § 18.2-247 of the Code of Virginia. The Forensic Science Board is granted the power to adopt regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), for the administration of Chapter 11 (§ 9.1-1100 et seq.) of Title 9.1 of the Code of Virginia; §§ 18.2-268.6,

18.2-268.9, 19.2-188.1, and 19.2-310.5 of the Code of Virginia; and any provisions of the Code of Virginia as they relate to the responsibilities of the department.

Purpose: The Forensic Science Board is aware of the significant concerns for the safety of law-enforcement officers as they handle unknown substances that may contain extremely lethal synthetic opioids. As the Drug Enforcement Administration advised, the use of presumptive chemical tests on suspected controlled substances creates a risk of potential lethal exposure to law enforcement. This risk has become so significant that most law-enforcement agencies have decided to forgo the use of the presumptive chemical tests by their officers.

Presumptive mobile instruments are an alternative to presumptive chemical tests. Some presumptive mobile instruments can test through clear plastic and glass packaging, which greatly reduces the risk of exposure to law enforcement. As with chemical field tests, these presumptive mobile instruments could produce false positives and false negatives and should only be utilized by law-enforcement officers for the limited purpose outlined in § 19.2-188.1 of the Code of Virginia. Law-enforcement agencies would not be required to purchase these instruments, but once approved by the department, these instruments would be an additional option available for law enforcement.

Substance: The proposed amendments expand the definition of "field test" to include presumptive mobile instruments, in addition to presumptive chemical tests. In response to the expanded definition, the regulations will be amended to set forth a process for the evaluation, approval, reevaluation, and fee schedule for presumptive mobile instruments. The proposed changes include amendments in (i) 6VAC40-30-10 to include presumptive mobile instruments in the definition of "field test" and eliminate the term "field test kit"; (ii) 6VAC40-30-30 to establish two different procedures for evaluations and requirements for approval of presumptive chemical tests and presumptive mobile instruments; (iii) 6VAC40-30-40 to insert the term "field" before "test" as it occurs; (iv) 6VAC40-30-50 to establish a separate set of requirements for maintenance of approved status for presumptive mobile instruments; (v) 6VAC40-30-70 to amend the term "presumptive chemical tests" to the broader term "field tests"; and (vi) 6VAC40-30-80 to establish a separate fee schedule for approval of presumptive mobile instruments.

Issues: The advantage to the public of this proposed regulatory change is that law enforcement has an increased ability to test suspected controlled substances in the field with a greatly reduced risk of exposure as compared to the currently approved presumptive chemical tests. This supports the goal of public safety. There are no disadvantages for the public.

There are no advantages or disadvantages to the Department of Forensic Science. As with the currently approved presumptive chemical tests, law-enforcement officers would still be required to submit the suspected controlled substances to the Department of Forensic Science for laboratory analysis so that those confirmed results may be utilized at trial.

As for the Commonwealth, in addition to reducing the risk of exposure for law-enforcement officers, the results obtained can be utilized by law-enforcement officers for the purpose of obtaining criminal charges, and § 19.2-188.1 of the Code of Virginia permits law-enforcement officers to testify to those results at the preliminary hearing stage. With the confirmation of the presumptive results by the department through laboratory analysis, there are no disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Forensic Science Board (Board) proposes to expand the definition of "field test" to include presumptive mobile instruments, in addition to presumptive chemical tests.

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

Estimated Economic Impact. Virginia Code § 19.2-188.1(A) permits any law enforcement officer to testify in any preliminary hearing as to the results of any field tests that have been approved by the Department of Forensic Science (DFS) pursuant to the Regulations for the Approval of Field Tests for Detection of Drugs. "Field test" is not defined in the statute. The regulation currently defines "field test" to include "any presumptive chemical test unit used outside of a chemical laboratory environment to detect the presence of a drug."

As law enforcement began to encounter increasingly lethal opioids, the Drug Enforcement Administration advised law-enforcement agencies of the dangers associated with presumptive chemical testing of suspected controlled substances. Consequently, according to the Department of Forensic Science (DFS), most law-enforcement agencies no longer use the presumptive chemical field tests currently authorized in the regulation. Specifically, in October 2017, a local Virginia law-enforcement agency advised DFS that it had ceased to use the presumptive chemical field tests due to safety concerns for their officers. A representative of that agency requested that DFS consider approving a presumptive mobile instrument that the agency had obtained for use. Since the current language of the regulation is limited to presumptive chemical tests, DFS was unable to consider the approval of that presumptive mobile instrument.

Accordingly, the Board now proposes to expand the definition of "field test" to include presumptive mobile instruments, in addition to presumptive chemical tests. Manufacturers of presumptive mobile instruments would be

able to submit their products to DFS for evaluation. In order to be approved, the presumptive mobile instrument must perform in accordance with the manufacturer's instructions and advertised claims, and offer convenience and efficiency in operation as determined by the agency. The proposed amendments would be beneficial in that it would allow law enforcement to perform field tests at reduced risk to their health and safety. The proposal does not produce cost.

Businesses and Entities Affected. The proposed amendments potentially affect the Virginia State Police, other state law-enforcement agencies, the Virginia Indigent Defense Commission, local law-enforcement agencies, local Commonwealth's Attorneys' offices, and the Criminal Defense Bar.

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

Projected Impact on Employment. The proposed amendments may increase demand for presumptive mobile instrument. This may lead to increased employment at their manufacturers.

Effects on the Use and Value of Private Property. The proposed amendments may increase the use of presumptive mobile instruments, and the value of their manufacturers.

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

Small Businesses:

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

Costs and Other Effects. The proposed amendments are unlikely to significantly affect costs for small businesses.

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

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

Summary:

The proposed amendments (i) modify the definitions of "field test" and "field test kit" to include presumptive mobile instruments; (ii) provide a process by which the department evaluates presumptive mobile instruments; (iii) establish a separate set of requirements for maintenance of approved status for presumptive mobile instruments; and (iv) provide the fee schedule for approval of presumptive mobile instruments.

Part I
Definitions

6VAC40-30-10. Definitions.

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

"Agency" means any federal, state, or local government law-enforcement organization in the Commonwealth.

"Approval authority" means the Director of the Department of Forensic Science or the director's designee.

"Department" means the Department of Forensic Science.

"Drug" means any controlled substance, imitation controlled substance, or marijuana, as defined in § 18.2-247 of the Code of Virginia.

"Field test" means any presumptive chemical test ~~unit~~ or any presumptive mobile instrument used outside of a ~~chemical~~ forensic laboratory environment to detect the presence of a drug.

~~"Field test kit" means a combination of individual field tests units.~~

"List of approved field tests" means a list of field tests ~~or field test kits~~ approved by the department for use by law-enforcement agencies in the Commonwealth and periodically published by the department in the Virginia Register of Regulations in accordance with § 19.2-188.1 of the Code of Virginia.

"Manufacturer" means any entity that makes or assembles field ~~test units or field test kits~~ tests to be used by any law-enforcement officer or agency in the Commonwealth for the purpose of detecting a drug.

"Manufacturers' instructions and claims" means those testing procedures, requirements, instructions, precautions, and proposed conclusions that are published by the manufacturer and supplied with the field tests ~~or field test kits~~.

"Street drug preparations" means any drug or combination of drugs and any other substance that has been encountered or is likely to be encountered by a law-enforcement officer as a purported drug in the Commonwealth.

6VAC40-30-30. Request for evaluation.

A. Any manufacturer that wishes to submit field tests ~~or field test kits~~ for evaluation shall submit a written request for evaluation to the department director at the following address:

Director
Department of Forensic Science
700 North Fifth Street
Richmond, VA 23219

B. ~~Materials~~ For presumptive chemical tests, materials sufficient for at least 10 ~~field~~ tests shall be supplied for each drug for which the manufacturer requests evaluation. The materials shall include all instructions, precautions, color charts, flow charts, and ~~the like which~~ other accompanying informational materials that are provided with the ~~field~~ test ~~or field test kit~~ and ~~which~~ that describe the use and interpretation of the ~~tests~~ test. The manufacturer shall also include exact specifications as to the chemical composition of all chemical or reagents used in the presumptive chemical tests. These specifications shall include the volume or weight of the chemicals and the nature of their packaging. Safety Data Sheets for each chemical or reagent shall be sufficient for this purpose.

C. ~~The manufacturer shall also include exact specifications as to the chemical composition of all chemicals or reagents used in the field tests. These shall include the volume or weight of the chemicals and the nature of their packaging. Material Safety Data Sheets for each chemical or reagent shall be sufficient for this purpose~~ For presumptive mobile instruments, two nonsequentially manufactured instruments and supporting materials shall be supplied for each model for which the manufacturer requests evaluation. These materials shall include all instructions, all training materials regarding the use of the instrument by law enforcement, the instrument specifications, a list of compounds in the instrument's library, and any foundational validation studies. If the manufacturer provides training for users of the instruments beyond the written instructional materials, such training shall be made available for the evaluation. The instruments shall be returned to the manufacturer upon completion of the evaluation.

D. The department's evaluation process will require at least 120 days from the receipt of the written request and all needed materials from the manufacturer.

E. The department will use commonly encountered street drug preparations to examine those field tests submitted for evaluation. In order to be approved, the ~~field~~ presumptive chemical test must correctly react in a clearly observable fashion to the naked eye~~,~~ and perform in accordance with manufacturers' instructions and claims. In order to be approved, the presumptive mobile instrument must perform in accordance with the manufacturer's instructions and advertised claims and offer convenience and efficiency in operation as determined by the department.

6VAC40-30-40. Notice of decision.

The department will notify each manufacturer in writing of the approval or disapproval of each field test for which evaluation was requested. Should any field test not be approved, the manufacturer may resubmit ~~their~~ its request for evaluation of that field test according to the previously outlined procedures. Resubmitted requests for approval shall be accompanied by a detailed explanation of all modifications or changes to the field test, the field test instructions, or the manufacturer's claims since the department's most recent evaluation of the field test.

6VAC40-30-50. Maintenance of approved status.

The department may require that ~~this evaluation~~ a reevaluation be done as often as annually for routine purposes. If any modifications are made to ~~an~~ any approved field test by the manufacturer, other than additions to the compounds in a presumptive mobile instrument's library, the department shall be notified in writing ~~of the changes~~. These modifications shall include any chemical, procedural, instructional, or firmware or software modifications made to the field test. The department may require reevaluation of any approved field test upon receiving notification of any such modifications.

If unreported modifications are discovered by the department, the department may require ~~that all evaluations be repeated for the particular manufacturer's~~ a reevaluation of the approved field ~~tests~~ test at any time. The department shall notify the manufacturer in writing of this requirement. ~~Any modified field test must be approved before it can be used in accordance with § 19.2-188.1 of the Code of Virginia. These changes shall include, but are not limited to any chemical, procedural or instructional modifications made to the field test.~~

6VAC40-30-70. Liability.

A. The department assumes no liability as to the safety of these field tests ~~or field test kits~~, any chemicals contained therein, or the procedures and instructions by which they are used.

B. The department further assumes no responsibility for any incorrect results or interpretations obtained from these ~~presumptive chemical~~ field tests.

Part III
Fees

6VAC40-30-80. Fees.

~~Manufacturers~~ For presumptive chemical tests, manufacturers shall pay the actual cost of ~~the~~ each street drug preparation and will be charged a fee of $50 for each drug for which individual evaluation is requested. For presumptive mobile instruments, manufacturers shall pay the actual cost of each street drug preparation and a fee of $2,500 for each

model of the presumptive mobile instrument for which evaluation is requested. The department will review the manufacturer's request and notify the manufacturer in writing of the amount due before the evaluation begins. Manufacturers who wish to withdraw a request for evaluation shall immediately notify the department in writing. The department's assessment of the amount of payment required will be based upon a detailed review of the manufacturer's request, and that amount will be final. The evaluation process will not be initiated before full payment is made to the Treasurer of Virginia.

VA.R. Doc. No. R18-5420; Filed September 25, 2019, 2:48 p.m.

TITLE 8. EDUCATION

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Final Regulation

REGISTRAR'S NOTICE: Virginia Polytechnic Institute and State University is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: **8VAC105-11. Parking and Traffic (amending 8VAC105-11-10).**

Statutory Authority: § 23.1-1301 of the Code of Virginia.

Effective Date: October 9, 2019.

Agency Contact: Lori Buchanan, Business Services Specialist, Office of the Vice President for Policy and Governance, 319 Burruss Hall, Blacksburg, VA 24061, telephone (540) 231-9512, or email lorib90@vt.edu.

Summary:

The amendment updates the university's parking regulations to reflect revised parking and traffic procedures.

8VAC105-11-10. Definitions.

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

"Parking and Traffic Procedures" means the Parking and Traffic Operational Manual, Virginia Tech Parking Services, effective August 1, ~~2018~~ 2019.

"Virginia Tech" means Virginia Polytechnic Institute and State University.

"University owned or leased property" means any property owned, leased, or controlled by Virginia Tech.

DOCUMENTS INCORPORATED BY REFERENCE (8VAC105-11)

~~Parking and Traffic Operational Manual, Volume 25, 2018 2019 Academic Year, Virginia Tech Division of Operations, Parking and Transportation (rev. 8/2018)~~

Parking and Traffic Operational Manual, Volume 26, 2019-2020 Academic Year, Virginia Tech Division of Operations, Parking and Transportation (rev. 8/2019)

VA.R. Doc. No. R20-5658; Filed October 7, 2019, 2:19 p.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Fast-Track Regulation

Title of Regulation: **9VAC20-160. Voluntary Remediation Regulations (amending 9VAC20-160-10, 9VAC20-160-30, 9VAC20-160-40, 9VAC20-160-55 through 9VAC20-160-70, 9VAC20-160-110, 9VAC20-160-120).**

Statutory Authority: § 10.1-1232 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 27, 2019.

Effective Date: December 12, 2019.

Agency Contact: Melissa Porterfield, Office of Regulatory Affairs, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

Basis: Section 10.1-1232 of the Code of Virginia directs the Virginia Waste Management Board to promulgate regulations that facilitate voluntary cleanup of contaminated sites where remediation is not clearly mandated by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Virginia Waste Management Act, or other applicable authority. Section 10.1-1402 of the Code of Virginia authorizes the board to promulgate and enforce regulations necessary to carry out its powers and duties, the intent of the Virginia Waste Management Act, and the federal acts.

The Voluntary Remediation Regulations is a state regulation, and there is no equivalent corresponding federal regulation. This regulation applies only where remediation is not otherwise required under state or federal law, or where such jurisdiction has been waived. Entities that qualify may choose to utilize this regulation to conduct remediation of contaminated sites.

Purpose: The purpose of this regulatory action is to clarify the requirements of the existing regulation. The remediation of sites protects the health, safety, and welfare of citizens as well as resolving environmental liability issues that facilitates redevelopment of sites and economic development.

Rationale for Using Fast-Track Rulemaking Process: The proposed amendments are expected to be noncontroversial, and therefore are appropriate for using the fast-track rulemaking process. An informal comment period was held on the proposed changes, and no comments were received on the changes.

Substance: Changes to the regulation include the addition of definitions, clarifications concerning the applicability of fees for sites that conduct remediation in phases, and the issuance of multiple certificates for a site.

Issues: The public and the agency will both benefit from the amendments to the regulation. The clarifications that are being made to the regulation will minimize confusion concerning the requirements of the regulation. There are no disadvantages to the public or to the Commonwealth from these changes.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Waste Management Board (Board) proposes to eliminate and amend some requirements concerning applications to the Virginia Voluntary Remediation Program (VRP) and make clarifying changes.

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

Estimated Economic Impact.

Background: The purpose of this regulation is to establish standards and procedures pertaining to the eligibility, enrollment, reporting, characterization, remediation, and termination criteria for the VRP in order to protect human health and the environment. VRP is a streamlined mechanism for site owners or operators to voluntarily address contamination at sites with concurrence from the Virginia Department of Environmental Quality (DEQ). When the remediation is satisfactorily completed, DEQ issues a certification of satisfactory completion of remediation. This certification provides assurance that the remediated site will not later become the subject of a DEQ enforcement action unless new issues are discovered. DEQ believes that the VRP facilitates the sale and reuse of industrial and commercial properties in the Commonwealth.

VRP registration fees are paid in three phases. The phase 1 registration fee ($2,000) is due when the application is submitted. Payment of the phase 2 registration fee ($7,500) is required after eligibility has been verified by DEQ and prior to technical review of submittals. The phase 3 registration fee ($4,500) is charged annually to any site participating in the program.

Analysis: Under the current regulation, applicants who are not the site owner must demonstrate that they have access to the property at the time of payment of the phase 1 registration fee. The Board proposes to amend the requirement to be that the applicants who are not the site owner demonstrate that they have access to the property at the time of payment of the phase 2 registration fee. At times it can take weeks or months to get a formal agreement between the applicant and the site owner.[2] This change would be beneficial in that it would speed the approval process, and perhaps make remediation more likely to occur. According to DEQ, this amendment would not induce any unauthorized access.

The regulation defines "authorized agent" as "any person who is authorized in writing to fulfill the requirements of this program." The current text requires that the application for participation in VRP include "For authorized agents, a letter of authorization from an eligible party." The Board has determined that this is not necessary as part of the application and thus proposes to eliminate the requirement. This would save staff time and perhaps legal fees for the applicant.

The current text also requires the following as part of the application package: "If the applicant is not the owner of the property, the applicant shall provide written documentation that the owner of the property: a. Consents in writing to the submission of the application; and b. Agrees in writing that the information set forth in the application is substantially correct to the best of the owner's knowledge." The Board proposes to eliminate this text and requirements. In cases where the current owner is not the applicant to the VRP, the Board and DEQ believe this requirement places a burden on the site owner that is unnecessary. In some cases the site owner and applicant may have an agreement for the transfer of the property that will occur prior to remediation of the site. In such cases, the information in this subdivision is irrelevant. The goal of the VRP is to remediate sites. If an applicant that is not the property owner is willing and able to participate in the program for the site, this requirement would potentially hinder the site from participating in the program. Thus removing this requirement is potentially beneficial.

Businesses and Entities Affected. The proposed amendments potentially affect land developers, builders, contractors, and firms that invest in real estate, as well as businesses that cleanup contaminated sites. According to DEQ, as of September 12, 2018, 143 sites were enrolled in VRP; and five additional sites had submitted applications to participate.

Localities Particularly Affected. The proposed amendments would particularly affect localities with disproportionately more contaminated properties.

Projected Impact on Employment. To the extent that the proposed amendments increase the occurrence of

contaminated industrial and commercial properties being cleaned up and redeveloped, employment associated with remediation and redevelopment of property may increase.

Effects on the Use and Value of Private Property. The proposed amendments may increase the likelihood that contaminated industrial and commercial properties are cleaned up, sold and reused.

Real Estate Development Costs. The proposed amendments may moderately reduce real estate development costs.

Small Businesses:

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

Costs and Other Effects. The proposed amendments would moderately reduce costs for small firms to participate in VRP.

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

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[2]Source: Department of Environmental Quality

Agency's Response to Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The amendments include (i) adding definitions, (ii) clarifying the applicability of fees for sites that conduct remediation in phases, and (iii) clarifying the issuance of multiple certificates for a site.

9VAC20-160-10. Definitions.

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

"Adjacent property" means either properties meeting at a shared property boundary or parcels of land that are not widely separated, including at a point or corner, or separated only by one or more relatively narrow linear features. Such linear features may include roadways, railways, and narrow bodies of water.

"Applicant" means a person who has applied to the program but is not a participant.

"Authorized agent" means any person who is authorized in writing to fulfill the requirements of this program.

"Board" means the Virginia Waste Management Board.

"Carcinogen" means a chemical classification for the purpose of risk assessment as an agent that is known or suspected to cause cancer in humans, including ~~but not limited to~~ a known or likely human carcinogen or a probable or possible human carcinogen under an ~~EPA~~ U.S. Environmental Protection Agency (EPA) weight-of-evidence classification system.

"Certificate" means a written certification of satisfactory completion of remediation issued by the department pursuant to § 10.1-1232 of the Code of Virginia.

"Completion" means fulfillment of the commitment agreed to by the participant as part of this program.

"Contaminant" means any man-made or man-induced alteration of the chemical, physical, or biological integrity of soils, sediments, air and surface water, or groundwater including~~, but not limited to,~~ such alterations caused by any hazardous substance (as defined in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC § 9601(14)), hazardous waste (as defined in 9VAC20-60), solid waste (as defined in 9VAC20-81), petroleum (as defined in Articles 9 (§ 62.1-44.34:8 et seq.) and 11 (§ 62.1-44.34:14 et seq.) of the Virginia State Water Control Law), or natural gas.

"Cost of remediation" means all costs incurred by the participant pursuant to activities necessary for completion of voluntary remediation at the site, based on an estimate of the net present value (NPV) of the combined costs of the site investigation, report development, remedial system installation, operation and maintenance, and all other costs associated with participating in the program and addressing the contaminants of concern at the site.

"Department" means the Department of Environmental Quality of the Commonwealth of Virginia or its successor agency.

"Director" means the Director of the Department of Environmental Quality.

"Engineering controls" means physical modification to a site or facility to reduce or eliminate potential for exposure to contaminants. These include~~, but are not limited to,~~ stormwater conveyance systems, pump and treat systems, slurry walls, vapor mitigation systems, liner systems, caps, monitoring systems, and leachate collection systems.

"Environmental covenant" means a servitude arising under an environmental response project that imposes activity and use limitations pursuant to the Uniform Environmental Covenants Act (§ 10.1-1238 et seq. of the Code of Virginia).

"Hazard index ~~(HI)~~" or "HI" means the sum of more than one hazard quotient for multiple contaminants or multiple exposure pathways or both. The HI is calculated separately for chronic, subchronic, and shorter duration exposures.

"Hazard quotient" means the ratio of a single contaminant exposure level over a specified time period to a reference dose for that contaminant derived from a similar period.

"Incremental upper-bound lifetime cancer risk" means a conservative estimate of the incremental probability of an individual developing cancer over a lifetime as a result of exposure to the potential carcinogen. Upper-bound lifetime cancer risk is likely to overestimate "true risk."

