VIRGINIA REGISTER OF REGULATIONS

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TABLE OF CONTENTS

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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).

January 2020 through December 2020

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

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Soil and Water Conservation Board conducted a small business impact review of **4VAC50-20, Impounding Structure Regulations**, and determined that this regulation should be amended.

The Notice of Intended Regulatory Action to amend 4VAC50-20, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: 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.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL 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 Department of Environmental Quality is conducting a periodic review and small business impact review of **9VAC25-192, Virginia Pollutant Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management**. 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 December 9, 2019, and ends December 30, 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 Melissa Porterfield, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

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: 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.

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Water Control Board conducted a small business impact review of **9VAC25-220, Surface Water Management Area Regulation**, and determined that this regulation should be retained in its current form. The State Water Control Board is publishing its report of findings dated September 24, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The regulation continues to be needed. As the demand for water increases and certain confined groundwater aquifers become threatened from becoming overdrawn, the dependence on surface water supplies is predicted to increase.

One comment was received from the regulated community supporting retaining the regulation without changes. Three identical comments were received from the general public requesting additional regulations that will enhance inspection procedures applicable to both the Atlantic Coast Pipeline (ACP) and the Mountain Valley Pipeline (MVP) projects that will take into account the full scale of the projects. This regulation establishes the procedures and requirements to be followed in connection with establishment of surface water management areas, the issuance of surface water withdrawal permits, and the issuance of surface water withdrawal certificates by the board pursuant to the Code of Virginia. This regulation is not related to inspection procedures for the ACP and the MVP projects.

The regulation is complex in nature because it includes permit conditions for the protection of instream uses, conservation of water by users of surface water, and monitoring requirements.

This regulation is a state-only regulation, and there is no equivalent federal regulation. This regulation is part of a series of regulations utilized by the State Water Control

Board to protect water resources in the Commonwealth. The Surface Water Management Area Regulation is closely related to the Virginia Water Protection Permit Program (VWPP) (9VAC25-210) because both regulations govern impacts to the instream flow of surface waters. The Surface Water Management Area Regulation however specifically addresses surface water withdrawals during low flow periods regulated under the Surface Water Management Act of 1989. The Water Withdrawal Reporting regulation (9VAC25-200) requires withdrawers of surface water (and groundwater) to report monthly and annual withdrawals of water. The Groundwater Withdrawal Regulations (9VAC25-610) address groundwater withdrawals in groundwater management areas and conjunctive uses of groundwater and surface water. The Local and Regional Water Supply Planning regulation (9VAC25-25-780) requires the development of plans that project long-term water demand to determine long-term availability of water. Collectively the regulations adopted by the State Water Control Board protect state waters, including surface waters, and regulate withdrawals of surface water within surface water management areas, which plays a role in protecting surface waters from impacts caused from the withdrawals. The Surface Water Management Area Regulation does not conflict with any federal or state regulation.

The regulation was last amended in 2016 to update citations and conform to statutory language. The content of the regulation is current, and no changes are needed to the regulation.

Currently no surface water management areas have been designated. The regulation does exclude surface water withdrawals of less than 300,000 gallons in any single month from being required to obtain a permit. Depending on the type of small business, this provision may exempt small businesses from being required to obtain a permit. This would provide small businesses with some regulatory relief since their withdrawals would have a smaller impact on the environment.

Contact Information: 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.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Board of Health conducted a small business impact review of **12VAC5-105, Rabies Regulations**, and determined that this regulation should be retained in its current form. The State Board of Health is publishing its report of findings dated October 29, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

There is a continued need for the regulation as it is essential to provide guidance related to rabies prevention, control, and response efforts in support of Chapter 834 of the 2010 Acts of Assembly. The agency did not receive any complaints or comments from the public during the periodic review. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with any other federal or state law or regulation. The regulation was last updated in 2015 when the regulation was promulgated. Retaining the regulation does not appear to cause an adverse economic impact on small businesses in the Commonwealth of Virginia.

Contact Information: Kristin Collins, Policy Analyst, Virginia Department of Health, 109 Governor Street, Office 642, Richmond, VA 23219-3623, telephone (804) 864-7298, or email kristin.collins@vdh.virginia.gov.

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health is conducting a periodic review and small business impact review of **12VAC5-165, Regulations for the Repacking of Crab Meat**. The review 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.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm.

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.

The comment period begins December 9, 2019, and ends December 30, 2019.

Contact Information: Danielle Schools, Shellfish Plant Program Manager, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7467, or email danielle.schools@vdh.virginia.gov.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

REAL ESTATE BOARD

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Real Estate Board conducted a small business impact review of **18VAC135-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Real Estate Board is publishing its report of findings dated November 14, 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 an agency 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 to promote public involvement in the development, amendment, or repeal of an agency's regulation. By soliciting the input of interested parties, the agency is better equipped to effectively regulate an occupation or profession.

No complaints or comments were received during the public comment period. 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 November 14, 2019, the board discussed the regulation and for the reasons stated determined that the regulation should not be amended or repealed but retained in its current form.