"Institutional controls" means legal or contractual restrictions on property use that remain effective after remediation is completed and are used to reduce or eliminate the potential for exposure to contaminants. The term may include~~, but is not limited to,~~ deed, land use, and water use restrictions and environmental covenants.

"Land use controls" means legal or physical restrictions on the use of, or access to, a site to reduce or eliminate potential for exposure to contaminants or prevent activities that could interfere with the effectiveness of remediation. Land use controls include ~~but are not limited to~~ engineering and institutional controls.

"Monitored natural attenuation" means a remediation process that monitors the natural or enhanced attenuation process.

"Natural attenuation" means the processes by which contaminants break down naturally in the environment. Natural attenuation processes include a variety of physical, chemical, or biological processes that, under favorable conditions, act without human intervention to reduce the mass, toxicity, mobility, volume, or concentrations of contaminants in soil or groundwater.

"Noncarcinogen" means a chemical classification for the purposes of risk assessment as an agent for which there is either inadequate toxicological data or is not likely to be a carcinogen based on an EPA weight-of-evidence classification system.

"Owner" means any person currently owning or holding legal or equitable title or possessory interest in a property, including the Commonwealth of Virginia, or a political subdivision thereof, including title or control of a property conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means.

"Participant" means a person who has received confirmation of eligibility and has remitted payment of the phase 2 registration fee.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Post-certificate monitoring" means monitoring of environmental or site conditions stipulated as a condition of issuance of the certificate.

"Program" means the Virginia Voluntary Remediation Program.

"Property" means a parcel of land defined by the boundaries in the deed.

"Reference dose" means an estimate of a daily exposure level for the human population, including sensitive subpopulations, that is likely to be without an appreciable risk of deleterious effects during a lifetime.

"Registration fee" means the fees paid to apply for, obtain eligibility for, enroll in, and participate in the Voluntary Remediation Program.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any contaminant into the environment.

"Remediation" means actions taken to clean up, mitigate, correct, abate, minimize, eliminate, control, contain, or prevent a release of a contaminant into the environment in order to protect human health and the environment. Remediation may include, when appropriate and approved by the department, land use controls, natural attenuation, and monitored natural attenuation.

"Remediation level" means the concentration of a contaminant with applicable land use controls that is protective of human health and the environment.

"Restricted use" means any use other than residential.

"Risk" means the probability that a contaminant will cause an adverse effect in exposed humans or to the environment.

"Risk assessment" means the process used to determine the risk posed by contaminants released into the environment. Elements include identification of the contaminants present in the environmental media, assessment of exposure and exposure pathways, assessment of the toxicity of the contaminants present at the site, characterization of human health risks, and characterization of the impacts or risks to the environment.

"Site" means any property or portion thereof, as agreed to and defined by the participant and the department, which contains or may contain contaminants being addressed under this program.

"Termination" means the formal discontinuation of participation in the Voluntary Remediation Program without obtaining a certificate.

"Unrestricted use" means the designation of acceptable future use for a site at which the remediation levels, based on either background or standard residential exposure factors, have been attained throughout the site in all media.

9VAC20-160-30. Eligibility criteria.

A. Applicants and proposed sites shall meet eligibility criteria as defined in this section.

B. Eligible applicants are any persons who own, operate, have a security interest in, or enter into a contract for the purchase or use of an eligible site. Those who wish to voluntarily remediate a site may apply to participate in the program. Any person who is an authorized agent of any of the parties identified in this subsection may apply to participate in the program.

Applicants who are not ~~the~~ site ~~owner~~ owners must demonstrate that they have access to the property at the time of payment of the phase 2 registration fee in accordance with 9VAC20-160-60 and must maintain such right of access until a certificate is issued or participation in the program is terminated pursuant to 9VAC20-160-100.

C. Sites are eligible for participation in the program if (i) remediation has not been clearly mandated by the ~~United States~~ U.S. Environmental Protection Agency, the department, or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 USC § 9601 et seq.), the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), the Virginia State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), or other applicable statutory or common law; or (ii) jurisdiction of the statutes listed in clause (i) has been waived.

1. A site on which an eligible party has performed remediation of a release is potentially eligible for the program (i) if the actions can be documented in a way ~~which~~ so that the actions are shown to be equivalent to the requirements for this chapter, and (ii) provided the site meets applicable remediation levels.

2. Petroleum or oil releases not mandated for remediation under Articles 9 (§ 62.1-44.34:8 et seq.) and 11 (§ 62.1-44.34:14 et seq.) of the Virginia State Water Control Law may be eligible for participation in the program.

3. Where an applicant raises a genuine issue based on documented evidence as to the applicability of regulatory programs in subsection D of this section, the site may be eligible for the program. Such evidence may include a demonstration that:

a. It is not clear whether the release involved a waste material or a virgin material;

b. It is not clear that the release occurred after the relevant regulations became effective; or

c. It is not clear that the release occurred at a regulated unit.

D. For the purposes of this chapter, remediation has been clearly mandated if any of the following conditions exist, unless jurisdiction for such mandate has been waived:

1. Remediation of the release is the subject of a permit issued by the U.S. Environmental Protection Agency or the department, a closure plan, an administrative order, a court order, or a consent order, or the site is on the National Priorities List;

2. The site at which the release occurred (i) is subject to the Virginia Hazardous Waste Management Regulations (9VAC20-60) (VHWMR), is a permitted facility, is applying for or should have applied for a permit, is under interim status or should have applied for interim status, or was previously under interim status, and (ii) is thereby subject to requirements of the VHWMR;

3. The site at which the release occurred has been determined by the department prior to the application submittal date to be an open dump or unpermitted solid waste management facility under 9VAC20-81-45 of the Solid Waste Management Regulations and such conditions still exist that made the site an open dump or unpermitted solid waste management facility;

4. The department determines that the release poses an imminent and substantial threat to human health or the environment; or

5. Remediation of the release is otherwise the subject of a response action or investigation required by local, state, or federal law or regulation.

E. The department may determine that a site under subdivision D 3 of this section may participate in the program provided that such participation complies with the substantive requirements of the applicable regulations.

9VAC20-160-40. Application for participation.

A. The application for participation in the Voluntary Remediation Program shall provide the elements listed ~~below~~ in this subsection:

1. An overview of the project~~, transaction, or other~~; reason for application for participation in the program.

2. A statement of the applicant's eligibility to participate in the program (e.g., proof of ownership, security interest, etc.).

3. ~~For authorized agents, a letter of authorization from an eligible party. 4.~~ A plat or map that indicates the approximate acreage and boundaries of the site. If the site is a portion of a larger property, then the plat or map shall show the approximate boundaries of both the site and the associated larger property.

~~5.~~ 4. A general operational history of the site.

~~6.~~ 5. A general description of information known to or ascertainable by the applicant pertaining to (i) the nature and extent of any contamination; and (ii) past or present releases, both at the site and immediately contiguous to the site.

~~7.~~ 6. A discussion of the potential jurisdiction of other existing environmental regulatory programs requiring ~~clean up~~ remediation of the release being proposed for admittance to the program, or documentation of a waiver thereof.

~~8.~~ 7. An application signed by the applicant attesting that to the best of the applicant's knowledge all of the information as set forth in this subsection is true and accurate.

~~9. If the applicant is not the owner of the property, the applicant shall provide written documentation that the owner of the property:~~

~~a. Consents in writing to the submission of the application; and~~

~~b. Agrees in writing that the information set forth in the application is substantially correct to the best of the owner's knowledge.~~

B. The department shall review the application for completeness and notify the applicant within 15 days of the application's receipt whether the application is administratively complete or incomplete. Within 60 days of the department's receipt of a complete application, the department shall verify whether or not the applicant and the site meet the eligibility criteria set forth in 9VAC20-160-30. The department reserves the right to conduct eligibility verification inspections of the candidate site during the eligibility verification review.

C. If the department makes a tentative decision to reject the application, it shall notify the applicant in writing that the application has been tentatively rejected and provide an explanation of the reasons for the proposed rejection. Within 30 days of the applicant's receipt of notice of rejection, the applicant may (i) submit additional information to correct the inadequacies of the rejected application or (ii) accept the rejection. The department's tentative decision to reject an application will become a final agency action under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) upon receipt of an applicant's written acceptance of the department's decision to reject an application, or in the event an applicant fails to respond within the 30 days specified in this subsection, upon expiration of the 30-day period. If within 30 days an applicant submits additional information to correct the inadequacies of an application, the review process shall begin again in accordance with this section.

9VAC20-160-55. Registration fees for applications received prior to January 29, 2014.

A. For applicants that submitted an application that was received by the department prior to January 29, 2014, the registration fee submitted and any registration fee refund sought shall be in accordance with the requirements of this section. On and after July 1, 2014, any addition of acreage to a site participating in the program based upon an application subject to registration fees under this section shall require a new application for the additional acreage, which shall be subject to registration fees pursuant to the requirements of 9VAC20-160-65. If the participant elects to subdivide the site or conduct a phased remediation project requiring multiple certificates for the site, the additional site shall be subject to phase 2 registration fees as required by 9VAC20-160-65 C 1 b and phase 3 registration fees as required by 9VAC20-160-65 D 6.

B. The registration fee shall be at least 1.0% of the actual cost of the remediation at the site, not to exceed ~~$5000~~ $5,000. To determine the appropriate registration fee, the applicant shall provide an estimate of the anticipated total cost of remediation and remit that amount. As an alternative to providing an estimate, the applicant may elect to pay the maximum registration fee.

C. If the participant did not elect to remit the maximum registration fee, the participant shall provide the department with the actual total cost of the remediation prior to issuance of a certificate. The department shall calculate any balance adjustment to be made to the initial registration fee. Any negative balance owed to the department shall be paid by the participant prior to the issuance of a certificate. Any overpayment to be refunded to the participant shall be remitted by the department with issuance of the certificate.

D. If the participant elected to remit the maximum registration fee and an overpayment has been made, the department shall refund any balance owed to the participant after receiving the actual total cost of remediation. If no remedial cost summary is provided to the department within 60 days of the participant's receipt of the certificate, the participant will have waived the right to a refund.

9VAC20-160-60. Registration fees for applications received on or after January 29, 2014, and prior to July 1, 2014.

A. In accordance with § 10.1-1232 A 5 of the Code of Virginia, the applicant shall submit a registration fee to defray the cost of the program. For applicants submitting an application that is received by the department on or after

January 29, 2014, and prior to July 1, 2014, the registration fee submitted and any registration fee refund sought shall be in accordance with the requirements of this section. On and after July 1, 2014, any addition of acreage to a site participating in the program based upon an application subject to registration fees under this section shall require a new application for the additional acreage, which shall be subject to registration fees pursuant to the requirements of 9VAC20-160-65. If the participant elects to subdivide the site or conduct a phased remediation project requiring multiple certificates for the site, the additional site shall be subject to phase 2 registration fees as required by 9VAC20-160-65 C 1 b and phase 3 registration fees as required by 9VAC20-160-65 D 6.

B. The preliminary registration fee shall be $5,000. Payment shall be required after eligibility has been verified by the department and prior to technical review of submittals pursuant to 9VAC20-160-80. Payment shall be made payable to the Commonwealth of Virginia and remitted to Virginia Department of Environmental Quality, P.O. Box 1104, Receipts Control, Richmond, VA 23218.

C. Failure to remit the required registration fee within 90 days of the date of eligibility determination shall result in the loss of eligibility status of the applicant. The applicant must reestablish ~~his~~ applicant eligibility for participation in the program and the eligibility of the site, unless the department agrees to extend the period for remitting the registration fee. Once eligibility is lost for failure to remit the registration fee pursuant to this subsection, the applicant shall submit a new application in order to reestablish ~~his~~ applicant eligibility for participation in the program and the eligibility of the site and shall be subject to the registration fees under the provisions of 9VAC20-160-65.

D. Upon completion of remediation and issuance of the certificate pursuant to 9VAC20-160-110, the participant whose final cost of remediation is less than $500,000 may seek a refund of a portion of the preliminary registration fee. The refund amount shall be reconciled as the difference between the preliminary registration fee and the final registration fee amounts.

1. In order to receive a refund, the participant shall provide the department with a summary of the final cost of remediation within 60 days of issuance of a certificate. The final registration fee amount for such projects shall be calculated as 1.0% of the final cost of remediation. The department shall review the summary, calculate the refund amount due, and issue a refund to the participant.

2. If no summary of the final cost of remediation is provided to the department within 60 days of issuance of the certificate, the final registration fee amount shall be equal to the preliminary registration fee amount, and no portion of the preliminary registration fee shall be refunded.

3. Concurrence with the summary of the final cost of remediation does not constitute department verification of the actual cost incurred.

E. No portion of the preliminary registration fee will be refunded if participation is terminated pursuant to the provisions of 9VAC20-160-100.

9VAC20-160-65. Registration fees for applications received on or after July 1, 2014.

A. In accordance with § 10.1-1232 A 5 of the Code of Virginia, the applicant shall submit a registration fee to defray the cost of the program. For applications received by the department on and after July 1, 2014, the registration fee shall be remitted in three phases as required by this section.

B. Phase 1 of the registration fee shall be an application fee in the amount of $2,000.

1. Payment of the phase 1 registration fee is required for each application received by the department on or after July 1, 2014.

2. The phase 1 registration fee is due when the application is submitted and shall be made payable to the Treasurer of Virginia.

3. The phase 1 registration fee shall be submitted separately from the application package and remitted to Virginia Department of Environmental Quality, P.O. Box 1104, Receipts Control, Richmond, VA 23218.

4. An application is not administratively complete until the phase 1 registration fee is received by the department. Review of an application for eligibility in accordance with 9VAC20-160-30 and 9VAC20-160-40 shall not commence until the application is administratively complete.

C. Phase 2 of the registration fee shall be an eligibility fee in the amount of $7,500.

1. Payment of the phase 2 registration fee shall be required after eligibility has been verified by the department and prior to technical review of submittals pursuant to 9VAC20-160-80. Upon receipt of the phase 2 registration fee, the site and applicant shall be considered by the department to be participating in the program.

a. A phase 2 registration fee shall be required from the applicant for each site that has been determined to be eligible for participation in the program based upon an application received by the department on or after July 1, 2014.

b. A separate phase 2 registration fee is required for each section of a phased remediation project that requires a separate eligibility determination or for any site that requires a separate certificate issued for that section pursuant to 9VAC20-160-110. In the event that the phased remediation work continues beyond November 1,

then phase 3 registration fees shall also be billed and remitted annually until project completion in accordance with subsection D of this section.

c. No phase 2 registration fee shall be required for a site that has been determined to be eligible for participation in the program based upon an application received by the department prior to July 1, 2014, unless the site requires more than a single certificate to be issued.

d. If multiple certificates are issued at the same time for different portions of a project pursuant to 9VAC20-160-110, a phase 1 fee shall be due for each certificate after the first.

2. Payments of phase 2 registration fees shall (i) be made payable to the Treasurer of Virginia, (ii) include the Voluntary Remediation Program (VRP) ID number assigned by the department, and (iii) be remitted to Virginia Department of Environmental Quality, P.O. Box 1104, Receipts Control, Richmond, VA 23218. The phase 2 registration fees shall be remitted to the department within 90 days after date of the eligibility determination unless the department agrees to extend the period for remitting the phase 2 registration fee.

3. Failure to remit the required phase 2 registration fee in accordance with subdivision 2 of this subsection within 90 days after the date of eligibility determination shall result in the loss of eligibility status of the applicant and the site. After such loss of eligibility, the applicant must reestablish eligibility in order to participate in the program.

a. The department shall mail notification of nonpayment of the phase 2 registration fee and pending loss of eligibility at least 30 days prior to loss of the applicant's and the site's eligibility.

b. If eligibility is lost as a result of failure to remit a phase 2 registration fee, the applicant shall pay new phase 1 and phase 2 registration fees as part of reestablishing eligibility.

D. Phase 3 of the registration fee shall be an annual program cost defrayment fee in the amount of $4,500. If a site (i) has been determined to be eligible for participation in the Voluntary Remediation Program based upon an application received by the department on or after July 1, 2014, and (ii) is participating in the Voluntary Remediation Program, a phase 3 registration fee shall be assessed for that site as follows:

1. On November 1 of each calendar year, any site participating in the program on that day shall be assessed a phase 3 registration fee if the application on which the eligibility determination was based was received by the department in a calendar year prior to that year. ~~For example:~~

~~a. Any site participating in the program on November 1, 2015, based upon an application that had been received by the department in calendar year 2014 (on or after July 1, 2014) will be assessed a phase 3 registration fee and will be billed for that assessment on March 1, 2016.~~

~~b. Any~~ a. For example, any eligible site participating in the program on November 1, 2017, based upon an application that had been received by the department in calendar year ~~2014 (on or after July 1, 2014), 2015, or~~ 2016 will be assessed a phase 3 registration fee to be billed on March 1, 2018.

b. For any site where the application was received prior to July 1, 2014, the site is not subject to a phase 3 registration fee unless the site requires multiple certificates (e.g., the original site was divided and certificates are issued at separate times).

c. Sites that are not participating in the program, including sites that have not yet been determined to be eligible to participate in the program~~;~~, sites that have had a certificate issued pursuant to 9VAC20-160-110 prior to November 1~~;~~, and sites that have been terminated from participation in the program pursuant to 9VAC20-160-100 prior to November 1 are not subject to a phase 3 registration fee assessment for that calendar year and will not be billed on March 1 of the following year.

2. The phase 3 registration fee is not prorated for participation in the program for portions of calendar years.

3. The phase 3 registration fee assessed for an eligible site shall be billed to the applicant on March 1 of the calendar year following the November 1 assessment.

4. The assessed phase 3 registration fee is due on April 1 of the billing year and shall (i) be made payable to the Treasurer of Virginia, (ii) include the VRP ID number assigned by the department, and (iii) be remitted to Virginia Department of Environmental Quality, P.O. Box 1104, Receipts Control, Richmond, VA 23218.

5. The phase 3 registration fees shall be remitted to the department by the due date specified in subdivision 4 of this subsection unless extended by the department.

a. Failure to remit a required phase 3 registration fee within 30 days of the due date shall be cause for termination from the program in accordance with 9VAC20-160-100 A 4.

b. The department shall mail notification of nonpayment of the phase 3 registration fee and intent to terminate participation in accordance with 9VAC20-160-100 to the participant at least 30 days prior to termination.

6. No phase 3 registration fee shall be assessed for a site participating in the program based upon an application received by the department prior to July 1, 2014, unless the participant elected to subdivide the site or conduct a

phased remediation project requiring multiple certificates for the site.

7. Any assessed phase 3 fees shall be remitted to the department before a certificate is issued.

E. The total amount of fees collected by the board shall defray the actual reasonable costs of the program. The director shall take whatever action is necessary to ensure that this limit is not exceeded.

F. No portion of Voluntary Remediation Program registration fees collected pursuant to this section shall be refunded.

G. If a site has been terminated from the program in accordance with 9VAC20-160-100, a new application shall be submitted before the site will be considered for a new eligibility determination and reenrollment into the program. The applicant shall also remit new phase 1 and phase 2 registration fees in accordance with this section and no monetary credit will be given for any fees submitted prior to termination.

H. Amendments to a site's certificate or the associated declaration of restrictive covenants issued by the department pursuant to 9VAC20-160-110 shall be subject to registration fees based on the amendments requested. The land owner shall submit a certificate amendment request to the department describing the changes being requested. The department will review the request and notify the land owner of any additional information required and the amount of the registration fee to be remitted as follows:

1. For amendments to the certificate or the associated declaration of restrictive covenants not requiring a technical review by the department, only a phase 1 registration fee shall be required.

2. For amendment requests that require technical review by the department, no phase 1 registration fee shall be required, but a reduced phase 2 registration fee in the amount of $4,500 shall be required. In the event that the amendment request also meets the phase 3 registration fee criteria in subsection D of this section based upon the date that the department received the amendment request being the date of the application for such purpose, phase 3 registration fees shall also be billed and remitted.

I. For a site that has been determined to be eligible for participation in the program based upon an application received by the department ~~prior to July 1, 2014~~, a request to change the participant for such site received by the department ~~on or after July 1, 2014, or the department making such change,~~ will not in and of itself subject the site to the fees under this section.

9VAC20-160-70. Work to be performed.

A. The Voluntary Remediation Report shall consist of the following components: a Site Characterization, a Risk Assessment, a Remedial Action Plan, a Demonstration of Completion, and Documentation of Public Notice. Each separate component of the Voluntary Remediation Report shall be submitted as listed ~~below~~ in this subsection:

1. The Site Characterization component shall provide an understanding of the site conditions including the identification and description of each area of concern (or source); the nature and extent of releases to all media, including a map of the onsite and offsite vertical and horizontal extent of contaminants above levels consistent with 9VAC20-160-90; and a discussion of the potential ~~risk or~~ risks posed by the release. If remedial activities have occurred prior to enrollment, this information shall be included.

2. The Risk Assessment component shall contain an evaluation of the risks to human health and the environment posed by the release, including an assessment of risk to offsite properties; a proposed set of remediation level objectives consistent with 9VAC20-160-90 that are protective of human health and the environment; and either recommended remediation actions to achieve the proposed objectives or a demonstration that no action is necessary.

3. The Remedial Action Plan component shall propose the specific activities, a schedule for those activities, any permits required to initiate and complete the remediation, and specific design plans for implementing remediation that will achieve the remediation level objectives specified in the Risk Assessment component of the report. Control or elimination of continuing onsite ~~source or~~ sources of releases to the environment shall be discussed. Land use controls and any permits required for the remediation process should be discussed as appropriate. If no remedial action is necessary, the Remedial Action Plan shall discuss the reasoning for no action.

4. The Demonstration of Completion component shall include the following, as applicable:

a. A detailed summary of the remediation implemented at the site, including a discussion of the remediation systems installed and a description of the remediation activities that occurred at the site.

b. A detailed summary of how the established site-specific objectives have been achieved, including (i) a description of how onsite releases (or sources) of contamination have been eliminated or controlled, and (ii) confirmational sampling results demonstrating that the remediation level objectives have been achieved and that the migration of contamination has been stabilized.

c. A description of any site restrictions including~~, but not limited to,~~ land use controls that are proposed for the certificate.

d. A demonstration that all other criteria for completion of remediation have been satisfied.

e. ~~Certification~~ A statement signed by the participant or authorized agent that to the best of the participant's knowledge, the activities performed at the site pursuant to ~~the~~ this chapter have been in compliance with ~~all~~ applicable regulations.

5. The Documentation of Public Notice component is required to demonstrate that public notice has been provided in accordance with 9VAC20-160-120. Such documentation shall, at a minimum, consist of copies of all of the documents required pursuant to the provisions of subsection E of 9VAC20-160-120.

B. It is the participant's responsibility to ensure that the investigation and remediation activities (e.g., waste management and disposal, erosion and sedimentation controls, air emission controls, and activities that impact wetlands and other sensitive ecological habitats) comply with all applicable federal, state, and local laws and regulations.

C. All work, to include sampling and analysis, shall be performed in accordance with Test Methods for Evaluating Solid Waste, USEPA SW-846, revised March 2009, or other media-specific methods approved by the department and completed using appropriate quality ~~assurance/quality~~ assurance and quality control protocols. All analyses shall be performed by laboratories certified by the Virginia Environmental Laboratory Accreditation Program (VELAP). Laboratory certificates of analysis shall be included with applicable reports.

D. While participating in the program, the participant shall notify the department in writing within 30 days of any change in property ownership and if the participant changes, then the new participant shall notify the department within 30 days of the change.

E. While participating in the program, the participant shall notify the department in writing within 30 days of any change in agent for the property owner or the participant.

9VAC20-160-110. Certification of satisfactory completion of remediation.

A. The department shall issue a certificate when:

1. The participant has demonstrated that migration of contamination has been stabilized;

2. The participant has demonstrated that the site has met the applicable remediation levels and will continue to meet the applicable remediation levels in the future for both onsite and offsite receptors;

3. All provisions of the ~~approved~~ final remedial action plan as applicable have been completed;

4. All applicable requirements of ~~the regulations~~ this chapter have been completed;

5. The department accepts all work submitted, as set forth in 9VAC20-160-70; and

6. All registration fees due to the department pursuant to 9VAC20-160-55, 9VAC20-160-60, and 9VAC20-160-65 have been received by the department.

B. The issuance of the certificate shall constitute immunity to an enforcement action under the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), the Virginia State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia), or other applicable Virginia law for the releases described in the certificate.

C. A site shall be deemed to have met the requirements for unrestricted use if the remediation levels, based on either background or standard residential exposure factors, have been attained throughout the site and in all media. Attainment of these levels will allow the site to be given an unrestricted use classification. No remediation techniques or land use controls that require ongoing management may be employed to achieve this classification.

D. For sites that do not achieve the unrestricted use classification, land use controls may be proffered in order to develop remediation levels based on restricted use. The restrictions imposed upon a site may be media-specific, may vary according to site-specific conditions, and may be applied to limit present and future use. All controls necessary to attain the restricted use classification shall be described in the certificate as provided in this section and defined in a declaration of restrictive covenants. Land use controls accepted by the department for use at the site are considered remediation for the purposes of this chapter.

E. If a use restriction is specified in the certificate, the participant shall cause the certificate and a declaration of restrictive covenants to be recorded among the land records in the office of the clerk of the circuit court for the jurisdiction in which the site is located within 90 days of execution of the certificate by the department, unless a longer period is specified in the certificate. If the certificate does not include any use restriction, recordation of the certificate is at the option of the participant. The immunity accorded by the certificate shall apply to the participant and current or future property owner and shall run with the land identified as the site.

F. The immunity granted by issuance of the certificate shall be limited to the known releases as described in the certificate. The immunity is further conditioned upon satisfactory performance by the participant of all obligations required by the department under the program and upon the

veracity, accuracy, and completeness of the information submitted to the department by the participant relating to the site. Specific limitations of the certificate shall be enumerated in the certificate. The immunity granted by the certificate shall be dependent upon the identification of the nature and extent of contamination as presented in the Voluntary Remediation Report.

G. The certificate shall specify the conditions for which immunity is being accorded, including~~, but not limited to~~:

1. A summary of the information that was considered;

2. Any restrictions on future use;

3. Any local land use controls on surrounding properties that were taken into account;

4. Any proffered land use controls; and

5. Any post-certificate monitoring.

H. The certificate may be revoked by the department in any of the following situations, provided that (i) the department has given the owner written notice of the deficiency and (ii) the owner has failed to cure the deficiency within 60 days of the date of the written notice or some longer period granted by the department.

1. In the event that conditions at the site, unknown at the time of issuance of the certificate, pose a risk to human health or the environment;

2. In the event that the certificate was based on information that was false, inaccurate, or misleading; or

3. In the event that the conditions of the certificate have not been met or maintained.

I. The certificate is not and shall not be interpreted to be a permit or a modification of an existing permit or administrative order issued pursuant to state law, nor shall it in any way relieve the participant of its obligation to comply with any other federal or state law, regulation, or administrative order. Any new permit or administrative order, or modification of an existing permit or administrative order, must be accomplished in accordance with applicable federal and state laws and regulations.

J. The issuance of the certificate shall not preclude the department from taking any action authorized by law for failure to meet a requirement of the program or for liability arising from future activities at the site that result in the release of contaminants.

K. The issuance of the certificate by the department shall not constitute a waiver of the Commonwealth's sovereign immunity unless otherwise provided by law.

9VAC20-160-120. Public notice.

A. The participant shall give public notice of the ~~proposed~~ voluntary remediation. The notice shall be made after the department accepts the ~~Site Characterization~~n site characterization component of the Voluntary Remediation Report and the proposed or completed remediation and shall occur prior to the department's issuing a certificate. Such notice shall be paid for by the participant.

B. The participant shall:

1. Provide written notice to the local government in which the facility is located;

2. Provide written notice to all adjacent property owners and other owners whose property has been affected by contaminants as determined pursuant to the provisions of subdivision A 1 of 9VAC20-160-70; and

3. Publish a notice once in a newspaper of general circulation in the area affected by the voluntary action.

C. A comment period of at least 30 days must follow issuance of the notices pursuant to this section. The department, at its discretion, may increase the duration of the comment period to 60 days. The contents of each public notice required pursuant to subsection B of this section shall include:

1. The name and address of the participant and the location of the proposed voluntary remediation;

2. A brief description of the general nature of the release, any remediation, and any proposed land use controls;

3. The address and telephone number of a specific person familiar with the remediation from whom information regarding the voluntary remediation may be obtained; and

4. A brief description of how to submit comments.

D. The participant shall send all commenters a letter acknowledging receipt of written comments and providing responses to the same.

E. The participant shall provide the following as documentation of public notice required in subdivision A 5 of 9VAC20-160-70:

1. A signed statement that the participant has ~~sent a copy of the~~ provided public notice as required by subsection B of this section;

2. A copy of the public notice and a list of names and addresses of all persons to whom the notice was sent; and

3. Copies of all written comments received during the public comment period, copies of ~~acknowledgement~~ acknowledgment letters, and copies of any response to comments, as well as an evaluation of the comment's impact on the planned or completed remedial action or actions.

VA.R. Doc. No. R20-5489; Filed September 27, 2019, 9:04 a.m.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Housing and Community Development is claiming an exemption from Article 2 of the Administrative Process Act pursuant to § 2.2-4006 A 12 of the Code of Virginia, which excludes regulations adopted by the Board of Housing and Community Development pursuant to the Statewide Fire Prevention Code (§ 27-94 et seq.), the Industrialized Building Safety Law (§ 36-70 et seq.), the Uniform Statewide Building Code (§ 36-97 et seq.), and § 36-98.3 of the Code of Virginia, provided the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) publishes the proposed regulation and provides an opportunity for oral and written comments as provided in § 2.2-4007.03, and (iii) conducts at least one public hearing as provided in §§ 2.2-4009 and 36-100 prior to the publishing of the proposed regulations. 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: **13VAC5-63. Virginia Uniform Statewide Building Code (amending 13VAC5-63-540).**

Statutory Authority: § 36-98 of the Code of Virginia.

Public Hearing Information:

December 16, 2019 - 10 a.m. - Virginia Housing Development Authority, Virginia Housing Center, 4224 Cox Road, Glen Allen, VA 23060

Public Comment Deadline: December 28, 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.

Background: Currently, the Virginia Maintenance Code (VMC), a part of the Uniform Statewide Building Code (USBC), requires that when cooling is provided to tenants of certain multifamily buildings, it must be provided to a temperature of at least 80° Fahrenheit. The current threshold has been identified as a public health concern in multiple localities that adopt the VMC.

Summary:

The proposed amendment lowers the required cooling temperature as provided in the USBC to 77° Fahrenheit, making permanent an emergency regulation currently in effect.

13VAC5-63-540. Chapter 6 Mechanical and electrical requirements.

A. Delete the following sections from Chapter 6 of the IPMC:

1. Section 601.2 Responsibility.

2. Section 603.6 Energy conservation devices.

3. Section 604.2 Service.

4. Section 604.3.2 Abatement of electrical hazards associated with fire exposure.

B. Change the following sections in Chapter 6 of the IPMC to read:

1. Section 601.1 General. The provisions of this chapter shall govern the maintenance of mechanical and electrical facilities and equipment.

2. Section 602 Heating and cooling facilities.

3. Section 602.2 Heat supply. Every owner and operator of a Group R-2 apartment building or other residential building who rents, leases, or lets one or more dwelling unit, rooming unit, dormitory, or guestroom on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat during the period from October 15 to May 1 to maintain a temperature of not less than 68°F (20°C) in all habitable rooms, bathrooms, and toilet rooms. The code official may also consider modifications as provided in Section 104.5.2 when requested for unusual circumstances or may issue notice approving building owners to convert shared heating and cooling piping HVAC systems 14 calendar days before or after the established dates when extended periods of unusual temperatures merit modifying these dates.

Exception: When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the locality shall be as indicated in Appendix D of the IPC.

4. Section 602.3 Occupiable work spaces. Indoor occupiable work spaces shall be supplied with heat during the period from October 1 to May 15 to maintain a minimum temperature of 65°F (18°C) during the period the spaces are occupied.

Exceptions:

1. Processing, storage, and operation areas that require cooling or special temperature conditions.

2. Areas in which persons are primarily engaged in vigorous physical activities.

5. Section 602.4 Cooling supply. Every owner and operator of a Group R-2 apartment building who rents, leases, or lets one or more dwelling units, rooming units, or guestrooms on terms, either expressed or implied, to furnish cooling to the occupants thereof shall supply cooling during the period from May 15 to October 1 to maintain a temperature of not more than ~~80°F (27°C)~~ 77°F (25°C) in all habitable rooms. The code official may also consider modifications as provided in Section 104.5.2 when requested for unusual circumstances or may issue notice approving building owners to convert shared heating and cooling piping HVAC systems 14 calendar days before or after the established dates when extended periods of unusual temperatures merit modifying these dates.

Exception: When the outdoor temperature is higher than the summer design temperature for the locality, maintenance of the room temperature shall not be required provided that the cooling system is operating at its full design capacity. The summer outdoor design temperature for the locality shall be as indicated in the IECC.

6. Section 603.1 Mechanical equipment and appliances. Required or provided mechanical equipment, appliances, fireplaces, solid fuel-burning appliances, cooking appliances, chimneys, vents, and water heating appliances shall be maintained in compliance with the code under which the appliances, system, or equipment was installed, kept in safe working condition, and capable of performing the intended function.

7. Section 603.2 Removal of combustion products. Where required by the code under which installed, fuel-burning equipment and appliances shall be connected to an approved chimney or vent.

8. Section 603.5 Combustion air. Where required by the code under which installed, a supply of air for complete combustion of the fuel shall be provided for the fuel-burning equipment.

9. Section 604.1 Electrical system. Required or provided electrical systems and facilities shall be maintained in accordance with the applicable building code.

10. Section 604.3 Electrical system hazards. Where it is found that the electrical system in a structure constitutes a hazard to the occupants or the structure by reason of deterioration or damage or for similar reasons, the code official shall require the defects to be corrected to eliminate the hazard.

11. Section 604.3.1.1 Electrical equipment. Electrical distribution equipment, motor circuits, power equipment, transformers, wire, cable, flexible cords, wiring devices, ground fault circuit interrupters, surge protectors, molded case circuit breakers, low-voltage fuses, luminaires, ballasts, motors, and electronic control, signaling, and communication equipment that have been exposed to water shall be replaced in accordance with the provisions of the VCC.

Exception: The following equipment shall be allowed to be repaired or reused where an inspection report from the equipment manufacturer, an approved representative of the equipment manufacturer, a third party licensed or certified electrician, or an electrical engineer indicates that the exposed equipment has not sustained damage that requires replacement:

1. Enclosed switches, rated 600 volts or less;

2. Busway, rated 600 volts or less;

3. Panelboards, rated 600 volts or less;

4. Switchboards, rated 600 volts or less;

5. Fire pump controllers, rated 600 volts or less;

6. Manual and magnetic motor controllers;

7. Motor control centers;

8. Alternating current high-voltage circuit breakers;

9. Low-voltage power circuit breakers;

10. Protective relays, meters, and current transformers;

11. Low-voltage and medium-voltage switchgear;

12. Liquid-filled transformers;

13. Cast-resin transformers;

14. Wire or cable that is suitable for wet locations and whose ends have not been exposed to water;

15. Wire or cable, not containing fillers, that is suitable for wet locations and whose ends have not been exposed to water;

16. Luminaires that are listed as submersible;

17. Motors; or

18. Electronic control, signaling, and communication equipment.

12. 604.3.2.1 Electrical equipment. Electrical switches, receptacles and fixtures, including furnace, water heating, security system and power distribution circuits, that have been exposed to fire shall be replaced in accordance with the provisions of the Virginia Construction Code.

Exception: Electrical switches, receptacles and fixtures that shall be allowed to be repaired or reused where an inspection report from the equipment manufacturer or an approved representative of the equipment manufacturer, a third party licensed or certified electrician, or an electrical engineer indicates that the equipment has not sustained damage that requires replacement.

13. Section 605.1 Electrical components. Electrical equipment, wiring, and appliances shall be maintained in accordance with the applicable building code.

14. Section 605.2 Power distribution and receptacles. Required or provided power circuits and receptacles shall be maintained in accordance with the applicable building code, and ground fault and arc-fault circuit interrupter protection shall be provided where required by the applicable building code. All receptacle outlets shall have the appropriate faceplate cover for the location when required by the applicable building code.

15. Section 605.3 Lighting distribution and luminaires. Required or provided lighting circuits and luminaires shall be maintained in accordance with the applicable building code.

16. Section 605.4 Flexible cords. Flexible cords shall not be run through doors, windows, or cabinets or concealed within walls, floors, or ceilings.

17. Section 606.1 General. Elevators, dumbwaiters, and escalators shall be maintained in compliance with ASME A17.1. The most current certificate of inspection shall be on display at all times within the elevator or attached to the escalator or dumbwaiter, be available for public inspection in the office of the building operator, or be posted in a publicly conspicuous location approved by the code official. Where not displayed in the elevator or attached on the escalator or dumbwaiter, there shall be a notice of where the certificate of inspection is available for inspection. An annual periodic inspection and test is required of elevators and escalators. A locality shall be permitted to require a six-month periodic inspection and test. All periodic inspections shall be performed in accordance with Section 8.11 of ASME A17.1. The code official may also provide for such inspection by an approved agency or through agreement with other local certified elevator inspectors. An approved agency includes any individual, partnership, or corporation who has met the certification requirements established by the VCS.

C. Add the following sections to Chapter 6 of the IPMC:

1. Section 602.2.1 Prohibited use. In dwelling units subject to Section 602.2, one or more unvented room heaters shall not be used as the sole source of comfort heat in a dwelling unit.

2. Section 607.2 Clothes dryer exhaust duct. Required or provided clothes dryer exhaust systems shall be maintained in accordance with the applicable building code.

VA.R. Doc. No. R20-6189; Filed October 8, 2019, 11:08 a.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **14VAC5-130. Rules Governing the Filing of Rates for Individual and Certain Group Accident and Sickness Insurance Policy Forms (amending 14VAC5-130-10 through 14VAC5-130-100).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: January 1, 2020.

Agency Contact: Bob Grissom, Chief Insurance Market Examiner, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9152, FAX (804) 371-9944, or email bob.grissom@scc.virginia.gov.

Summary:

The amendments address the statutory revision to the definition of "small employer," clarify rating requirements related to short-term limited duration insurance, clarify premium rates and rating factor requirements, and replace the Uniform Age Rating Curve table with a reference to the table.

AT RICHMOND, SEPTEMBER 30, 2019

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2019-00089

Ex Parte: In the matter of Amending Rules Governing the Filing of Rates for Accident and Sickness Insurance

ORDER ADOPTING AMENDMENTS TO RULES

By Order to Take Notice ("Order") entered July 16, 2019, insurers and interested persons were ordered to take notice that subsequent to September 9, 2019, the State Corporation Commission ("Commission") would consider the entry of an order adopting amendments to rules set forth in Chapter 130 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing the Filing of Rates for Accident and Sickness Insurance" ("Rules"), which amend the Rules at 14 VAC 5-130-10 through 14 VAC 5-130-100 and repeal

forms, unless on or before September 9, 2019, any person objecting to the adoption of the amendments to the Rules filed a request for a hearing with the Clerk of the Commission ("Clerk").

The Order also required insurers and interested persons to file their comments in support of or in opposition to the proposed amendments to the Rules with the Clerk on or before September 9, 2019.

No request for a hearing was filed with the Clerk. A comment from Doug Gray, Executive Director of the Virginia Association of Health Plans was timely filed with the Clerk. The Bureau of Insurance ("Bureau") responded to the comment by letter dated September 17, 2019, and filed such response in the case file.

The amendments to the Rules are necessary to address the statutory revision to the definition of "small employer," to clarify rating requirements related to short-term limited duration insurance, and other clarifications and amendments to premium rates and rating factor requirements. In addition, the amendments remove the inclusion of the Uniform Age Rating Curve table and instead provide reference to the table as this information may change at the federal level from time to time. Finally, repeal of the forms as attachments is necessary because the data requirements on the forms change from time to time, and for some filings the forms are part of a larger template.

NOW THE COMMISSION, having considered the proposed amendments, the comment filed, and the Bureau's response, is of the opinion that the attached amendments to the Rules should be adopted as proposed, effective January 1, 2020.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to the "Rules Governing the Filing of Rates for Accident and Sickness Insurance" at Chapter 130 of Title 14 of the Virginia Administrative Code that amend the Rules at 14 VAC 5-130-10 through 14 VAC 5-130-100 and repeal forms, which are attached hereto and made a part hereof, are hereby ADOPTED effective January 1, 2020.

(2) The Bureau shall provide notice of the adoption of the amendments to the Rules to all insurers licensed in Virginia to write accident and sickness insurance and to all interested persons.

(3) The Commission's Division of Information Resources shall cause a copy of this Order, together with the amended Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) The Commission's Division of Information Resources shall make available this Order and the attached amendments to the Rules on the Commission's website: http://www.scc.virginia.gov/case.

(5) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

(6) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 North 9th Street, 8th Floor, Richmond, Virginia 23219; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Julie S. Blauvelt.

CHAPTER 130
RULES GOVERNING THE FILING OF RATES FOR INDIVIDUAL AND ~~CERTAIN~~ GROUP ACCIDENT AND SICKNESS INSURANCE ~~POLICY FORMS~~

14VAC5-130-10. Purpose.

The purposes of this chapter ~~(14VAC5-130-10 et seq.)~~ are to~~:~~ (i) implement procedures for the filing or filing and approval of rates for individual and ~~certain~~ group accident and sickness insurance policy forms and (ii) establish minimum loss ratios to assure that the benefits provided by such policy forms are or are ~~likely~~ anticipated to be reasonable in relation to the premiums charged.

14VAC5-130-30. Scope.

A. This chapter ~~(14VAC5-130-10 et seq.)~~ applies to ~~all:~~

1. All individual and group accident and sickness insurance ~~policy forms~~ policies, subscriber contracts of ~~hospital, medical or surgical~~ health maintenance organizations or health services plans, dental plans, and optometric plans delivered or issued for delivery in this Commonwealth.

~~B. This chapter also applies to all~~ 2. All health insurance coverage issued in the individual and small group markets.

~~C. This chapter also applies to~~ 3. Individual and group Medicare supplement insurance ~~policy forms~~ policies and group ~~Medicare supplement~~ subscriber contracts of ~~hospital, medical or surgical~~ health maintenance organizations or health services plans providing Medicare supplement coverage delivered or issued for delivery in this Commonwealth.

~~D. For purposes of this chapter, a policy form shall include any rider or endorsement form affecting benefits which is attached to the base policy~~ 4. Individual and group long-term care policies issued before October 1, 2003.

~~E.~~ B. Except as otherwise provided, nothing contained in this chapter shall be construed to relieve ~~a health insurance issuer~~ an insurer of complying with the statutory requirements set forth in Title 38.2 of the Code of Virginia.

14VAC5-130-40. Definitions.

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

"Actuarial value" or "AV" means the anticipated covered medical spending for essential health benefits (EHB) coverage paid by a health plan for a standard population, computed in accordance with the plan's cost-sharing, divided by the total anticipated allowed charges for EHB coverage provided to a standard population, and expressed as a percentage.

"Anticipated loss ratio" means the ratio of the present value of the future benefits to the present value of the future premiums of a policy form over the entire period for which rates are computed to provide coverage.

"Grandfathered plan" means coverage provided by a health carrier in which an individual was enrolled on March 23, 2010, for as long as such plan maintains that status in accordance with federal law.

"Group health insurance coverage" means in connection with a group health plan, health insurance coverage offered in connection with such plan.

"Group health plan" means an employee welfare benefit plan (as defined in § 3(1) of the Employee Retirement Income Security Act of 1974 (29 USC § 1002(1)), to the extent that the plan provides medical care and including items and services paid for as medical care to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise.