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

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Real Estate Board conducted a small business impact review of **18VAC135-20, Virginia Real Estate Board Licensing Regulations**, and determined that this regulation should be retained in its current form. The Real Estate Board is publishing its report of findings dated November 15, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Subdivision 5 of § 54.1-201 of the Code of Virginia mandates the Real Estate Board to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Real Estate Board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in statute and regulation are eligible to receive a real estate appraiser license and business registration. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations.

No comments or complaints were received during the public comment period. The regulation is clearly written and 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 November 14, 2019, the board discussed the regulation and for the reasons stated determined that the regulation should not be amended or repealed but retained in its current form.

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

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Real Estate Board conducted a small business impact review of **18VAC135-50, Fair Housing Regulations**, and determined that this regulation should be retained in its current form. The Real Estate Board is publishing its report of findings dated November 15, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Subdivision 5 of § 54.1-201 of the Code of Virginia mandates the Real Estate Board to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Real Estate Board and the Fair Housing Board provide protection to the safety and welfare of the citizens of the Commonwealth by ensuring enforcement of the Fair Housing Law. The boards are 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 and 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 November 14, 2019, the board discussed the

regulation and for the reasons stated determined that the regulation should not be amended or repealed but retained in its current form.

Contact Information: Christine Martine, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 826-8863, or email reboard@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, the State Board of Social Services is conducting a periodic review and small business impact review of **22VAC40-293, Locality Groupings**. The review 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.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm.

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.

The comment period begins December 9, 2019, and ends December 30, 2019.

Contact Information: Mark Golden, TANF Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7385, FAX (804) 726-7357, or email mark.golden@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, the State Board of Social Services is conducting a periodic review and small business impact review of **22VAC40-685, Virginia Energy Assistance Program - Home Energy Assistance Program**. The review 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.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm.

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.

The comment period begins December 9, 2019, and ends December 30, 2019.

Contact Information: Denise Surber, Interim Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7386, FAX (804) 726-7358, or email denise.t.surber@dss.virginia.gov.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

VIRGINIA SOIL AND WATER CONSERVATION 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 Soil and Water Conservation Board intends to consider amending **4VAC50-20, Impounding Structure Regulations**. The purpose of the proposed action is to amend the regulation in response to comments received during a periodic review. Specifically the board will consider amendments related to (i) roadways on or below an impounding structure for hazard potential classifications, (ii) the incremental damage analysis process, (iii) gate requirements, (iv) the requirements for exempt agricultural dams, (v) the use of temporal curves to determine the probable maximum precipitation, and (vi) the development of a realistic and achievable process for certain impounding structures to achieve regulatory compliance, while maintaining public safety.

This Notice of Intended Regulatory Action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

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

Statutory Authority: § 10.1-604 of the Code of Virginia.

Public Comment Deadline: January 8, 2020.

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. R20-6047; Filed November 8, 2019, 4:31 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Department of Medical Assistance Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (amending 12VAC30-70-271, 12VAC30-70-281, 12VAC30-70-331, 12VAC30-70-341).**

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-30, 12VAC30-80-36, 12VAC30-80-190).

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

Effective Date: January 8, 2020.

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

Summary:

The amendments conform the regulation to the 2019 Appropriation Act by (i) increasing the reimbursement for critical access hospitals, (ii) including supplemental payments for graduate medical education, (iii) increasing practitioner rates for adult primary care and emergency department services, (iv) increasing practitioner rates for psychiatric services, (v) increasing the telehealth originating site facility fee, (vi) modifying rates for hospice services, and (vii) increasing rates for personal care in early and periodic screening, diagnosis, and treatment.

12VAC30-70-271. Payment for capital costs.

A. Inpatient capital costs shall be determined on an allowable cost basis and settled at the hospital's fiscal year end. Allowable cost shall be determined following the methodology described in Supplement 3 (12VAC30-70-10 through 12VAC30-70-130).

B. For hospitals with fiscal years that are in progress and do not begin on July 1, inpatient capital costs for the fiscal year in progress shall be apportioned in accordance with subdivisions 1 through 6 of this subsection.

1. Inpatient capital costs apportioned before July 1, 2003, shall be settled at 100% of allowable cost.

2. Effective July 1, 2003, through June 30, 2009, inpatient capital costs of Type One hospitals shall be settled at 100% of allowable cost. Inpatient capital costs of Type Two hospitals shall be settled at 80% of allowable cost.

3. Effective July 1, 2009, through June 30, 2010, inpatient capital costs of Type One hospitals shall be settled at 100% of allowable cost. Inpatient capital costs of Type Two hospitals, excluding hospitals with Virginia Medicaid utilization greater than 50%, shall be settled at 75% of allowable cost. Inpatient capital costs of Type Two hospitals with Virginia Medicaid utilization greater than 50% shall be settled at 80% of allowable cost.