~~"Group Medicare supplement policy" means a group policy of accident and sickness insurance, or a group subscriber contract of hospital, medical or surgical plans, covering individuals who are entitled to have payment made under Medicare, which is designed primarily to supplement Medicare by providing benefits for payment of hospital, medical or surgical expenses, or is advertised, marketed or otherwise purported to be a supplement to Medicare. Such term does not include:~~

~~1. A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or~~

~~2. A policy or contract of any professional, trade or occupational association for its members or former retired members, or combination thereof, if such association:~~

~~a. Is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;~~

~~b. Has been maintained in good faith for purposes other than obtaining insurance; and~~

~~c. Has been in existence for at least two years prior to the date of its initial offering of such policy or plan to its members.~~

"Health benefit plan" means any accident and health insurance policy or certificate, health services plan contract, health maintenance organization subscriber contract, plan provided by a ~~MEWA~~ multiple employer welfare arrangement, or plan provided by another benefit arrangement. "Health benefit plan" does not mean accident only, credit, or disability insurance; coverage of Medicare services or federal employee health plans, pursuant to contracts with the United States government; Medicare supplement or long-term care insurance; Medicaid coverage; dental only or vision only insurance; specified disease insurance; hospital confinement indemnity coverage; limited benefit health coverage; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical payment insurance; medical expense and loss of income benefits; or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

"Health insurance coverage" means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by ~~a health insurance issuer~~ an insurer.

~~"Health insurance issuer" means an insurance company, or insurance organization (including a health maintenance organization) that is licensed to engage in the business of insurance in this Commonwealth and that is subject to the laws of this Commonwealth that regulate insurance within the meaning of § 514(b)(2) of the Employee Retirement Income Security Act of 1974 (29 USC § 1144(b)(2)). Such term does not include a group health plan.~~

"Health maintenance organization" means~~: 1. A federally qualified health maintenance organization; 2. An organization recognized under the laws of this Commonwealth as a health maintenance organization; or 3. A similar organization regulated under the laws of this Commonwealth for solvency in the same manner and to the same extent as such a health maintenance organization~~ any person who undertakes to provide or arrange for one or more health care plans as defined in § 38.2-4300 of the Code of Virginia.

"Health system" means an organization that consists of either (i) at least one hospital plus at least one group of physicians or (ii) more than one group of physicians.

"Individual accident and sickness insurance" means insurance against loss resulting from sickness or from bodily injury or death by accident or accidental means or both when sold on an individual rather than group basis.

"Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, that includes a health benefit plan provided to individuals through a trust arrangement, association, or other discretionary group that is not an employer plan, but does not include coverage defined as "excepted benefits" in § 38.2-3431 of the Code of Virginia or short-term limited duration insurance. Student health insurance coverage shall be considered a type of individual health insurance coverage.

"Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan. Coverage that would be regulated as individual market coverage if it were not sold through an association is individual market coverage.

~~"Individual Medicare supplement policy" means an individual policy of accident and health insurance or a subscriber contract of hospital, medical or surgical plans, offered to individuals who are entitled to have payment made under Medicare, which is designed primarily to supplement Medicare by providing benefits for hospital, medical or surgical expenses, or is advertised, marketed or otherwise purported to be a supplement to Medicare.~~

"Insurer" means a person licensed to issue or that issues any insurance policy in this Commonwealth.

"Medicare supplement policy" means an individual or group accident and sickness insurance policy or certificate, or a health maintenance organization subscription contract or evidence of coverage, designed primarily to supplement Medicare by providing benefits for payment of hospital, medical, or surgical expenses, or is advertised, marketed or otherwise purported to be a supplement to Medicare. For group policies, the term does not include a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or a combination of employees and labor organizations, for employees, former employees, or combination of employees and labor organizations or for members or former members, or combination thereof, of the labor organizations.

"Member" means an enrollee, insured, member, subscriber, policyholder, certificate holder, or other individual who is participating in a health benefit plan or covered under ~~health~~ accident and sickness insurance.

"Policy" means an insurance policy, form, contract, certificate of insurance, evidence of coverage, subscriber contract or other similar document. A policy shall include any rider or endorsement affecting benefits attached to the base policy.

"Premium" means all moneys paid by an employer, eligible employee, or member as a condition of coverage from ~~a health insurance issuer~~ an insurer, including fees and other contributions associated with a health benefit plan.

"Qualified actuary" means a member of the American Academy of Actuaries, or other individual qualified as described in the American Academy of Actuaries' U.S. Qualification Standards and the Code of Professional Conduct to render statements of actuarial opinion in the applicable area of practice.

"Rate" or "premium rate" means any rate of premium, policy fee, membership fee, or any other charge made by an insurer for or in connection with a contract or policy of insurance. "Rate" shall not include a membership fee paid to become a member of an organization or association, one of the benefits of which is the purchase of insurance coverage.

"SERFF" means the National Association of Insurance Commissioner's (NAIC) System for Electronic Rate and Form Filing, or its successor.

"Small employer" ~~means in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 50 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year. Effective January 1, 2016, "small employer" means in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 100 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year~~ has the same meaning as in § 38.2-3431 of the Code of Virginia.

"Small group market" means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a small employer. Coverage that would be regulated as small group market coverage if it were not sold through an association is small group market coverage.

"Student health insurance coverage" means a type of individual health insurance coverage offered in the individual market that is provided pursuant to a written agreement between an institution of higher education, as defined by the Higher Education Act of 1965 (Public Law No. 89-329), and a health carrier and provided to students enrolled in that institution of higher education and their dependents, and that does not make health insurance coverage available other than in connection with enrollment as a student or as a dependent of a student in the institution of higher education, and does not condition eligibility for health insurance coverage on any

health status-related factor related to a student or a dependent of the student.

14VAC5-130-50. General rules on rate filing; experience records and data.

A. Every policy, rider, or endorsement form affecting benefits which is submitted for approval shall be accompanied by a rate filing unless such rider or endorsement form does not require a change in the rate. Any subsequent addition to or change in rates applicable to such policy, rider, or endorsement form shall also be filed.

B. Each rate submission shall include an actuarial memorandum describing the basis on which rates and rating factors were determined and shall ~~indicate and~~ describe and provide the calculation of the anticipated loss ratio. Except for ~~coverage issued in the~~ individual and small employer group ~~market~~ health insurance coverage, interest at a rate consistent with that assumed in the original determination of premiums~~,~~ shall be used in the calculation of this loss ratio. Each rate submission must also include a certification by a qualified actuary that to the best of the actuary's knowledge and judgment, the rate filing is in compliance with the applicable laws and regulations of this Commonwealth, and that the benefits are reasonable in relation to the premiums.

C. ~~Health insurance issuers~~ Insurers shall maintain records of earned premiums and incurred benefits for each calendar year for each policy form, including data for rider and endorsement forms which are used with the policy form, on the same basis, including all reserves, as required for the Accident and Health Policy Experience Exhibit. Separate data may be maintained for each rider or endorsement form to the extent appropriate. Experience under forms which provide substantially similar coverage may be combined. The data shall be for each calendar year of experience since the year the form was first issued.

D. In determining the credibility and appropriateness of experience data, due consideration must be given to all relevant factors, such as:

1. Statistical credibility of premiums and benefits, e.g., low exposure, low loss frequency.

2. Experienced and projected trends relative to the kind of coverage, ~~e.g.,~~ for example, inflation in medical expenses, economic cycles affecting disability income experience.

3. The concentration of experience at early policy durations where select morbidity and preliminary term reserves are applicable and where loss ratios are expected to be substantially lower than at later policy durations.

4. The mix of business by risk classification.

E. Rates for ~~coverage issued in the~~ individual or small employer group ~~markets~~ health insurance coverage are required to meet the following:

1. Premium rates with respect to a particular plan or coverage may only vary by:

a. Whether the plan or coverage covers an individual or family;

b. Rating area, as may be established by the commission;

c. Age, consistent with the default Uniform Age Rating Curve ~~table below~~ as specified in guidance by the federal Secretary of Health and Human Services in accordance with 45 CFR 147.102(a)(1)(iii); and

d. Tobacco use, except that the rate shall not vary by more than 1.5 to 1. Employees of a small employer may avoid this surcharge by participating in a wellness program that complies with § 2705(j) of the Public Health Service Act (42 USC § 300gg-4).

~~Uniform Age Rating Curve~~

~~AGE~~	~~PREMIUM RATIO~~	~~AGE~~	~~PREMIUM RATIO~~	~~AGE~~	~~PREMIUM RATIO~~
~~0 20~~	~~0.635~~	~~35~~	~~1.222~~	~~50~~	~~1.786~~
~~21~~	~~1.000~~	~~36~~	~~1.230~~	~~51~~	~~1.865~~
~~22~~	~~1.000~~	~~37~~	~~1.238~~	~~52~~	~~1.952~~
~~23~~	~~1.000~~	~~38~~	~~1.246~~	~~53~~	~~2.040~~
~~24~~	~~1.000~~	~~39~~	~~1.262~~	~~54~~	~~2.135~~
~~25~~	~~1.004~~	~~40~~	~~1.278~~	~~55~~	~~2.230~~
~~26~~	~~1.024~~	~~41~~	~~1.302~~	~~56~~	~~2.333~~
~~27~~	~~1.048~~	~~42~~	~~1.325~~	~~57~~	~~2.437~~
~~28~~	~~1.087~~	~~43~~	~~1.357~~	~~58~~	~~2.548~~

~~29~~	~~1.119~~	~~44~~	~~1.397~~	~~59~~	~~2.603~~
~~30~~	~~1.135~~	~~45~~	~~1.444~~	~~60~~	~~2.714~~
~~31~~	~~1.159~~	~~46~~	~~1.500~~	~~61~~	~~2.810~~
~~32~~	~~1.183~~	~~47~~	~~1.563~~	~~62~~	~~2.873~~
~~33~~	~~1.198~~	~~48~~	~~1.635~~	~~63~~	~~2.952~~
~~34~~	~~1.214~~	~~49~~	~~1.706~~	~~64 and older~~	~~3.000~~

2. A premium rate shall not vary by any other factor not described in this subsection.

3. With respect to family coverage, the rating variations permitted in this subsection shall be applied based on the portion of the premium that is attributable to each family member covered under the plan. With respect to family members ~~under age~~ younger than 21 years of age, the premiums for no more than the three oldest covered children shall be taken into account in determining the total family premium.

4. The premium charged shall not be adjusted more frequently than annually, except that the premium rate may be changed to reflect changes to (i) the family composition of the member, (ii) the coverage requested by the member, or (iii) the geographic location of the member.

5. Premium rates for student health insurance coverage may be based on school-specific community rating and are exempt from subdivisions 1 through 4 of this subsection.

F. If the proposed area rate factors set forth in a rate filing for individual or small employer group health insurance coverage by an insurer for a rating area exceed by more than 15% the weighted average of the proposed area rate factors among all rating areas in which the insurer offers health benefit plans in that market, then:

1. The insurer's rate filing shall include in a publicly available and unredacted form:

a. A comparison of the area rate factor for individual and small employer group health benefit plans that utilize the same provider network and provider reimbursement levels of the health benefit plans that are subject to the filing;

b. A detailed disclosure of the area rate factor methodology, which shall include any third-party resources or representations from a person other than the signing actuary, on which the signing actuary relied, provided that disclosure of third-party resources shall address that the source data only reflects differences in unit cost and provider practice patterns; and

c. To the extent that the insurer is deriving any area rate factor from experience data, by rating area for the experience period used:

(1) The (i) total enrollment; (ii) total premiums; (iii) allowed claims; (iv) incurred claims excluding anticipated or, if available, actual risk adjustment payments or receipts; (v) incurred claims including anticipated or, if available, actual risk adjustment payments or receipts; and (vi) loss ratio for each of their rating areas in that market; and

(2) Aggregated incurred claims for any health system exceeding 30% of total incurred claims for that rating area in that market.

2. The commission shall hold a public hearing on the proposed premium rates prior to the approval of the rate filing.

3. The commission shall not approve the proposed rate filing if (i) a variance in area rate factors, indexed to the same rating region for both the individual and small group markets, of 15% or more exists between health benefit plans an insurer intends to offer in the individual market and health benefit plans intended to be offered in the small group market, when those plans utilize the same provider network and provider reimbursement levels and (ii) the methodologies used to calculate the area rate factors are different between the two markets.

G. Beginning for plan year 2020, an insurer with an approved rate filing that contains at least one area rate factor that exceeds by more than 25% the weighted average of the area rate factors among all rating areas in a market in which the insurer offers individual or small employer group health insurance coverage shall file with the commission for each calendar quarter during that plan year a report that provides, for each rating area within the market in which the insurer operates, the plan's (i) enrollment; (ii) total premiums; (iii) allowed claims; (iv) incurred claims excluding anticipated or, if available, actual risk adjustment payments or receipts; (v) incurred claims including anticipated or, if available, actual risk adjustment payments or receipts; (vi) loss ratio; and (vii) aggregate incurred claims, for each health system exceeding 25% of total incurred claims for that rating area. The insurer shall make each such quarterly report publicly available, without redaction, not later than 45 days after the end of the calendar quarter.

H. The commission may investigate and determine whether a rate is excessive, unfairly discriminatory, or unreasonable in

relation to the benefits provided. In the event of disapproval or withdrawal of approval by the commission of a rate submission, ~~a health insurance issuer~~ an insurer may proceed ~~as indicated~~ using the process described in § 38.2-1926 of the Code of Virginia.

14VAC5-130-60. Filing of rates for a new policy form.

A. Each rate submission shall include~~:~~ (i) the applicable policy or certificate form, application, and endorsements required by § 38.2-316 of the Code of Virginia, (ii) a rate sheet, (iii) an actuarial memorandum, and (iv) all information required in SERFF. ~~The Unified Rate Review Template shall also be filed for coverage issued in the individual or small group markets, except for student health insurance coverage.~~

B. The actuarial memorandum shall contain the following information:

1. A description of the type of policy ~~or coverage~~, including benefits, renewability, general marketing method, and issue age limits.

2. A description of how rates and rating factors were determined, including the ~~general~~ description and source of each assumption used.

3. The ~~estimated~~ expected average annual premium per policy and per anticipated member.

4. The anticipated loss ratio and a description of how it was calculated.

5. The minimum anticipated loss ratio presumed reasonable in this chapter, as specified in 14VAC5-130-65.

6. If the anticipated loss ratio in subdivision 4 of this subsection is less than the minimum loss ratio in subdivision 5 of this subsection, supporting documentation for the use of such premiums shall also be included.

~~7. For coverage issued in the individual or small group market, a certification by a qualified actuary of the actuarial value of each plan of benefits included and the AV calculation summary.~~

~~8.~~ A certification by a qualified actuary that, to the best of the actuary's knowledge and judgment, the rate filing is in compliance with the applicable laws and regulations of this Commonwealth and the premiums are reasonable in relation to the benefits provided.

8. For individual or small employer group health insurance coverage, a certification by a qualified actuary to include (i) the methodology used to calculate the AV metal value for each plan; (ii) the appropriateness of the essential health benefit portion of premium upon which advanced payment of premium tax credits are based; (iii) the development of the index rate in accordance with federal regulations and the development of plan specific premium rates using allowable modifiers to the index rate; and (iv) the geographic rating factors, which should reflect differences only in the costs of delivery (which can include unit cost and provider practice pattern differences) and not differences in population morbidity by geographic area.

9. For student health insurance coverage, a certification by a qualified actuary to include the methodology used to calculate an AV level of coverage that meets a minimum 60%.

14VAC5-130-65. Reasonableness of benefits in relation to initial premiums.

A. Benefits shall be deemed reasonable in relation to premiums provided the anticipated loss ratio of the policy form, including riders and endorsements, is at least as great as specified ~~below~~ in this subsection:

1. If the expected average annual premium is at least $200 but less than $1,000:

Type of Coverage	Renewal Clause				
	OR	CR	GR	NC	Other
Hospital Confinement Indemnity	~~60%~~ n/a	~~55%~~ n/a	55%	50%	~~60%~~ n/a
Disability Income Protection, Accident Only, Specified Disease and Other, whether paid on an expense incurred or indemnity basis	60%	55%	50%	45%	60%
Short-term Limited Duration	n/a	n/a	n/a	n/a	60%

Definitions of renewal clause:

OR - Optionally renewable: individual policy renewal is at the option of the insurance company.

CR - Conditionally renewable: renewal can be declined by the insurance company only for stated reasons other than deterioration of health or renewal can be declined on a geographic territory basis.

GR - Guaranteed renewable: renewal cannot be declined by the insurance company for any reason, but the insurance company can revise rates on a class basis.

NC - Noncancellable: renewal cannot be declined nor can rates be revised by the insurance company.

Other - Any other renewal or nonrenewal clauses ~~(e.g., short term nonrenewable policies)~~.

2. If the expected average annual premium is $100 or more but less than $200, subtract five percentage points from the numbers in the table in subdivision 1 of this subsection.

3. If the expected average annual premium is less than $100, subtract 10 percentage points from the numbers in the table in subdivision 1 of this subsection.

4. If the expected average annual premium is $1,000 or more, add five percentage points to the numbers in the table in subdivision 1 of this subsection.

5. ~~Notwithstanding subdivision 1 of this subsection,~~ For individual or group Medicare supplement policies, ~~shall be expected to return to policyholders in the form of aggregate benefits under the policy at least 75% of the aggregate amount of premiums collected~~ the loss ratios are identified in 14VAC5-170-120 A.

~~6. Notwithstanding subdivisions 1 and 5 of this subsection, for Medicare supplement policies issued prior to July 30, 1992, as a result of solicitation of individuals through the mails or by mass media advertising, which shall include both print and broadcast advertising, shall be expected to return to policyholders in the form of aggregate benefits under the policy at least 60% of the aggregate amount of premiums collected.~~

~~7. Notwithstanding subdivision 1 of this subsection, for Medicare supplement policies issued prior to July 30, 1992, sold on an individual rather than group basis shall be expected to return to policyholders in the form of aggregate benefits under the policy at least 60% of the aggregate amount of premiums collected.~~

~~8.~~ 6. Notwithstanding subdivisions 1 through 4 of this subsection, all individual health insurance coverage ~~issued in the individual market~~ shall be originally priced to meet a minimum 75% loss ratio and, except for student health insurance coverage~~,~~ such coverage shall be guaranteed renewable or noncancellable.

~~9.~~ 7. Notwithstanding subdivisions 1 through 4 of this subsection, all small employer group health insurance coverage ~~issued in the small group market~~ shall be originally priced to meet a minimum 75% loss ratio and shall be guaranteed renewable or noncancellable.

The above anticipated loss ratio standards do not apply to a type of coverage where such standards are in conflict with specific statutes or regulations.

B. The expected average annual premium per policy and per member shall be computed by the ~~health insurance issuer~~ insurer based on an anticipated distribution of business by all applicable criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc., except assuming an annual mode for all policies (i.e., the fractional premium loading shall not affect the average annual premium or anticipated loss ratio calculation).

14VAC5-130-70. Filing a rate revision.

A. Each rate revision submission shall include~~:~~ (i) a new rate sheet~~;~~, (ii) an actuarial memorandum~~;~~, and (iii) all information required in SERFF. ~~The Unified Rate Review Template shall be filed for coverage issued in the individual or small group markets, except for student health insurance coverage.~~

B. The actuarial memorandum shall contain the following information:

1. A description of the type of policy, including benefits, renewability, issue age limits, and if applicable, whether the policy includes grandfathered or nongrandfathered plans or both.

2. The scope and reason for the premium or rate revision.

3. A comparison of the revised premiums with the current ~~premium scale~~ premiums, including all percentage rate changes and any rating factor changes.

4. A statement of whether the revision applies only to new business, only to in-force business, or to both.

5. The ~~estimated~~ expected average annual premium per policy and per member, before and after the proposed rate revision. Where different changes by rating classification are being requested, the rate filing shall also include (i) the range of changes and (ii) the average overall change with a detailed explanation of how the change was determined.

6. ~~Except for coverage issued in the small group market, historical~~ Historical and projected experience, ~~submitted on Form 130 A,~~ including:

a. Virginia and, if applicable, national or manual historical experience as specified in 14VAC5-130-50 C and projections for future experience;

b. A statement indicating the basis for determining the rate revision (Virginia, national or manual, or blended);

c. If the basis is blended, the credibility factor assigned to the ~~national~~ Virginia experience;

d. Earned Premiums (EP), Incurred Benefits (IB), Increase in Reserves (IR), and Incurred Loss Ratio = (IB + IR) ÷ (EP); and

e. Any other available data the ~~health insurance issuer~~ insurer may wish to provide. The additional data may include, if available and appropriate, the ratios of actual claims to the claims expected according to the assumptions underlying the existing rates; substitution of

actual claim run-offs for claim reserves and liabilities; accumulations of experience funds; substitution of net level policy reserves for preliminary term policy reserves; adjustments of premiums to an annual mode basis; or other adjustments or schedules suited to the form and to the records of the company. All additional data must be reconciled, as appropriate, to the required data.

7. Details and dates of all past rate revisions, including the annual rate revisions members will experience as a result of this filing. For ~~companies~~ insurers revising rates only annually, the rate revision should be identical to the current submission. For ~~companies~~ insurers that have had more frequent rate revisions, the annual revision should reflect the compounding impact of all such revisions for the previous 12 months.

8. A description of how revised rates were determined, including the general description and source of each assumption ~~on Form 130A~~. For claims, provide historical and projected claims by major service category for both cost and utilization ~~on Form 130B~~.

9. If the rate revision applies to new business, provide the anticipated loss ratio and a description of how it was calculated.

10. If the rate revision applies to in-force business:

a. The anticipated loss ratio and a description of how it was calculated; and

b. The estimated cumulative loss ratio, historical and anticipated, and a description of how it was calculated.

11. The loss ratio that was originally anticipated for the policy.

12. If 9, 10a, or 10b is less than 11, supporting documentation for the use of such premiums or rates.

13. The current number of Virginia, and national if applicable, members to which the revision applies for the most recent month for which such data is available, and either premiums in force, premiums earned, or premiums collected for such members in the year immediately prior to the filing of the rate revision.

14. Certification by a qualified actuary that, to the best of the actuary's knowledge and judgment, the rate filing is in compliance with applicable laws and regulations of this Commonwealth and the premiums are reasonable in relation to the benefits provided.

15. For ~~coverage issued in the~~ individual or small employer group ~~markets~~ health insurance coverage, a certification by a qualified actuary ~~of the actuarial value of each plan of benefits included and the AV calculation summary~~ to include (i) the methodology used to calculate the AV metal value for each plan; (ii) the appropriateness of the essential health benefit portion of premium upon which advanced payment of premium tax credits are based; (iii) the development of the index rate in accordance with federal regulations and the development of plan specific premium rates using allowable modifiers to the index rate; and (iv) the geographic rating factors, which should reflect differences only in the costs of delivery (which can include unit cost and provider practice pattern differences) and not differences in population morbidity by geographic area.

16. For student health insurance coverage, a certification by a qualified actuary to include the methodology used to calculate an AV level of coverage that meets a minimum 60%.

14VAC5-130-75. Reasonableness of benefits in relation to revised premiums.

A. For individual accident and sickness insurance~~, group~~ that is "excepted benefits" as defined in § 38.2-3431 of the Code of Virginia and Medicare supplement insurance, ~~and coverage issued in the individual market,~~ with respect to filings of rate revisions for a previously approved form, benefits shall be deemed reasonable in relation to premiums provided that both subdivisions 1 and 2 of this subsection shall be at least as great as the standards in 14VAC5-130-70 B 11.

1. The anticipated loss ratio over the entire period for which the revised rates are computed to provide coverage; and

2. The ratio of (a) to (b) where (a) is the sum of the accumulated benefits, from the original effective date of the form to the effective date of the revision, and the present value of future benefits, and (b) is the sum of the accumulated premiums from the original effective date of the form to the effective date of the revision and the present value of future premiums.

Present values shall be taken over the entire period for which the revised rates are computed to provide coverage. Accumulated benefits and premiums shall include an explicit estimate of benefits and premiums from the last accounting date to the effective date of the revision. Interest, at a rate consistent with that assumed in the original determination of premiums shall be used in the calculation of this loss ratio.

B. For ~~coverage issued in the~~ individual and small employer group ~~market~~ health insurance coverage or short-term limited duration insurance, the anticipated loss ratio over the entire period for which the revised rates are computed to provide coverage shall be at least as great as the standards in 14VAC5-130-70 B 11.

~~C. If a health insurance issuer wishes to charge a premium for policies issued on or after the effective date of the rate revision that is different from the premium charged for such policies issued prior to the revision date, then with respect to~~

~~policies issued prior to the effective date of the revision the requirements of subsection A of this section must be satisfied, and with respect to policies issued on and after the effective date of the revision, the standards are the same as in 14VAC5-130-65, except that the average annual premium shall be determined based on an actual rather than an anticipated distribution of business.~~

14VAC5-130-81. Risk pools and index rate.

A. This section shall only apply to individual or small employer group health insurance coverage, except for grandfathered plans and student health insurance coverage.

~~A health insurance issuer~~ B. An insurer shall consider the claims experience of all ~~enrollees in all health benefit plans~~ individual health insurance coverage members, other than those in grandfathered plans and student health insurance coverage, ~~in the individual market~~ to be members of a single risk pool.

~~B. A health insurance issuer~~ C. An insurer shall consider the claims experience of all ~~enrollees in all health plans~~ small employer group health insurance coverage members, other than those in grandfathered plans, ~~in the small group market~~ to be members of a single risk pool.

~~C.~~ D. Each plan year or policy year, as applicable, ~~a health insurance issuer~~ an insurer shall establish an index rate based on the total combined claims costs for providing essential health benefits within the single risk pool ~~of the individual or small group market~~. The index rate may be adjusted on a market-wide basis based on the total expected market-wide payments and charges under the risk adjustment and reinsurance programs in this Commonwealth and the health benefit exchange user fees. The premium rate for all of the ~~health insurance issuer's~~ insurer's plans shall use the applicable index rate, as adjusted in accordance with subsection ~~D~~ E of this section.

~~D. A health insurance issuer~~ E. An insurer may vary premium rates for a particular plan from its index rate for a relevant state market based only on the following actuarially justified plan-specific factors in accordance with 45 CFR 156.80(d)(2):

1. ~~Cost-sharing~~ Actuarial value and cost-sharing design of the plan.

2. The plan's provider network, delivery system characteristics, and utilization management practices.

3. ~~The benefits~~ Benefits provided under the plan that are in addition to the essential health benefits. ~~These additional benefits shall be pooled with similar benefits within a single risk pool and the claims experience from those benefits shall be utilized to determine rate variations for plans that offer those benefits in addition to essential health benefits.~~

4. Administrative costs, excluding health benefit exchange user fees.

5. ~~With respect to~~ Only catastrophic plans~~,~~ may be adjusted for the expected impact of the specific eligibility categories for those plans.

14VAC5-130-90. Monitoring of experience.

A. The commission may prescribe procedures for the effective monitoring of actual experience under any form subject to this chapter.

B. The commission may request information subsequent to approval of a policy form, rate, or rate revision so that it may determine whether premium rates are reasonable in relation to the benefits provided as specified herein in 14VAC5-130-65 and 14VAC5-130-75.

C. If the commission finds that the premium rate filed in accordance with this chapter is or will not meet the originally filed and approved loss ratio, the commission may require appropriate rate adjustments, premium refunds or premium credits as deemed necessary for the coverage to conform with the minimum loss ratio standards set forth in 14VAC5-130-65, and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current rates by the ~~health insurance issuer~~ insurer for the coverage. The commission may take into consideration any previous or expected premium refunds or credits. Detailed supporting documents will be required as necessary to justify the adjustment.

14VAC5-130-100. Severability.

If any provision of this chapter ~~(14VAC5-130-10 et seq.)~~ or the application ~~thereof~~ to any person or circumstance is for any reason held to be invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected ~~thereby~~.

~~FORMS (14VAC5-130)~~

~~Form 130A, Template for data supporting individual rate revision filings (eff. 7/13).~~

~~Form 130B, Trend analysis details (eff. 7/13).~~

~~Unified rate review template (http://www.serff.com/plan_management_data_templates.htm).~~

VA.R. Doc. No. R19-5487; Filed September 30, 2019, 2:38 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Proposed Regulation

Title of Regulation: **18VAC48-60. Common Interest Community Board Management Information Fund Regulations (amending 18VAC48-60-13, 18VAC48-60-17, 18VAC48-60-60; adding 18VAC48-60-14, 18VAC48-60-15, 18VAC48-60-25, 18VAC48-60-55; repealing 18VAC48-60-20, 18VAC48-60-30, 18VAC48-60-40, 18VAC48-60-50).**

Statutory Authority: § 54.1-2349 of the Code of Virginia.

Public Hearing Information:

November 12, 2019 - 10 a.m. - Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 200, Board Room 1, Richmond, Virginia 23233

Public Comment Deadline: December 27, 2019.

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

Basis: Section 54.1-2349 of the Code of Virginia specifies the Common Interest Community Board may prescribe regulations that shall be adopted, amended, or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) to accomplish the purpose of Article 1 (§ 54.1-2345 et seq.) of Chapter 23.3 of Title 54.1 of the Code of Virginia.

Purpose: In 2008, the General Assembly transferred authority over the Common Interest Community Management Information Fund and corresponding regulations from the Real Estate Board to the newly created Common Interest Community (CIC) Board. The board determined a comprehensive review was necessary to ensure that the regulation complements current statutory requirements, provides minimal burdens on regulants while still protecting the public, achieves its intended objective in the most efficient, cost-effective manner, is clearly written and understandable, and reflects current Department of Professional and Occupational Regulation (DPOR) procedures and policies.

The General Assembly created the fund to be used at the discretion of the board to promote the improvement and more efficient operation of common interest communities through research and education. CIC associations are required by statute to finance the fund on an annual basis through the filing of annual reports with the board and payment of fees. Moneys from the fund support the operations of the Office of the Common Interest Community Ombudsman. The Ombudsman's office protects the public welfare through fulfilling its statutory obligations to (i) assist association members in understanding their rights and the processes available to them according to the laws and regulations governing common interest communities; (ii) provide members and other citizens with information concerning common interest communities upon request; and (iii) receive notices of final adverse decision from association members and members of the public. The fund also supports the functions of the board, which protects the public welfare, in part, by enforcing the requirements of statute.

Unlike most DPOR regulatory programs, the board's association registration program does not grant a license or other authorization for an association to operate or exist. However, the General Assembly has imposed on associations certain obligations tied to registration with the board. The public welfare will be enhanced by (i) changing the name of the regulation to more accurately reflect its objective; (ii) providing greater specificity as to what constitutes association registration and how registration is obtained, maintained, and renewed; and (iii) providing notice as to the potential consequences for failure to comply with registration requirements.

Requirements pertaining to registration of CIC associations are spread out across multiple chapters of the Code of Virginia. Members of the public, including association governing board members, often contact the board's office as they are unsure of registration requirements, in particular, where registration requirements are established. In a given month, the board's office receives 15 to 20 inquiries pertaining to why associations must register, where to find registration requirements, and what can happen if an association does not register. An anticipated benefit of the changes proposed by this action is that statutory registration requirements for associations will be more clearly outlined and referenced in a single source. Another anticipated benefit of this action is that the process for initial registration and registration renewal will be clearer to the public. The existing regulation does little in way of outlining procedurally how to achieve initial registration and registration renewal. Consequently, the board's office receives inquiries regarding processes for registration or renewal of a registration, and there is the risk of inconsistent application of these processes without clear provisions in the regulation.

Substance: The proposed amendments will change the title of the regulation to Common Interest Community Association Registration Regulations, which more accurately reflects the purpose of the regulation. The amendments also make the following substantive changes:

Repealing 18VAC48-60-20, which permits an association to submit a State Corporation Commission annual report to

satisfy the annual reporting requirement, and 18VAC48-60-30, 18VAC48-60-40, and 18VAC48-60-50, which outline timeframes for registration of condominium associations, cooperative associations, and property owner associations, and consolidating those provisions into a single new section.

Amending:

1. 18VAC48-60-13 to add several new definitions: "annual report," "board," "common interest community," "contact person," "property owners' association," "registration," and "renew."

2. 18VAC48-60-17 to more clearly outline procedures for renewal of a registration and establish a one-year renewal period.

3. 18VAC48-60-60 to clarify the difference between initial registration and renewal fees and that the fee schedule is based on number of lots or units subject to the association's declaration.

Adding:

1. 18VAC48-60-14 to outline general association registration requirements and consequences for associations that fail to register in accordance with the chapter.

2. 18VAC48-60-15 to outline the specific registration timeframes for (i) condominium unit owner associations, (ii) proprietary lessee associations (cooperatives), and (iii) property owner associations.

3. 18VAC48-60-25 to outline the requirement for associations to notify the board of changes in contact person's address, change of governing board members, and any other changes to association information reported on an annual report.

4. 18VAC48-60-55 to outline general requirements pertaining to fees paid to the board, including the nonrefundability of fees.

Issues: The primary advantages to the public are that the amendments clarify and update the regulation to better complement statutory requirements and incorporate current agency practice.

The amended regulation title more clearly communicates the purpose and function of the regulation. Associations subject to the Property Owners' Association Act, Condominium Act, or Real Estate Cooperative Act are required by law to file annual reports with the board and register. The amendments clearly establish how registration is to occur, how registration is renewed and maintained, and penalties for failing to register as required. The amendments also provide definitions for terms such as "registration," and "annual report," which are undefined in statute. The amended regulation also incorporates current agency practice, particularly regarding processes for renewal of a registration.

Associations are already required to register with the board and file annual reports. The amendments add no new requirements for registration or renewal of a registration. There are no identifiable disadvantages to the public.

DPOR and the board will primarily benefit from having a regulation that more clearly reflects statutory requirements and current agency practice. An anticipated advantage is that associations, both registered and unregistered, will have a better understanding of the requirement to register and will be more inclined to comply. There are no identifiable disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Common Interest Community Board (Board) proposes to clarify language regarding the registration process, filing fees, renewals, and information updates.

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

Estimated Economic Impact. This regulation establishes when and how common interest community associations (property owners' associations, condominium unit owners' associations, and proprietary lessees' associations in cooperatives) are to register with the Board by filing an annual report, registration application filing fees, procedures for renewing registrations, and requirements for updating registration information.

The Board proposes to improve the clarity of the regulatory language by adding definitions, creating a new section on registration requirements, consolidating several existing sections regarding registration timeframes into a single section, removing outdated language, clarifying procedures for renewal of a registration, and addressing statutory requirements for associations to pay an annual fee to the Board based on associations' gross assessment income. According to the Board, the proposed changes reflect current practices and do not create any new requirements. Thus, no significant economic impact is expected from the proposed amendments other than improving the language of the regulation to reflect the current practices.

Businesses and Entities Affected

This regulation applies to common interest community associations. There were 6,349 associations registered with the Board in February 2019. However, this number likely understates the true number of affected entities due to nonregistration by some associations.

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

Projected Impact on Employment. The proposed amendments would not affect employment.

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

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

Small Businesses:

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

Costs and Other Effects. The proposed amendments do not create costs and other effects on small businesses.

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

Agency's Response to Economic Impact Analysis: The Common Interest Community Board concurs with the economic impact analysis.

Summary:

The proposed amendments (i) add several definitions; (ii) add a new section that comprehensively outlines association registration requirements, including penalties for failing to comply; (iii) consolidate the provisions of several existing sections regarding registration timeframes into a single section; (iv) remove language indicating that associations may submit the State Corporation Commission annual report in lieu of an annual report form to the board; and (v) establish procedures for renewal of a registration, including a one-year timeframe.

CHAPTER 60
COMMON INTEREST COMMUNITY ~~BOARD MANAGEMENT INFORMATION FUND~~ ASSOCIATION REGISTRATION REGULATIONS

18VAC48-60-13. Definitions.

"Annual report" means the proper filing with the board of a completed, board-prescribed form submitted with the appropriate fee, and other required documentation for registration or renewal of an association.

"Association" shall ~~be as~~ have the meaning defined in ~~§ 55-528~~ § 54.1-2345 of the Code of Virginia.

"Board" shall have the meaning defined in § 54.1-2345 of the Code of Virginia.

"Common interest community" shall have the meaning defined in § 54.1-2345 of the Code of Virginia.

"Contact person" means the individual designated by an association to receive communications and notices from the board on behalf of the association.

"Governing board" shall ~~be as~~ have the meaning defined in § 54.1-2345 of the Code of Virginia.

"Property owners' association" shall have the meaning defined in § 55.1-1800 of the Code of Virginia.

"Registration" means the proper filing of an annual report with the board by an association and issuance of a certificate of filing by the board to an association in accordance with § 54.1-2349 A 8 of the Code of Virginia.

"Renew" means the process of filing an annual report with the board for continuance of a registration.

18VAC48-60-14. Association registration, generally.

A. Within the meaning and intent of § 54.1-2349 A 8 of the Code of Virginia, an association is registered upon acceptance by the board of an annual report and issuance of a certificate of filing by the board in accordance with 18VAC48-60-15 and 18VAC48-60-17.

B. In accordance with §§ 55.1-1808 and 55.1-1990 of the Code of Virginia, for any condominium unit owners' association or property owners' association that does not have a current registration with the board in accordance with §§ 55.1-1835 and 55.1-1980 of the Code of Virginia, the disclosure packet or resale certificate, as applicable, is deemed not available.

C. A property owners' association that is not (i) registered with the board, (ii) current in filing the most recent annual report with the board, and (iii) current in paying any assessment made by the board pursuant to § 54.1-2354.5 of the Code of Virginia is prohibited from collecting fees for disclosure packets authorized by §§ 55.1-1810 and 55.1-1811 of the Code of Virginia.

D. In accordance with §§ 54.1-2351 and 54.1-2352 of the Code of Virginia, the board may take action against the governing board of an association that fails to register in accordance with this chapter, which action may include issuance of a cease and desist order and an affirmative order to file an annual report or assessment of a monetary penalty of not more than $1,000.

18VAC48-60-15. Timeframe for association registration and annual report.

A. Within 30 days after the date of termination of the declarant control period, a condominium unit owners' association shall register with the board by filing the annual report required by § 55.1-1980 of the Code of Virginia and shall file an annual report every year thereafter.

B. Within 30 days after the date of termination of the declarant control period, a proprietary lessees' association shall register with the board by filing the annual report required by § 55.1-2182 of the Code of Virginia and shall file an annual report every year thereafter.

C. Within the meaning and intent of § 55.1-1835 of the Code of Virginia, a property owners' association shall register with the board by filing an annual report within 30 days of recordation of the declaration and shall file an annual report every year thereafter.

18VAC48-60-17. Association registration expiration and renewal.

A. An association registration shall expire one year from the last day of the month in which it was issued ~~or renewed~~.

B. Prior to the expiration date on the registration, the board shall mail a renewal notice to the registered association's contact person named in the board's records. Failure to receive a renewal notice from the board does not relieve the association of the obligation to renew by filing the annual report with the applicable fee.

C. Each association shall renew its registration by filing an annual report with the board. A registration shall be renewed and considered current upon ~~submittal to~~ receipt and processing by the board office of the completed annual report ~~and applicable fees~~ along with the renewal fee pursuant to 18VAC48-60-60. ~~An association shall notify the board office, in writing, within 30 days of any of the following:~~

~~1. Change of address;~~

~~2. Change of members of the governing board; and~~

~~3. Any other changes in information that was reported on the association's previous annual report filing.~~

D. An association that does not renew registration within 12 months after expiration of the registration may not renew and must submit a new common interest community association registration application by filing the annual report and applicable registration fee.

E. The governing board of an association that fails to comply with registration requirements in this chapter may be subject to action by the board in accordance with 18VAC48-60-14 D.

18VAC48-60-20. ~~Annual report by association.~~ (Repealed.)

~~Each association annual report shall be on the form designated by the board or shall be a copy of the annual report filed with the State Corporation Commission. Such report shall be accompanied by the fee established by this chapter.~~

18VAC48-60-25. Maintenance of registration.

An association shall notify the board office, in writing, within 30 days of any of the following:

1. Change of address of contact person;

2. Change of members of the governing board; and

3. Any other changes in information reported on the association's annual report.

18VAC48-60-30. ~~Annual report by condominium association.~~ (Repealed.)

~~Within 30 days after the date of termination of the declarant control period, and every year thereafter, an association shall file an annual report with the board.~~

18VAC48-60-40. ~~Annual report by cooperative association.~~ (Repealed.)

~~Within 30 days after the date of termination of the declarant control period, and every year thereafter, an association shall file an annual report with the board.~~

18VAC48-60-50. ~~Annual report by property owners' association.~~ (Repealed.)

~~Within the meaning and intent of § 55-516.1 of the Code of Virginia, within 30 days of the creation of the association, and every year thereafter, the association shall file an annual report with the board.~~

18VAC48-60-55. Fees, generally.

All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the board or its agent will determine whether the fee is on time. Checks or money orders shall be made payable to the Treasurer of Virginia.

18VAC48-60-60. Registration ~~fee~~ and renewal fees.

A. The following fee schedule is based upon the ~~size of~~ number of lots or units subject to the declaration for each ~~residential common interest community~~ association. ~~The application fee is different than the annual renewal fee. All fees are nonrefundable.~~

Number of ~~Lots/Units~~ Lots or Units	~~Application~~ Registration Fee	Renewal Fee
1 - 50	$45	$30
51 - 100	$65	$50
101 - 200	$100	$80
201 - 500	$135	$115
501 - 1000	$145	$130
1001 - 5000	$165	$150
5001+	$180	$170

~~The application fee for registration~~ B. Notwithstanding subsection A of this section, the registration and renewal fee of ~~a residential common interest community~~ an association received on or before June 30, 2020, shall be $10 regardless of ~~size~~ the number of lots or units subject to the declaration. ~~For annual renewal of a residential common interest community registration received on or before June 30, 2020, the fee shall be $10 regardless of size.~~

VA.R. Doc. No. R19-5532; Filed September 30, 2019, 6:17 p.m.

DEPARTMENT OF HEALTH PROFESSIONS

Forms

REGISTRAR'S 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.

Title of Regulation: **18VAC76-20. Regulations Governing the Prescription Monitoring Program.**

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

FORMS (18VAC76-20)

~~Request for a Waiver or an Exemption from Reporting (rev. 5/2018)~~

~~Request for a Waiver or an Exemption from Reporting: Veterinarian (rev. 5/2018)~~

Request for a Waiver or an Exemption from Reporting (rev. 10/2019)

Request for a Waiver or an Exemption from Reporting: Veterinarian (rev. 10/2019)

Request to Register as an Authorized Agent to Receive Information from the Prescription Monitoring Program (rev. 7/2017)

Recipient Request for Discretionary Disclosure of Information from the Prescription Monitoring Program (rev. 7/2017)

Regulatory Authority Request for Discretionary Disclosure of Information from the Prescription Monitoring Program (rev. 4/2018)

Application to Register as a Virginia Medicaid Managed Care Authorized Agent to Receive Information from Prescription Monitoring Program (rev. 4/2018)

Account Development Form for Reporting to Virginia's Prescription Monitoring Program (rev. 7/2018)

Request to Register as an Authorized Parole or Probation Officer to Receive Information from the Prescription Monitoring Program (rev. 4/2018)

Request to Register as an Authorized Drug Diversion Investigator to Receive Information from the Prescription Monitoring Program (rev. 4/2018)

Request to Register as an Authorized Investigator for the Department of Corrections to Receive Information from the Prescription Monitoring Program (eff. 8/2019)

VA.R. Doc. No. R20-6207; Filed October 9, 2019, 8:09 a.m.

BOARD OF COUNSELING

Fast-Track Regulation

Title of Regulation: **18VAC115-15. Delegation of Informal Fact-Finding to an Agency Subordinate (amending 18VAC115-15-20).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 27, 2019.

Effective Date: December 12, 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.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system and authorization for delegation to an agency subordinate.

Purpose: The regulatory change is consistent with the principle of regulations that are clearly written and easily understandable. The current regulation is inconsistent with

current policy, so it may be confusing to persons seeking information about the agency subordinate process. It is necessary to retain the section because the statute requires regulations to specify the criteria for appointment in order to conduct informal fact-finding proceeding in a manner that protects the health and safety of the public.

Rationale for Using Fast-Track Rulemaking Process: As required by Executive Order 14 (2018), the Board of Counseling conducted a periodic review of this chapter. The amendments are technical in nature, reflect current procedures, have no impact on the public, and are not expected to be controversial.

Substance: Pursuant to a periodic review of 18VAC115-15, the board has amended 18VAC115-15-20 to add "registered" to the types of professions regulated by the board and to provide that cases involving standard of care may only be delegated to an agency subordinate by determination of the executive director in consultation with the board chair.

Issues: There are no advantages or disadvantages to the public. The amendment is technical and clarifying. There are no advantages or disadvantages to the agency or the Commonwealth.

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

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Counseling (Board) proposes to clarify that cases involving standard of care may only be delegated to an agency subordinate by determination of the executive director in consultation with the Board chair and that authority now covers "registered" professions.

Background. This action results from a periodic review of the regulation.[1] Current language states that cases involving standard of care may only be delegated to an agency subordinate by the "probable cause committee" in consultation with the Board chair. However, the Board's bylaws have not included a probable cause committee for some time, and such cases have been delegated by the executive director in consultation with the Board chair instead. In addition, the current delegation language covers professions certified or licensed by the Board, but omits "registered" professions. Since the Board now "registers" peer recovery specialists and qualified mental health professionals, the word "registered" is proposed to be added.

Estimated Benefits and Costs. The proposed amendments are technical and clarifying in nature reflecting current practices. Thus, no significant economic impact is expected from this action other than improving the clarity of the regulation.

Businesses and Other Entities Affected. This regulation applies to 35,930 entities regulated by the Board. The number of cases delegated to an agency subordinate have been less than 10 historically, but with the addition of approximately 15,000 newly registered professionals, the number of such cases would likely increase.

Localities[3] Affected[4]. The proposed action is not expected to disproportionally affect any locality, nor introduce costs for local governments.

Projected Impact on Employment. The proposed action would not affect employment.

Effects on the Use and Value of Private Property. The proposed action would not affect the use and value of private property or real estate development costs.

Adverse Effect on Small Businesses[5]: The proposed action would not adversely affect small businesses.

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[2]https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1670.

[3]"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[4]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

[5]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."

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

Summary:

The amendments (i) add "registered" to the types of professions regulated by the board and (ii) provide that cases involving standard of care may only be delegated to an agency subordinate by determination of the executive director in consultation with the board chair.

18VAC115-15-20. Criteria for delegation.

Cases that may not be delegated to an agency subordinate include violations of standards of practice as set forth in regulations governing each profession registered, certified, or licensed by the board, except as may otherwise be determined by the ~~probable cause committee~~ executive director in consultation with the board chair.

VA.R. Doc. No. R20-5853; Filed September 30, 2019, 10:31 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Proposed Regulation

Title of Regulation: **22VAC40-705. Child Protective Services (amending 22VAC40-705-10, 22VAC40-705-40, 22VAC40-705-50, 22VAC40-705-80, 22VAC40-705-140, 22VAC40-705-160; repealing 22VAC40-705-20).**

Statutory Authority: § 63.2-217 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 27, 2019.

Agency Contact: Nicole Shipp, Department of Social Services, 801 East Main Street, Richmond, VA 23229, telephone (804) 726-7574, or email nicole.shipp@dss.virginia.gov.

Basis: The most relevant citations for amending the provisions regarding substance-exposed infants are Chapters 176 and 428 of the 2017 Acts of Assembly. Citations for amending provisions related to active duty members of the United States Armed Forces are pursuant to Chapters 88 and 142 of the 2017 Acts of Assembly. The citation for adding a new provision proposing a 24-hour child protective services (CPS) response to reports alleging abuse or neglect of a child younger than two years of age is based on Chapter 604 of the 2017 Acts of Assembly.

Section 63.2-217 of the Code of Virginia gives the State Board of Social Services the responsibility to make rules and regulations to carry out the purposes of social services. Chapter 15 (§ 63.2-1501 et seq.) of Title 63.2 of the Code of Virginia provides the authority for the CPS program.

Purpose: The proposed amendments are necessary for the regulation to be consistent with the Code of Virginia and the changes effective in July 2017 and July 2018. This regulatory action will provide clear guidance for local departments of social services (LDSS) regarding the receipt and response to suspected child abuse or neglect complaints and reports. This regulation is essential to protect the health, safety, and welfare of children at risk for child abuse or neglect. The goals of this regulatory action are (i) to amend existing regulation to comport with changes made during the 2017 and 2018 Sessions of the General Assembly; (ii) to add new response requirements for children younger than two years of age; and (iii) to clarify and strengthen the CPS program while balancing the rights of alleged abusers with protecting children and families.

Substance: The proposed amendments conform the regulation to the Code of Virginia and applicable federal law.

The substantive changes include:

•Adding (i) a definition for "plan of safe care" as it relates to substance-exposed infants; (ii) a requirement to conduct a family assessment for substance-exposed infant reports and creating a plan of safe care; (iii) a requirement to notify the Armed Forces Family Advocacy Program representative when any report is received and of the final outcomes of any investigation or family assessment regarding a dependent child of an active duty military member; (iv) a requirement of CPS to see any victim child younger than two years of age within 24 hours of receiving a valid CPS report; and (v) a requirement of a LDSS to comply with any court order to release information from a child abuse or neglect case record;

•Deleting definitions for "certified substance abuse counselor" and "licensed substance abuse treatment practitioner" and amending the definition for "Family Advocacy Program representative";

•Repealing 22VAC40-705-20, the general policy regarding complaints or reports of child abuse or neglect; and

•Amending (i) provisions for the reporting of substance-exposed infants by health care providers by incorporating the changes made in the Code of Virginia during the 2017 Session of the General Assembly, which became effective on July 1, 2017; (ii) provisions for handling a complaint of child abuse by a LDSS without jurisdiction; and (iii) provisions for notifying the Superintendent of Public Instruction when an individual holding a license issued by the Board of Education is the subject of a founded complaint of child abuse or neglect by incorporating the changes made in the Code of Virginia during the 2018 Session of the General Assembly, which became effective on July 1, 2018.

Issues: One of the primary advantages of the proposed amendments to the public and Commonwealth is a clearer understanding of the processes involved when making a report to CPS and the actions that are taken by CPS. Overall, LDSS will benefit from amendments to the regulation that provide clarity for legislative changes made in 2017 and 2018. Other advantages include establishing a priority response to suspected child abuse or neglect of children younger than two years of age. Notification to the Armed Forces Family Advocacy Program in all cases involving a military dependent provides opportunity to address CPS and non-CPS related child matters involving this population. This specific requirement can increase the community response to the military but will also require additional resources to effectively address the increased reporting of these children. There are no disadvantages to the agency, public, or Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Social Services (Board) proposes to update this regulation to reflect Chapters 88, 176, 428, and 604 of the 2017 Acts of Assembly and Chapters 5 and 209 of the 2018 Acts of Assembly.

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

Estimated Economic Impact. Chapters 176 and 428, 2017 Acts of Assembly[1] require local departments of social services (local departments) to collect information during a family assessment to determine whether the mother of a child who was exposed in utero to a controlled substance sought substance abuse counseling or treatment prior to the child's birth. The legislation also requires mandated reporters of suspected child abuse or neglect to report if (i) within six weeks following a child's birth, it becomes apparent that that child was born affected by substance abuse or experiencing withdrawal symptoms resulting from in utero drug exposure; (ii) within four years following a child's birth that the child has an illness, disease, or condition that is attributable to maternal abuse of a controlled substance during pregnancy; or (iii) within four years following a child's birth that the child has a fetal alcohol spectrum disorder attributable to in utero exposure to alcohol. The legislation further provides that if a local department receives a report or complaint of suspected child abuse or neglect on the basis of one or more of the aforementioned factors, the local department shall (a) conduct a family assessment, unless an investigation is required by law or is necessary to protect the safety of the child, and (b) develop a plan of safe care in accordance with federal law.

Chapters 176 and 428 became effective July 1, 2017. The Department of Social Services (DSS) estimated that approximately 605 new Child Protective Services (CPS) assessments/investigations would be needed annually, which would require the equivalent of 20 additional local department positions. DSS also estimated that 25 percent of the new reports would result in a child placed in foster care. The total estimated cost was $3,492,752 funded through general funds ($2,290,631), title IV-E federal funds ($957,600) and local match ($244,521). The Board now proposes to incorporate the new laws into this regulation.

Similarly, Chapters 88 and 142, 2017 Acts of Assembly[2] require local departments to transmit information regarding reports, complaints, family assessments, and investigations involving children of active duty members of the United States Armed Forces or members of their household to family advocacy representatives of the United States Armed Forces. Prior to this change, local departments were required to transmit information regarding only founded complaints or family assessments. The new laws expanded notifications sent to the United States Armed Forces from only founded reports to also include all reports, complaints, family assessments and investigations received by the local departments. Only a small increase in the number of notifications to the military was expected.

Chapter 604, 2017 Acts of Assembly[3] requires the board to promulgate regulations that require local departments to respond to valid reports and complaints alleging suspected abuse or neglect of a child under the age of two within 24 hours of receiving such reports or complaints. This legislative change would affect how local departments prioritize their workload and respond to reports, but was not expected to affect the overall number of reports they must investigate or assess.

Chapters 5 and 209, 2018 Acts of Assembly[4] require local departments to notify the Superintendent of Public Instruction without delay (i) when an individual holding a license issued by the Board of Education is the subject of a founded complaint of child abuse or neglect and (ii) if the founded complaint of child abuse or neglect is dismissed on appeal. According to DSS, Chapters 5 and 209 were in response to a specific case and were unlikely to necessitate a large number of notifications.

Overall, the proposed legislative changes are expected to produce a beneficial impact on the ability of CPS to identify and respond to child abuse and neglect cases. These legislative changes were expected to identify more children and families in the Commonwealth who may benefit from programs and services designed to improve safety and well-being of children. However, the proposed amendments to the regulation are not expected to produce a significant economic impact since the legislative changes are already in effect. The proposed amendments are mainly beneficial in that they will align the regulatory language with the new legislation and reduce the potential that readers of the regulation misunderstand current applicable law.

Businesses and Entities Affected. The proposed regulation applies to all local departments' staff, mandated reporters of child abuse or neglect, particularly health care providers involved in the delivery and care of substance-exposed infants and Armed Forces Family Advocacy Programs. There are approximately 106 hospitals in Virginia where a substance-exposed infant could be born and identified as such. There are approximately 25 military installations in Virginia, all of which may not have a Family Advocacy Program.

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

Projected Impact on Employment. The legislation was expected to lead to more reports/assessments/investigations of child abuse and neglect and was estimated to require 20 additional local department positions. The proposed

regulation however is not expected to have any significant impact on employment.

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

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

Small Businesses:

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

Costs and Other Effects. The proposed amendments to the regulation do not affect costs for small businesses.

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. Localities may see an increase in the number of CPS reports for substance-exposed infants due to changes in legislation, but the proposed amendments to the regulation do not significantly affect costs for localities.

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

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[1]See http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0176 and http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0428.

[2]See http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0088 and http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0142.

[3]See http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0604.

[4]See http://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+CHAP0005 and http://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+CHAP0209.

Agency's Response to Economic Impact Analysis: The Department of Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

Pursuant to Chapters 88 and 142 of the 2017 Acts of Assembly, the proposed amendments add requirements to notify the Armed Forces Advocacy Program representative when any report is received and of the final outcomes of any investigation or family assessment regarding a dependent child of an active duty service member.

Pursuant to Chapters 176 and 428 of the 2017 Acts of Assembly, the proposed amendments (i) add definitions relating to substance-exposed infants, (ii) modify provisions for reporting substance-exposed infants by health care providers, and (iii) add requirements for conducting family assessments and creating a plan of care for a substance-exposed infant.

Pursuant to Chapter 604 of the 2017 Acts of Assembly, the proposed amendments add requirements for child protective services workers to see a victim child younger than two years of age within 24 hours of receiving a valid report.

Pursuant to Chapters 5 and 209 of the 2018 Acts of Assembly, the proposed amendments modify provisions for notifying the Superintendent of Public Instruction when an individual holding a license issued by the State Board of Education is the subject of a founded complaint of child abuse or neglect.

Other amendments include (i) requiring that the local department of social services comply with court orders on the release of information from a child abuse or neglect record; (ii) providing for the handling of a complaint of child abuse by a local department of social services without jurisdiction; and (iii) repealing 22VAC40-705-20, which is a statement of policy and is not regulatory text.

22VAC40-705-10. Definitions.

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

"Abuser or neglector" means any person who is found to have committed the abuse or neglect of a child pursuant to Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2 of the Code of Virginia.

"Administrative appeal rights" means the child protective services appeals procedures for a local level informal conference and a state level hearing pursuant to § 63.2-1526 of the Code of Virginia, under which an individual who is found to have committed abuse or neglect may request that the local department's determination or records be amended.

"Alternative treatment options" means treatments used to prevent or treat illnesses or promote health and well-being outside the realm of modern conventional medicine.

"Appellant" means (i) anyone who has been found to be an abuser or neglector and appeals the founded disposition to the director of the local department of social services~~,~~ or to an administrative hearing officer~~, or to circuit court~~ and (ii) anyone who has been found to be an abuser or neglector and seeks judicial review of a decision by an administrative hearing officer.

"Assessment" means the process by which child protective services workers determine a child's and family's needs.

"Caretaker" means any individual having the responsibility of providing care and supervision of a child and includes the following: (i) a parent or other person legally responsible for the child's care; (ii) an individual who by law, social custom, expressed or implied acquiescence, collective consensus, agreement, or any other legally recognizable basis has an obligation to look after a child left in his care; and (iii) persons responsible by virtue of their positions of conferred authority.

"Case record" means a collection of information maintained by a local department, including written material, letters, documents, ~~tapes~~ audio or video recordings, photographs, film, or other materials, regardless of physical form, about a specific child protective services investigation, family, or individual.

"Central Registry" means a subset of the child abuse and neglect information system and is the name index with identifying information of individuals named as an abuser or neglector in founded child abuse or neglect complaints or reports not currently under administrative appeal, maintained by the department.

~~"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.~~

"Child abuse and neglect information system" means the statewide computer system that collects and maintains information gathered by local departments regarding incidents of child abuse and neglect involving parents or other caretakers. The computer system is composed of three parts: the statistical information system with nonidentifying information, the Central Registry of founded complaints not on administrative appeal, and a database that can be accessed only by the department and local departments that contains all nonpurged child protective services reports. This system is the official state automated system required by federal law.

"Child protective services" means the identification, receipt, and immediate response to complaints and reports of alleged child abuse or neglect for children ~~under~~ younger than 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and ~~his~~ the child's family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child protective services worker" means ~~one~~ an individual who is qualified by virtue of education, training, and supervision and is employed by the local department to respond to child protective services complaints and reports of alleged child abuse or neglect.

"Chronically and irreversibly comatose" means a condition caused by injury, disease, or illness in which a patient has suffered a loss of consciousness with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner other than reflexive activity of muscles and nerves for low-level conditioned response and from which to a reasonable degree of medical probability there can be no recovery.

"Collateral" means a person whose personal or professional knowledge may help confirm or rebut the allegations of child abuse or neglect or whose involvement may help ensure the safety of the child.

"Complaint" means any information or allegation ~~of child abuse or neglect~~ that a child is an abused or neglected child as defined in § 63.2-100 of the Code of Virginia made orally or in writing ~~pursuant to § 63.2-100 of the Code of Virginia~~.

"Consultation" means the process by which the alleged abuser or neglector may request an informal meeting to discuss the investigative findings with the local department prior to the local department rendering a founded disposition of abuse or neglect against that person pursuant to § 63.2-1526 A of the Code of Virginia.

"Controlled substance" means a drug, substance, or marijuana as defined in § 18.2-247 of the Code of Virginia including those terms as they are used or defined in the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia. The term does not include alcoholic beverages or tobacco as those terms are defined or used in Title 3.2 or Title 4.1 of the Code of Virginia.

"Department" means the Virginia Department of Social Services.

"Differential response system" means ~~that local departments of social services may~~ the system by which local departments may respond to valid reports or complaints of child abuse or neglect by conducting either a family assessment or an investigation.

"Disposition" means the determination of whether or not child abuse or neglect ~~has~~ occurred and identifies the individual responsible for the abuse or neglect of the child.

"Documentation" means information and materials, written or otherwise, concerning allegations, facts, and evidence.

"Family Advocacy Program representative" means the ~~professional~~ individual employed by the United States Armed Forces who has responsibility for the program designed to address prevention, identification, evaluation, treatment, rehabilitation, follow-up, and reporting of family violence, pursuant to 22VAC40-705-50 and 22VAC40-705-140.

"Family assessment" means the collection of information necessary to determine:

1. The immediate safety needs of the child;

2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;

3. Risk of future harm to the child; and

4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services. These arrangements may be made in consultation with the caretaker of the child.

"First source" means any direct evidence establishing or helping to establish the existence or nonexistence of a fact. Indirect evidence and anonymous complaints do not constitute first source evidence.

"Founded" means that a review of the facts gathered as a result of an investigation shows by a preponderance of the evidence that child abuse or neglect has occurred. A determination that a case is founded shall be based primarily on first source evidence; in no instance shall a determination that a case is founded be based solely on indirect evidence or an anonymous complaint.

"Human trafficking assessment" means the collection of information necessary to determine:

1. The immediate safety needs of the child;

2. The protective and rehabilitative services needs of the child and the child's family that will deter abuse and neglect; and

3. Risk of future harm to the child.

"Identifying information" means name, social security number, address, race, sex, and date of birth.

"Indirect evidence" means any statement made outside the presence of the child protective services worker and relayed to the child protective services worker as proof of the contents of the statement.

"Informed opinion" means that the child has been informed and understands the benefits and risks, to the extent known, of the treatment recommended by conventional medical providers for ~~his~~ the child's condition and the alternative treatment being considered as well as the basis of efficacy for each, or lack thereof.

"Investigation" means the collection of information to determine:

1. The immediate safety needs of the child;

2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;

3. Risk of future harm to the child;

4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services;

5. Whether or not abuse or neglect has occurred;

6. If abuse or neglect has occurred, who abused or neglected the child; and

7. A finding of either founded or unfounded based on the facts collected during the investigation.

"Investigative narrative" means the written account of the investigation contained in the child protective services case record.

"Legitimate interest" means a lawful, demonstrated privilege to access the information as defined in § 63.2-105 of the Code of Virginia.

~~"Licensed substance abuse treatment practitioner" means a person who (i) is trained in and engages in the practice of substance abuse treatment with individuals or groups of individuals suffering from the effects of substance abuse or dependence, and in the prevention of substance abuse or dependence and (ii) is licensed to provide advanced substance abuse treatment and independent, direct and unsupervised treatment to such individuals or groups of individuals, and to plan, evaluate, supervise, and direct substance abuse treatment provided by others.~~

"Life-threatening condition" means a condition that if left untreated more likely than not will result in death and for which the recommended medical treatments carry a probable chance of impairing the health of the individual or a risk of terminating the life of the individual.

"Local department" means the city or county local agency of social services or department of public welfare in the Commonwealth of Virginia responsible for conducting investigations or family assessments of child abuse or neglect complaints or reports pursuant to § 63.2-1503 of the Code of Virginia.

"Local department of jurisdiction" means the local department in the city or county in Virginia where the alleged victim child resides or in which the alleged abuse or neglect is believed to have occurred. If neither of these is known, then the local department of jurisdiction shall be the local department in the county or city where the abuse or neglect was discovered.

"Mandated reporters" means those persons who are required to report suspicions of child abuse or neglect pursuant to § 63.2-1509 of the Code of Virginia.

"Monitoring" means ongoing contacts with the child, family, and collaterals ~~which~~ that provide information about the child's safety and the family's compliance with the service plan.

"Multidisciplinary teams" means any organized group of individuals representing, but not limited to, medical, mental health, social work, education, legal, and law enforcement~~,~~ which will assist local departments in the protection and

prevention of child abuse and neglect established pursuant to § 63.2-1503 K of the Code of Virginia. Citizen representatives may also be included.

"Near fatality" means an act that, as certified by a physician, places the child in serious or critical condition. Serious or critical condition is a life-threatening condition or injury.

"Notification" means informing designated and appropriate individuals of the local department's actions and the individual's rights.

"Particular medical treatment" means a process or procedure that is recommended by conventional medical providers and accepted by the conventional medical community.

"Plan of safe care" means a guide developed by service providers with their clients to ensure mothers and other caretakers of a substance-exposed infant have the necessary resources to safely care for the infant. The plan should address the needs of the child, mother, and other caretakers, as appropriate.

"Preponderance of evidence" means just enough evidence to make it more likely than not that the asserted facts are true. ~~It~~ "Preponderance of evidence" is evidence ~~which~~ that is of greater weight or more convincing than the evidence offered in opposition.

"Purge" means to delete or destroy any reference data and materials specific to subject identification contained in records maintained by the department and the local department pursuant to §§ 63.2-1513 and 63.2-1514 of the Code of Virginia.

"Reasonable diligence" means the exercise of ~~justifiable and appropriate~~ persistent effort that is justifiable and appropriate under the circumstances.

"Report" means ~~either~~ (i) a complaint as defined in this section or (ii) an official document on which information is given concerning abuse or neglect. ~~Pursuant to § 63.2-1509 of the Code of Virginia, a report is required to be made by persons designated herein and by local departments in those situations in which a response to a complaint from the general public reveals suspected child abuse or neglect pursuant to the definition of abused or neglected child in § 63.2-100 of the Code of Virginia.~~

"Response time" means ~~a reasonable~~ the time for the local department to initiate an investigation or family assessment after receiving a valid report of suspected child abuse or neglect based upon the facts and circumstances presented at the time the complaint or report is received.

"Safety plan" means an immediate course of action designed to protect a child from abuse or neglect.

"Service plan" means a plan of action to address the service needs of a child or ~~his~~ the child's family in order to protect a child and ~~his~~ the child's siblings~~,~~ to prevent future abuse and neglect~~,~~ and to preserve the family life of the parents and children whenever possible.

"Sex trafficking" means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act as defined in § 18.2-357.1 of the Code of Virginia.

"State automated system" means the "child abuse and neglect information system" as previously defined.

"Sufficiently mature" is determined on a case-by-case basis and means that a child has no impairment of his cognitive ability and is of a maturity level capable of having intelligent views on the subject of his health condition and medical care.

"Terminal condition" means a condition caused by injury, disease, or illness from which to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is chronically and irreversibly comatose.

"Unfounded" means that a review of the facts does not show by a preponderance of the evidence that child abuse or neglect occurred.

"Valid report or complaint" means ~~the local department of social services has evaluated the information and allegations of the report or complaint and determined that~~ a report or complaint of suspected child abuse or neglect for which the local department ~~shall~~ must conduct an investigation or family assessment because the following elements are present:

1. The alleged victim child is younger than 18 years of age at the time of the complaint or report;

2. The alleged abuser is the alleged victim child's parent or other caretaker;

3. The local department receiving the complaint or report is a local department of jurisdiction; and

4. The circumstances described allege suspected child abuse or neglect.

"Withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening condition by providing treatment (including appropriate nutrition, hydration, and medication) ~~which~~ that in the treating physician's ~~or physicians'~~ reasonable medical judgment will most likely be effective in ameliorating or correcting all such conditions.

22VAC40-705-20. ~~General policy regarding complaints or reports of child abuse and neglect.~~ (Repealed.)

~~It is the policy of the Commonwealth of Virginia to require complaints or reports of child abuse and neglect for the following purposes:~~

~~1. Identifying abused and neglected children;~~

~~2. Assuring protective services to such identified children;~~

~~3. Preventing further abuse and neglect;~~

~~4. Preserving the family life of the parents and children, where possible, by enhancing parental capacity for adequate care.~~

22VAC40-705-40. Complaints and reports of suspected child abuse or neglect.

A. Persons who are mandated to report are those individuals defined in § 63.2-1509 of the Code of Virginia.

1. Mandated reporters shall report immediately any suspected abuse or neglect that they learn of in their professional or official capacity unless the person has actual knowledge that the same matter has already been reported to the local department or the department's toll-free child abuse and neglect hotline.

2. Pursuant to § 63.2-1509 of the Code of Virginia, if information is received by a teacher, staff member, resident, intern, or nurse in the course of his professional services in a hospital, school, or other similar institution, such person may make reports of suspected abuse or neglect immediately to the person in charge of the institution or department, or his designee, who shall then make such report forthwith. If the initial report of suspected abuse or neglect is made to the person in charge of the institution or department, or his designee, such person shall (i) notify the teacher, staff member, resident, intern, or nurse who made the initial report when the report of suspected child abuse or neglect is made to the local department or to the department's toll-free child abuse and neglect hotline; (ii) provide the name of the individual receiving the report; and (iii) forward any communication resulting from the report, including any information about any actions taken regarding the report, to the person who made the initial report.

3. Mandated reporters shall disclose all information that is the basis for the suspicion of child abuse or neglect and shall make available, upon request, to the local department any records and reports that document the basis for the complaint or report.

4. Pursuant to § 63.2-1509 D of the Code of Virginia, a mandated reporter's failure to report as soon as possible, but no longer than 24 hours after having reason to suspect a reportable offense of child abuse or neglect, shall result in a fine.

5. In cases evidencing acts of rape, sodomy, or object sexual penetration as defined in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, a person who knowingly and intentionally fails to make the report required pursuant to § 63.2-1509 of the Code of Virginia shall be guilty of a Class 1 misdemeanor.

6. Pursuant to § 63.2-1509 B of the Code of Virginia, certain medical facts indicating that a newborn may have been exposed to a controlled substance prior to birth constitute a reason to suspect that a child is abused or neglected and must be reported. Such facts shall include (i) a finding made by a health care provider within six weeks of the birth of a child that the ~~results of toxicology studies of the child indicate the presence of a controlled substance that was not prescribed for the mother by a physician~~ child was born affected by substance abuse or experiencing withdrawal symptoms resulting from in utero drug exposure; (ii) ~~a finding made by a health care provider within six weeks of the birth of a child that the child was born dependent on a controlled substance that was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms; (iii)~~ a diagnosis made by a health care provider ~~at any time~~ within four years following a child's birth that the child has an illness, disease, or condition that, to a reasonable degree of medical certainty, is attributable to ~~in utero exposure to~~ maternal abuse of a controlled substance ~~that was not prescribed by a physician for the mother or the child~~ during pregnancy; or ~~(iv)~~ (iii) a diagnosis made by a health care provider ~~at any time~~ within four years following a child's birth that the child has a fetal alcohol spectrum disorder attributable to in utero exposure to alcohol. When "reason to suspect" is based upon this ~~subsection~~ subdivision, such fact shall be included in the report along with the facts relied upon by the person making the report. Such reports shall not constitute a per se finding of child abuse or neglect. If a health care provider in a licensed hospital makes any medical finding or diagnosis set forth in clause (i), (ii), or (iii) of this subdivision, the hospital shall be responsible for the development of a written discharge plan pursuant to § 32.1-127 B of the Code of Virginia.

a. ~~Pursuant to § 63.2-1509 B of the Code of Virginia, whenever a health care provider makes a finding or diagnosis, then the health care provider or his designee must make a report to child protective services immediately~~ For purposes of this regulation, "affected by substance abuse" is a determination by a health care professional and may be determined by clinical indicators that include maternal and infant presentation at birth; substance use and medical histories; and include toxicology study results of the infant that are positive for illegal substances or indicate abuse of controlled substances.

b. When a valid report or complaint ~~alleging abuse or neglect~~ is made pursuant to § 63.2-1509 B of the Code of Virginia, ~~then~~ the local department must immediately assess the child's circumstances and any threat to the child's health and safety. Pursuant to 22VAC40-705-110 A, the local department must conduct an initial safety assessment.

c. When a valid report or complaint ~~alleging abuse or neglect~~ is made pursuant to § 63.2-1509 B of the Code of Virginia, ~~then~~ the local department ~~must immediately determine whether to~~ may petition a juvenile and domestic relations district court for any necessary services or court orders needed to ensure the safety and health of the child in accordance with § 16.1-241.3 of the Code of Virginia.

~~d. Following the receipt of a report made pursuant to § 63.2-1509 B of the Code of Virginia, the local department may determine that no further action is required pursuant to § 63.2-1505 B of the Code of Virginia if the mother of the infant sought or received substance abuse counseling or treatment.~~

~~(1) The local department must notify the mother immediately upon receipt of a complaint made pursuant to § 63.2-1509 B of the Code of Virginia. This notification must include a statement informing the mother that, if the mother fails to present evidence that she sought or received substance abuse counseling or treatment during the pregnancy, then the local department shall conduct an investigation or family assessment.~~

~~(2) If the mother sought counseling or treatment but did not receive such services, then the local department must determine whether the mother made a good faith effort to receive substance abuse treatment before the child's birth. If the mother made a good faith effort to receive treatment or counseling prior to the child's birth, but did not receive such services due to no fault of her own, then the local department may determine no further action is required.~~

~~(3) If the mother sought or received substance abuse counseling or treatment, but there is evidence, other than exposure to a controlled substance, that the child may be abused or neglected, then the local department shall conduct an investigation or family assessment.~~

~~e. For purposes of this chapter, substance abuse counseling or treatment includes, education about the impact of alcohol, controlled substances and other drugs on the fetus and on the maternal relationship; education about relapse prevention to recognize personal and environmental cues that may trigger a return to the use of alcohol or other drugs.~~

~~f. The substance abuse counseling or treatment should attempt to serve the purposes of improving the pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the infant and achieving and maintaining a sober, and drug free lifestyle.~~

~~g. The substance abuse counseling or treatment services must be provided by a professional. Professional substance abuse treatment or counseling may be provided by a certified substance abuse counselor or a licensed substance abuse treatment practitioner.~~

d. Pursuant to § 63.2-1506 C of the Code of Virginia, when a valid report or complaint is based on one of the factors in § 63.2-1509 B, the local department shall conduct a family assessment, unless an investigation is required or necessary to protect the safety of the child.

(1) Pursuant to § 63.2-1506 of the Code of Virginia, the local department shall determine whether the mother of an infant who was exposed to a controlled substance sought substance abuse counseling or treatment prior to the child's birth. For purposes of this chapter, substance abuse counseling or treatment includes education about the impact of alcohol and drugs, legal or illegal, on the infant and on the maternal-child relationship, and education about relapse prevention.

(2) The substance use counseling or treatment should attempt to serve the purposes of treating the substance use disorder, strengthening the maternal relationship with the infant and siblings, and achieving and maintaining a sober, drug-free lifestyle.

e. Pursuant to § 63.2-1506 of the Code of Virginia, the local department shall develop a plan of safe care.

~~h.~~ f. Facts solely indicating that the infant may have been exposed to controlled substances prior to birth are not sufficient to render a founded disposition of abuse or neglect in an investigation.

~~i. The local department may provide assistance to the mother in locating and receiving substance abuse counseling or treatment.~~

B. Persons who may report child abuse or neglect include any individual who suspects that a child is being abused or neglected pursuant to § 63.2-1510 of the Code of Virginia.

C. Complaints and reports of child abuse or neglect may be made anonymously.

D. Any person making a complaint or report of child abuse or neglect shall be immune from any civil or criminal liability in connection therewith, unless it is proven that such person acted in bad faith or with malicious intent pursuant to § 63.2-1512 of the Code of Virginia.

E. When the identity of the reporter is known to the department or local department, these agencies shall not disclose the reporter's identity unless court ordered or required under § 63.2-1503 D of the Code of Virginia. Upon request, the local department shall advise the person who was the subject of an unfounded investigation if the complaint or report was made anonymously.

F. If a person suspects that he is the subject of a report or complaint of child abuse or neglect made in bad faith or with

malicious intent, that person may petition the court for access to the record including the identity of the reporter or complainant pursuant to § 63.2-1514 of the Code of Virginia.

G. Any person age 14 years or older who makes or causes to be made a knowingly false complaint or report of child abuse or neglect and is convicted shall be guilty of a Class 1 misdemeanor for a first offense pursuant to § 63.2-1513 of the Code of Virginia.

1. A subsequent conviction results in a Class 6 felony.

2. Upon receipt of notification of such conviction, the department will retain a list of convicted reporters.

3. The subject of the records may have the records purged upon presentation of a certified copy of such conviction.

4. The subject of the records shall be notified in writing that the records have been purged.

H. To make a complaint or report of child abuse or neglect, a person may telephone the department's toll-free child abuse and neglect hotline or contact a local department of jurisdiction pursuant to § 63.2-1510 of the Code of Virginia.

I. A local department of jurisdiction must determine the validity of a complaint of child abuse or neglect and, if valid, conduct an investigation or family assessment.

1. ~~The~~ If the local department ~~of jurisdiction~~ that first receives a complaint or report of child abuse or neglect has jurisdiction, that local department becomes a local department of jurisdiction and shall assume responsibility to determine validity and, if the complaint or report is valid, to ensure that a family assessment or an investigation is conducted.

2. If the local department that first receives a complaint or report of child abuse or neglect does not have jurisdiction, that local department must immediately do the following:

a. Document and transfer the complaint or report in the child abuse and neglect information system;

b. Contact the local department of jurisdiction to advise of the transfer; and

c. Advise the person making the complaint of the name and telephone number for the local department of jurisdiction.

3. A local department of jurisdiction may ask another local department ~~that is a local department of jurisdiction~~ to assist in conducting the family assessment or investigation. If assistance is requested, the local department shall comply.

~~3.~~ 4. A local department of jurisdiction may ask another local department through a cooperative agreement to assist in conducting the family assessment or investigation.

~~4.~~ 5. If a local department employee is suspected of abusing or neglecting a child, the complaint or report of child abuse or neglect shall be made to the juvenile and domestic relations district court of the county or city where the alleged abuse or neglect was discovered. The judge shall assign the report to a local department that is not the employer of the subject of the report, or~~,~~ if the judge believes that no local department in a reasonable geographic distance can be impartial in responding to the reported case, the judge shall assign the report to the court service unit of ~~his~~ the judge's court for evaluation pursuant to §§ 63.2-1509 and 63.2-1510 of the Code of Virginia. The judge may consult with the department in selecting a local department to respond.

~~5.~~ 6. In cases where an employee at a private or state-operated hospital, institution, or other facility or an employee of a school board is suspected of abusing or neglecting a child in such hospital, institution, or other facility or public school, the local department of jurisdiction shall request the department and the relevant private or state-operated hospital, institution, or other facility or school board to assist in conducting a joint investigation in accordance with regulations adopted in 22VAC40-730, in consultation with the Departments of Education, Health, Medical Assistance Services, Behavioral Health and Developmental Services, Juvenile Justice, and Corrections.

22VAC40-705-50. Actions to be taken upon receipt of a complaint or report.

A. All complaints and reports of suspected child abuse or neglect shall be recorded in the child abuse and neglect information system and either screened out or determined to be valid upon receipt by the local department of jurisdiction and if valid, acted on within the determined response time. A record of all invalid reports and complaints made to a local department or to the department~~, regardless of whether the report or complaint was found to be a valid complaint of abuse or neglect,~~ shall be purged one year after the date of the report or complaint unless a subsequent report or complaint is made.

B. Pursuant to § 63.2-1506.1 A of the Code of Virginia, the local department shall conduct a human trafficking assessment when a report or complaint alleges that a child is a victim of sex trafficking or severe forms of trafficking, which is defined in § 63.2-100 of the Code of Virginia; the federal Trafficking Victims Protection Act of 2000 (22 USC § 7102 et seq.); and the federal Justice for Victims of Trafficking Act of 2015 (42 USC § 5101 et seq.) as a commercial sex act that is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to

involuntary servitude, peonage, debt bondage, or slavery, unless at any time during the human trafficking assessment the local department determines that an investigation or family assessment is required pursuant to § 63.2-1505 or 63.2-1506 of the Code of Virginia.

C. ~~In~~ For all valid complaints or reports of child abuse or neglect the local department of social services shall determine whether to conduct an investigation or a family assessment. ~~A valid complaint or report is one in which:~~

~~1. The alleged victim child is younger than 18 years of age at the time of the complaint or report;~~

~~2. The alleged abuser is the alleged victim child's parent or other caretaker;~~ Pursuant to § 63.2-1508 of the Code of Virginia, a valid report or complaint regarding a child who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in § 63.2-100 of the Code of Virginia; the federal Trafficking Victims Protection Act of 2000 (22 USC § 7102 et seq.); and the federal Justice for Victims of Trafficking Act of 2015 (42 USC § 5101 et seq.) may be established if the alleged abuser is the alleged victim child's parent, other caretaker, or any other person suspected to have caused such abuse or neglect.

~~3. The local department receiving the complaint or report has jurisdiction; and~~

~~4. The circumstances described allege suspected child abuse or neglect as defined in § 63.2-100 of the Code of Virginia.~~

D. The local department shall not conduct a family assessment or investigate complaints or reports of child abuse or neglect that ~~fail to meet all of the criteria in subsection C of this section~~ are not valid.

E. The local department shall report certain cases of suspected child abuse or neglect to the local attorney for the Commonwealth and the local law-enforcement agency pursuant to § 63.2-1503 D of the Code of Virginia.

F. Pursuant to § 63.2-1503 D of the Code of Virginia, the local department shall develop, where practical, a memoranda of understanding for responding to reports of child abuse and neglect with local law enforcement and the local office of the commonwealth's attorney.

G. The local department shall report to the following when the death of a child is involved:

1. When abuse or neglect is suspected in any case involving the death of a child, the local department shall report the case immediately to the regional medical examiner and the local law-enforcement agency pursuant to § 63.2-1503 E of the Code of Virginia.

2. When abuse or neglect is suspected in any case involving the death of a child, the local department shall report the case immediately to the attorney for the Commonwealth and the local law-enforcement agency pursuant to § 63.2-1503 D of the Code of Virginia.

3. The local department shall contact the department immediately upon receiving a complaint involving the death of a child and at the conclusion of the investigation.

4. The department shall immediately, upon receipt of information, report on all child fatalities to the state board in a manner consistent with department policy and procedures approved by the board. At a minimum, the report shall contain information regarding any prior statewide child protective services involvement of the family, alleged ~~perpetrator~~ abuser or neglector, or victim.

H. Valid complaints or reports shall be screened for high priority based on the following:

1. The immediate danger to the child;

2. The severity of the type of abuse or neglect alleged;

3. The age of the child;

4. The circumstances surrounding the alleged abuse or neglect;

5. The physical and mental condition of the child; and

6. Reports made by mandated reporters.

I. The local department shall respond within the determined response time. The response shall be a family assessment or an investigation. Any valid report may be investigated, but in accordance with § 63.2-1506 C of the Code of Virginia, those cases shall be investigated that involve (i) sexual abuse, (ii) a child fatality, (iii) abuse or neglect resulting in a serious injury as defined in § 18.2-371.1 of the Code of Virginia, (iv) a child having been taken into the custody of the local department of social services, or (v) a caretaker at a state-licensed child day care center, religiously exempt child day center, regulated family day home, private or public school, or hospital or any institution. Pursuant to § 63.2-1506 B 1 of the Code of Virginia, when a valid report or complaint regarding a substance-exposed infant is received, the local department shall conduct a family assessment, unless an investigation is required in accordance with § 63.2-1506 C of the Code of Virginia.

1. The purpose of an investigation is to collect the information necessary to determine or assess the following:

a. The immediate safety needs of the child;

b. Whether or not abuse or neglect has occurred;

c. Who abused or neglected the child;

d. To what extent the child is at risk of future harm;

e. What types of services can meet the needs of this child or family; and

f. If services are indicated and the family appears to be unable or unwilling to participate in services, what alternate plans will provide for the child's safety.

2. The purpose of a family assessment is to engage the family in a process to collect the information necessary to determine or assess the following:

a. The immediate safety needs of the child;

b. The extent to which the child is at risk of future harm;

c. The types of services that can meet the needs of ~~this~~ the child or family; and

d. If services are indicated and the family appears to be unable or unwilling to participate in services, the plans that will be developed in consultation with the family to provide for the child's safety. These arrangements may be made in consultation with the caretaker of the child.

3. The local department shall use reasonable diligence to locate any child for whom a report or complaint of suspected child abuse or neglect has been received and determined valid and persons who are the subject of a valid report if the whereabouts of such persons are unknown to the local department pursuant to § 63.2-1503 F of the Code of Virginia.

4. The local department shall document its attempts to locate the child and family.

5. In the event the alleged victim child cannot be found after the local department has exercised reasonable diligence, the time the child cannot be found shall not be computed as part of the timeframe to complete the investigation, pursuant to ~~subdivision B 5 of~~ § 63.2-1505 B 5 of the Code of Virginia.

6. Pursuant to § 63.2-1503 N of the Code of Virginia, the local department shall notify the Family Advocacy Program representative of the United States Armed Forces of any report involving a dependent child of an active duty member of the United States Armed Forces or members of his household.

22VAC40-705-80. Family assessment and investigation contacts.

A. During the course of the family assessment, the child protective services worker shall document in writing in the state automated system the following contacts and observations. When any of these contacts or observations is not made, the child protective services worker shall document in writing why the specific contact or observation was not made.

1. The child protective services worker shall conduct a face-to-face interview with and observe the alleged victim child within the determined response time. When a victim child is younger than two years of age, this contact shall be within 24 hours of receiving the report.

2. The child protective services worker shall conduct a face-to-face interview with and observe all minor siblings residing in the home.

3. The child protective services worker shall conduct a face-to-face interview with and observe all other children residing in the home with parental permission.

4. The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians or any caretaker named in the report.

5. The child protective services worker shall observe the family environment, contact pertinent collaterals, and review pertinent records in consultation with the family.

B. During the course of the investigation, the child protective services worker shall document in writing in the state automated system the following contacts and observations. When any of these contacts or observations is not made, the child protective services worker shall document in writing why the specific contact or observation was not made.

1. The child protective services worker shall conduct a face-to-face interview with and observation of the alleged victim child within the determined response time. When a victim child is younger than two years of age, this contact shall be within 24 hours of receiving the report. All interviews with alleged victim children must be electronically recorded except when the child protective services worker determines that:

a. The child's safety may be endangered by electronically recording his statement;

b. The age or developmental capacity of the child makes electronic recording impractical;

c. The child refuses to participate in the interview if electronic recording occurs;

d. In the context of a team investigation with law-enforcement personnel, the team or team leader determines that electronic recording is not appropriate; or

e. The victim provided new information as part of a family assessment and it would be detrimental to reinterview the victim and the child protective services worker provides a detailed narrative of the interview in the investigation record.

In the case of an interview conducted with a nonverbal child where none of the exceptions in this subdivision apply, it is appropriate to electronically record the questions being asked by the child protective services worker and to describe, either verbally or in writing, the child's responses. A child protective services worker shall

document in detail in the record and discuss with supervisory personnel the basis for a decision not to electronically record an interview with the alleged victim child.

A child protective services finding may be based on the written narrative of the child protective services worker in cases where an electronic recording is unavailable due to equipment failure or the exceptions in this subdivision 1.

2. The child protective services worker shall conduct a face-to-face interview with and observe all minor siblings residing in the home.

3. The child protective services worker shall conduct a face-to-face interview with and observe all other children residing in the home with parental permission.

4. The child protective services worker shall conduct a face-to-face interview with the alleged abuser or neglector.

a. The child protective services worker shall inform the alleged abuser or neglector of his right to electronically record any communication pursuant to § 63.2-1516 of the Code of Virginia.

b. If requested by the alleged abuser or neglector, the local department shall provide the necessary equipment in order to electronically record the interview and retain a copy of the electronic recording.

5. The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians.

6. The child protective services worker shall observe the environment where the alleged victim child lives. This requirement may be waived in complaints or reports of child abuse and neglect that took place in state licensed and religiously exempted child day centers, regulated and unregulated family day homes, private and public schools, group residential facilities, hospitals, or institutions where the alleged abuser or neglector is an employee or volunteer at such facility.

7. The child protective services worker shall observe the site where the alleged incident took place.

8. The child protective services worker shall conduct interviews with collaterals who have pertinent information relevant to the investigation and the safety of the child.

C. Pursuant to §§ 63.2-1505 and 63.2-1506 of the Code of Virginia, local departments may obtain and consider statewide criminal history record information from the Central Criminal Records Exchange and shall obtain and consider results of a search of the Central Registry on any individual who is the subject of a child abuse and neglect investigation or family assessment where there is evidence of child abuse or neglect and the local department is evaluating the safety of the home and whether removal is necessary to ensure the child's safety. The local department may also obtain a criminal record check and a Central Registry check on all adult household members residing in the home of the alleged abuser or neglector and where the child visits. Pursuant to § 19.2-389 of the Code of Virginia, local departments are authorized to receive criminal history information on the person who is the subject of the investigation as well as other adult members of the household for the purposes in § 63.2-1505 of the Code of Virginia. The results of the criminal record history search may be admitted into evidence if a child abuse or neglect petition is filed in connection with the child's removal. Local departments are prohibited from dissemination of this information except as authorized by the Code of Virginia.

D. Pursuant to §§ 63.2-1505 and 63.2-1506 of the Code of Virginia, local departments must determine whether the subject of an investigation or family assessment has resided in another state within the last five years, and~~,~~ if he has resided in another state, shall request a search of the child abuse and neglect registry or equivalent registry maintained by such state.

22VAC40-705-140. Notification of findings.

A. Upon completion of the investigation or family assessment the local child protective services worker shall make notifications as provided in this section.

B. Individual against whom allegations of abuse or neglect were made.

1. When the disposition is unfounded, the child protective services worker shall inform the individual against whom allegations of abuse or neglect were made of this finding. This notification shall be in writing with a copy to be maintained in the case record. The individual against whom allegations of abuse or neglect were made shall be informed that he may have access to the case record and that the case record shall be retained by the local department for one year unless requested in writing by such individual that the local department retain the record for up to an additional two years.

a. If the individual against whom allegations of abuse or neglect were made or the subject child is involved in subsequent complaints, the information from all complaints shall be retained until the last purge date has been reached.

b. The local worker shall notify the individual against whom allegations of abuse or neglect were made of the procedures set forth in § 63.2-1514 of the Code of Virginia regarding reports or complaints alleged to be made in bad faith or with malicious intent.

c. In accordance with § 32.1-283.1 D of the Code of Virginia when an unfounded disposition is made in an investigation that involves a child death, the child

protective services worker shall inform the individual against whom allegations of abuse or neglect were made that the case record will be retained for the longer of 12 months or until the State Child Fatality Review Team has completed its review of the case.

2. When the abuser or neglector in a founded disposition is a foster parent of the victim child, the local department shall place a copy of this notification letter in the child's foster care record and in the foster home provider record.

3. When the abuser or neglector in a founded disposition is a full-time, part-time, permanent, or temporary employee of a school division, the local department shall notify the relevant school board of the founded complaint pursuant to § 63.2-1505 B 7 of the Code of Virginia.

4. The local department shall immediately notify the Superintendent of Public Instruction when an individual holding a license issued by the Board of Education is the subject of a founded complaint of child abuse or neglect and shall transmit identifying information regarding such individual if the local department knows the person holds a license issued by the Board of Education ~~and after all rights to any appeal provided by § 63.2-1526 of the Code of Virginia have been exhausted~~. The local department shall immediately notify the Superintendent of Public Instruction if the founded complaint of child abuse or neglect is dismissed on administrative appeal.

5. No disposition of founded or unfounded shall be made in a family assessment. At the completion of the family assessment the subject of the report shall be notified orally and in writing of the results of the assessment. The child protective services worker shall notify the individual against whom allegations of abuse or neglect were made of the procedures set forth in § 63.2-1514 of the Code of Virginia regarding reports or complaints alleged to be made in bad faith or with malicious intent.

C. Subject child's parents or guardian.

1. When the disposition is unfounded, the child protective services worker shall inform the parents or guardian of the subject child in writing, when they are not the individuals against whom allegations of child abuse or neglect were made, that the investigation involving their child resulted in an unfounded disposition and the length of time the child's name and information about the case will be maintained. The child protective services worker shall file a copy in the case record.

2. When the disposition is founded, the child protective services worker shall inform the parents or guardian of the child in writing, when they are not the abuser or neglector, that the complaint involving their child was determined to be founded and the length of time the child's name and information about the case will be retained in the Central Registry. The child protective services worker shall file a copy in the case record.

3. When the founded disposition of abuse or neglect does not name the parents or guardians of the child as the abuser or neglector and when the abuse or neglect occurred in a licensed or unlicensed child day center, a licensed, registered, or approved family day home, a private or public school, or a children's residential facility, the parent or guardian must be consulted and must give permission for the child's name to be entered into the Central Registry pursuant to § 63.2-1515 of the Code of Virginia.

D. Complainant.

1. When an unfounded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and determined to be unfounded. The worker shall file a copy in the case record.

2. When a founded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and necessary action was taken. The local worker shall file a copy in the case record.

3. When a family assessment is completed, the child protective services worker shall notify the complainant, when known, that the complaint was assessed and necessary action taken.

E. Family Advocacy Program of the United States Armed Forces.

1. Pursuant to § 63.2-1503 N of the Code of Virginia, ~~in~~ all reports, complaints, investigations ~~with a founded disposition or~~ and family ~~assessment~~ assessments that involve a dependent child of an active duty member of the United States Armed Forces or members of his household, information regarding the disposition, type of abuse or neglect, and the identity of the abuser or neglector shall be provided to the appropriate Family Advocacy Program representative. This notification shall be made ~~in writing within 30 days after the administrative appeal rights of the abuser or neglector have been exhausted or forfeited~~ immediately.

2. The military member shall be advised that this information regarding the ~~founded~~ disposition or family assessment involving his dependent child or member of his household is being provided to the Family Advocacy Program representative and shall be given a copy of the written notification sent to the Family Advocacy Program representative.

3. In accordance with § 63.2-105 of the Code of Virginia, when an active duty member of the United States Armed Forces or a member of his household is involved in an investigation, family assessment, or provision of services

case, any information regarding child protective services reports, complaints, investigations, family assessments, and ~~follow up~~ follow-up may be shared with the appropriate Family Advocacy Program representative of the United States Armed Forces when the local department determines such release to be in the best interest of the child. In these situations, coordination between child protective services and the Family Advocacy Program is intended to facilitate identification, treatment, and service provision to the military family.

4. When needed by the Family Advocacy Program representative to facilitate treatment and service provision to the military family, any other additional information not prohibited from being released by state or federal law or regulation shall also be provided to the Family Advocacy Program representative when the local department determines such release to be in the best interest of the child.

22VAC40-705-160. Releasing information.

A. In the following instances of mandatory disclosure the local department shall release child protective services information. The local department may do so without any written release.

1. Report to attorney for the Commonwealth and law enforcement pursuant to § 63.2-1503 D of the Code of Virginia.

2. Report to the regional medical examiner's office pursuant to § 63.2-1503 E of the Code of Virginia.

3. Any individual, including an individual against whom allegations of child abuse or neglect were made, may exercise his rights under the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq. of the Code of Virginia) to access personal information related to himself that is contained in the case record including, with the individual's notarized consent, a search of the Central Registry.

4. When the material requested includes personal information about other individuals, the local department shall be afforded a reasonable time in which to redact those parts of the record relating to other individuals.

5. Pursuant to the Child Abuse Prevention and Treatment Act, as amended (42 USC § 5101 et seq.), and federal regulations (45 CFR Part 1340), the local department shall provide case-specific information about child abuse and neglect reports and investigations to citizen review panels when requested.

6. Pursuant to the Child Abuse Prevention and Treatment Act, as amended (42 USC § 5101 et seq.), the department shall develop guidelines to allow for public disclosure in instances of child fatality or near fatality.

7. An individual's right to access information under the Government Data Collection and Dissemination Practices Act is stayed during criminal prosecution pursuant to § 63.2-1526 C of the Code of Virginia.

8. The local department shall disclose and release to the United States Armed Forces Family Advocacy Program child protective services information as required pursuant to 22VAC40-705-140.

9. Child protective services shall, on request by the Division of Child Support Enforcement, supply information pursuant to § 63.2-103 of the Code of Virginia.

10. The local department shall release child protective services information to a court appointed special advocate pursuant to § 9.1-156 A of the Code of Virginia.

11. The local department shall release child protective services information to a court-appointed guardian ad litem pursuant to § 16.1-266 G of the Code of Virginia.

12. In any case properly before a court having jurisdiction, if the court orders the local department to disclose information from a child abuse or neglect case record, the local department must either comply with the order if permitted under federal and state law or appeal the order if such disclosure is contrary to federal and state law.

B. The local department may use discretion in disclosing or releasing child protective services case record information, investigative and ~~on going~~ ongoing services to parties having a legitimate interest when the local department deems disclosure to be in the best interest of the child. The local department may disclose such information without a court order and without a written release pursuant to § 63.2-105 of the Code of Virginia.

C. Prior to disclosing information to any individuals or organizations, and to be consistent with § 63.2-105 of the Code of Virginia, the local department must consider the factors described in subdivisions 1, 2, and 3 of this subsection as some of the factors necessary to determine whether a person has a legitimate interest and the disclosure of information is in the best interest of the child:

1. The information will be used only for the purpose for which it is made available;

2. Such purpose shall be related to the goal of child protective or rehabilitative services; and

3. The confidential character of the information will be preserved to the greatest extent possible.

D. ~~In the following instances, the local department shall not release child protective services information:~~

~~1. The local department shall not release the identity of persons reporting incidents of child abuse or neglect,~~

~~unless court ordered or as required under § 63.2-1503 D of the Code of Virginia, in accordance with § 63.2-1526 of the Code of Virginia, 42 USC § 5101 et seq., and federal regulations (45 CFR Part 1340).~~

~~2. In all complaints or reports that are being investigated jointly with law enforcement, no information shall be released by the local department prior to the conclusion of the criminal investigation unless authorized by the law enforcement officer or his supervisor or the attorney for the Commonwealth pursuant to § 63.2-1516.1 B of the Code of Virginia.~~

D. In cases of abuse or neglect in which the person who is the subject of the founded report or complaint has appealed the finding and has submitted a written request for the local department's records in accordance with § 63.2-1526 of the Code of Virginia, the local department shall not disclose or release to such person any information or record that (i) pertains to the identity of persons reporting incidents of child abuse or neglect; (ii) may endanger the well-being of the victim child if such information or records are disclosed or released; (iii) pertains to the identity of a collateral witness or any other person if such disclosure or release may endanger the collateral witness's or other person's life or safety; or (iv) is otherwise prohibited from being disclosed or released by state or federal law or regulation.

E. In all complaints or reports that are being investigated jointly with law enforcement, the local department shall release child protective services information in accordance with the following:

1. Pursuant to § 63.2-1516.1 B of the Code of Virginia, no information or records shall be disclosed or released by the local department prior to the conclusion of the criminal investigation unless authorized by the law-enforcement officer or the law-enforcement officer's supervisor or the attorney for the Commonwealth.

2. Pursuant to § 63.2-1503 D of the Code of Virginia, the local department shall provide the attorney for the Commonwealth and the local law-enforcement agency with the information and records of the local department related to the investigation of the complaint, including records related to any complaints of abuse or neglect involving the victim or the alleged abuser or neglector, and information or records pertaining to the identity of the person who reported the complaint of abuse or neglect.

VA.R. Doc. No. R18-5314; Filed September 26, 2019, 8:57 a.m.

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 OF MOTOR VEHICLES

Titles of Documents:

Class A - Driver Training School Contract Requirements.

Class A Third Party Tester Driver Training School Curriculum Requirements.

Public Comment Deadline: November 27, 2019.

Effective Date: November 28, 2019.

Agency Contact: Melissa K. Velazquez, Senior Policy Analyst, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804) 367-1844, or email melissa.velazquez@dmv.virginia.gov.

BOARD OF PHARMACY

Titles of Documents:

Compliance with USP Standards for Compounding.

Categories of Facility Licensure.

Naloxone Protocols.

Guidance for Pharmacies within Opioid Treatment Programs.

Practitioner/Patient Relationship and the Prescribing of Drugs for Family or Self.

Public Comment Deadline: November 27, 2019.

Effective Date: November 28, 2019.

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

STATE BOARD OF SOCIAL SERVICES

Title of Document: Temporary Assistance for Needy Families Manual.

Public Comment Deadline: November 27, 2019.

Effective Date: November 28, 2019.

Agency Contact: Karyn Thornhill, Economic Assistant and Employment Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23141, telephone (804) 726-7733, or email karyn.thornhill@dss.virginia.gov.

DEPARTMENT OF TRANSPORTATION

Title of Document: Locally Administered Projects Manual at http://www.virginiadot.org/business/locally_administered_projects_manual.asp.

Public Comment Deadline: November 27, 2019.

Effective Date: November 28, 2019.

Agency Contact: Jo Anne P. Maxwell, Regulatory Coordinator, Policy Division, Department of Transportation, 1401 East Broad Street, 11th Floor, Richmond, VA 23219, telephone (804) 786-1830, or email joanne.maxwell@vdot.virginia.gov.

VIRGINIA WASTE MANAGEMENT BOARD

Title of Document: Solid Waste Compliance Program Inspection Manual.

Public Comment Deadline: November 27, 2019.

Effective Date: December 2, 2019.

Agency Contact: Priscilla Rohrer, Solid Waste Compliance Coordinator, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (540) 574-7852, or email priscilla.rohrer@deq.virginia.gov.

APPRENTICESHIP COUNCIL

Virginia Apprenticeship Council Final Board Minutes June 20, 2019

The Virginia Apprenticeship Council met on Thursday, June 20, 2019, at the Department of Professional Occupational Regulation Building in Richmond, Virginia.

Council Members Present: Dudley Harris, Chairman; Christopher Cash; Dr. Robert Benson; Laura Duckworth; Darold Kemp; Michael Mays; Terry Kelley; Todd Estes; Dr. Latitia McCane; Ray Davenport, Commissioner.

Staff Present: Patricia Morrison, Director; Jacob Schwartz, Program Support.

Call to Order and Introductions: Chairman Dudley Harris called the meeting to order at 10 a.m. and welcomed everyone. Chairman Harris thanked the Department of Professional and Occupational Regulation for hosting the meeting. The Chairman welcomed the new council member Dr. Latitia McCane from Newport News Shipbuilding. Council members introduced themselves.

Public comment: No public comment.

Council Comments: Chairman Harris stated Director Morrison, Assistant Director Eddington and himself were going to attend the NASTAD Conference, National Association of State and Territorial Apprenticeship Directors, where representatives from all over the nation come together to talk about what is working and not working for their state.

Chairman Harris mentioned that the Outstanding Apprenticeship Awards will take place again this year in November; Director Morrison will have more information in her report.

Approval of Minutes: On proper motion and second, the minutes for the Council meeting held on March 21, 2019, were approved by Council members by roll call vote. Todd Estes did ask to have the previous minutes amended to reflect him being at the Shipyard for 19 years not seven.

Correspondence: There was no correspondence.

Old Business: Chairman Harris stated the Sub-Committee submitted the corrections for the Bylaws, He asked the council members to review the changes and corrections presented and send proposed changes to Director Morrison's staff. There will be a vote on the Bylaws at the next Council Meeting.

New Business: Michael Mays, Exemption from Examination Subcommittee member reported:

Sponsor 2003-02R had been registered for 58 Years and it is their 3rd submission for request of exemption. The request has been reviewed and meets the requirements for exemptions from licensing examination.

A motion was properly made, seconded and passed by roll call vote.

Laura Duckworth asked to review the Exemption Review process checklist at the next Council Meeting.

Vice-Chair Laura Duckworth wanted to address the Council's role and voice in Apprenticeship matters. She recently attended a grant writing session for the Apprenticeship Expansion Grant where she felt that the Department of Labor and Industry and the VAC were not being included as much as it should have been. Todd Estes stated that there was an advisory function in the grant that the VAC would be part of. Commissioner Davenport stated that the final language of the grant had not been released and that function may have been left out in the final submission. Commissioner Davenport expressed that the Council should have an active voice in the apprenticeship and workforce development community. Since the community has been sponsor driven for a long time, they need to continue to focus on providing workers with a lifelong skill.

Laura Duckworth asked the Council what is their role in Build Virginia and what is the Department of Labor and Industry's involvement with Build Virginia. Employers and Sponsors in her area are confused about the Related Instruction offered at the Community College being confused as a "program" without being a registered apprentice employer. She was asking if there was a way to bridge the gap and help get the Council more active in the community. Todd Estes pointed out that in the Expansion Grant there is a position intended to help bring together all the pieces and help remove the confusion we are facing right now in the community around related instruction and Registered Apprenticeship. Chairman Harris stated that he is active in Workforce Development boards and expressed that all the council members and sponsors need to be more involved in workforce boards and the community.

Reports:

Virginia Apprenticeship Alumni Association (VAAA): Chairman Harris will try and get the information about the VAAA Upcoming Golf Tournament.

Virginia Employment Commission (VEC): Commissioner Hess could not attend.

Virginia Community College System (VCCS): Mr. Estes stated that hopefully, the VCCS will have the new position at the VCCS system office to focus on apprenticeship that was funded by the state filled within the next couple of months. That position could be a very important position and ally, to make sure that we have consistency across the 23 community colleges and we work consistently with DOLI and workforce boards and the like. Mr. Estes stated the VCCS certainly intends to be a good partner in all of this and work with DOLI and sponsoring Employers.

Division of Registered Apprenticeship (DOLI): Director Morrison reported the following -

The most recent event is the application process we did with other workforce partners for the Apprenticeship State Expansion grant. This grant replaces a previous grant issued by USDOLETA. The intention was to include the 13 states that had not been able to participate in the previous expansion grant. We have been notified that we will be receiving the 1.6 million dollars to expand our reach and visibility over a three year period of performance. We are responsible for adding 800 new apprentices in several different categories during that time and must show how the grant funding impacted those new apprentices.

DOLI has advertised for two Registered Apprenticeship Consultant apprentices. One will work out of the Roanoke office and one out of the Verona office. The posting is on the Department of Human Resource Management website if you would like to direct any possible candidates to explore.

Kathleen and I attended the Eastern Seaboard Apprenticeship Conference in Portland, Maine in May. This was the first time Virginia had a presence at this conference which was celebrating its 75th year. We learned from our peers in both the Office of Apprenticeship states as well as State Apprenticeship Agency states. Many of us were doing double-duty writing up grant narrative in our spare time in anticipation of the submission. Health care occupations, women in building trades and diversification in general were the themes of the conference.

Lastly, we continue to work on the RAPIDS 2.0 conversion. It now appears that it will go through this entire calendar year as the engineers in DC work with our IT and Administrative staff at Headquarters.

Let me wrap up with metrics for the Division. I have the numbers from last Fiscal Year 2019 July 1, 2018, through June 19, 2019:

106 National Guard apprentices active

535 Department of Corrections' apprentices active

11,163 public/private apprentices active

11,804 total

In this time we issued 1,521 Completion Certificates

We added 3906 new apprentices

We added 329 new or re-activated sponsors

We have 12 Schools who have created formal, Youth Registered Apprenticeship programs.

Department of Labor and Industry (DOLI): Commissioner Davenport reported the following -

Commissioner expressed his thanks to the folks that were willing to have their input on the grant writing committee.

Year to date 2019 approaching already investigated 18 workplace accidents, fatal accidents where we have jurisdiction. Just to give you an idea of how these 18 have occurred 11 in general industry five and construction to agriculture, the top killers is normal year today. There was six from falls, four from struck by against to do from engulfment. Commissioner encourages you to share that information with employees that you work with on a daily basis.

Thank you for your service and support to Virginia's Apprenticeship Council and Registered Apprenticeship.

Announcements: Chairman Harris announced that the next Council meeting is scheduled for Thursday, September 19, 2019, at 10 a.m. at the Department of Professional and Occupational Regulation.

Chairman Harris thanked the Council, Director Morrison, her staff, and all in attendance.

The meeting adjourned at 11:30 a.m.

/s/ Mr. Dudley Harris, Chairman

/s/ Mr. C. Ray Davenport, Secretary

Contact Information: Patricia Morrison, Program Director, Apprenticeship Council, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-1035, or email patricia.morrison@doli.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Draft Pharmacy Appendix D for Stakeholder Input

Comment period: October 7, 2019, to November 6, 2019.

The draft Appendix D of the Pharmacy provider manual is now available on the Department of Medical Assistance Services website for public comment until November 6, 2019.

The Pharmacy provider manual update reflects updates to the Virginia Medicaid's fee-for-service Preferred Drug List Program and drug service authorization requirements for drugs reviewed by the department's Pharmacy and Therapeutics Committee and the Drug Utilization Review Board.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email emily.mcclellan@dmas.virginia.gov.

VIRGINIA WASTE MANAGEMENT BOARD

Proposed Enforcement Action for Avail Vapor LLC

An enforcement action has been proposed for Avail Vapor LLC for violations of the Virginia waste management

regulations in North Chesterfield, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Frank Lupini will accept comments by email at frank.lupini@deq.virginia.gov or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from October 28, 2019, to November 30, 2019.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Conny Oil Inc.

An enforcement action has been proposed for Conny Oil Inc. for violations of the State Water Control Law at Wythe Oil Distributors in Wytheville, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Ralph T. Hilt will accept comments by email at ralph.hilt@deq.virginia.gov, FAX at (276) 676-4899, or postal mail at Virginia Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, from October 29, 2019, through November 27, 2019.

Proposed Judicial Consent Decree for Mountain Valley Pipeline LLC

The Commonwealth of Virginia is proposing to enter into a judicial consent decree with Mountain Valley Pipeline LLC to settle certain alleged violations of the Commonwealth's environmental laws and regulations related to construction activities in Craig, Franklin, Giles, Montgomery, Pittsylvania, and Roanoke Counties, Virginia (Case No. CL18006874-00 in Henrico County Circuit Court). The proposed consent decree is available at www.deq.virginia.gov or by submitting a request for the document to mountainvalleypipeline@deq.virginia.gov. Written comments will be accepted from October 28, 2019, through November 27, 2019, and should be submitted to mountainvalleypipeline@deq.virginia.gov or by postal mail to Room 2253-A, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia 23218, or hand-delivery by close of business to Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, Virginia 23219.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at https://commonwealthcalendar.virginia.gov.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Title of Regulation: **12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services.**

Publication: 35:19 VA.R. 2284-2294, May 13, 2019.

Corrections to Final Regulation:

Page 2287, 12VAC35-105-20, column 2, line 4,

after "specialist," remove "[or]"

after "analyst", unstrike ", ~~or licensed psychiatric/mental health nurse practitioner~~"

VA.R. Doc. No. R18-5245; Filed October 16, 2019, 3:08 p.m.