4. Effective July 1, 2010, through September 30, 2010, inpatient capital costs of Type One hospitals shall be settled at 97% of allowable costs. Inpatient capital costs of Type Two hospitals, excluding hospitals with Virginia Medicaid utilization greater than 50%, shall be settled at 72% of allowable cost. Inpatient capital costs of Type Two hospitals with Virginia Medicaid utilization greater than 50% shall be settled at 77% of allowable cost.

5. Effective October 1, 2010, through June 30, 2011, inpatient capital costs of Type One hospitals shall be settled at 100% of allowable cost. Inpatient capital costs of Type Two hospitals, excluding hospitals with Virginia Medicaid utilization greater than 50%, shall be settled at 75% of allowable cost. Inpatient capital costs of Type Two hospitals with Virginia Medicaid utilization greater than 50% shall be settled at 80% of allowable cost.

6. Effective July 1, 2011, inpatient capital costs of Type One hospitals shall be settled at 96% of allowable costs. Inpatient capital costs of Type Two hospitals, excluding hospitals with Virginia Medicaid utilization greater than 50%, shall be settled at 71% of allowable cost. Inpatient

capital costs of Type Two hospitals with Virginia Medicaid utilization greater than 50% shall be settled at 76% of allowable cost.

7. Effective July 1, 2019, inpatient capital rates for critical access hospitals shall be 100% of cost reimbursement.

C. The exception to the policy in subsection A of this section is that the hospital specific rate per day for services in freestanding psychiatric facilities licensed as hospitals, as determined in 12VAC30-70-321 B, shall be an all-inclusive payment for operating and capital costs. The capital rate per day determined in 12VAC30-70-321 will be multiplied by the same percentage of allowable cost specified in subsection B of this section.

12VAC30-70-281. Payment for direct medical education costs of nursing schools, paramedical programs, and graduate medical education for interns and residents.

A. Direct medical education costs of nursing schools and paramedical programs shall continue to be paid on an allowable cost basis.

1. Payments for these direct medical education costs shall be made in estimated quarterly lump sum amounts and settled at the hospital's fiscal year end.

2. Final payment for these direct medical education (DMedEd) costs shall be the sum of the fee-for-service DMedEd payment and the managed care DMedEd payment. Fee-for-service DMedEd payment is the ratio of Medicaid inpatient costs to total allowable costs, times total DMedEd costs. Managed care DMedEd payment is equal to the managed care days times the ratio of fee-for-service DMedEd payments to fee-for-service days.

B. Effective with cost reporting periods beginning on or after July 1, 2002, direct graduate medical education (GME) costs for interns and residents shall be reimbursed on a per-resident prospective basis, subject to cost settlement as outlined in this subsection except that on or after April 1, 2012, payment for direct GME for interns and residents for Type One hospitals shall be 100% of allowable costs as outlined in subsection C of this section.

1. The methodology provides for the determination of a hospital-specific base period per-resident amount to initially be calculated from cost reports with fiscal years ending in state fiscal year 1998 or as may be rebased in the future and provided to the public in an agency guidance document. The per-resident amount for new qualifying facilities shall be calculated from the most recently settled cost report. This per-resident amount shall be calculated by dividing a hospital's Medicaid allowable direct GME costs for the base period by its number of interns and residents in the base period yielding the base amount.

2. The base amount shall be updated annually by the moving average values in the Virginia-Specific Hospital Input Price Index as described in 12VAC30-70-351. The updated per-resident base amount will then be multiplied by the weighted number of full-time equivalent (FTE) interns and residents as reported on the annual cost report to determine the total Medicaid direct GME amount allowable for each year. Payments for direct GME costs shall be made in estimated quarterly lump sum amounts and settled at the hospital's fiscal year end based on the actual number of FTEs reported in the cost reporting period. The total Medicaid direct GME allowable amount shall be allocated to inpatient and outpatient services based on Medicaid's share of costs under each part.

C. Effective April 1, 2012, Type One hospitals shall be reimbursed 100% of Medicaid allowable fee-for-service (FFS) and managed care organization (MCO) GME costs for interns and residents.

1. Type One hospitals shall submit annually separate FFS and MCO GME cost schedules, approved by the agency, using GME per diems and GME ratios of cost to charges (RCCs) from the Medicare and Medicaid cost reports and FFS and MCO days and charges. Type One hospitals shall provide information on managed care days and charges in a format similar to FFS.

2. Interim lump sum GME payments for interns and residents shall be made quarterly based on the total cost from the most recently audited cost report divided by four and will be final settled in the audited cost report for the fiscal year end in which the payments are made.

D. Direct medical education shall not be a reimbursable cost in freestanding psychiatric facilities licensed as hospitals.

E. ~~Effective July 1, 2017, the~~ The Department of Medical Assistance Services (DMAS) shall make supplemental payments to ~~the following~~ hospitals for ~~the specified number of primary care residencies: Sentara Norfolk General (two residencies), Carilion Medical Center (six residencies), Centra Lynchburg General Hospital (one residency), Riverside Regional Medical Center (two residencies), and Bon Secours St. Francis Medical Center (two residencies). DMAS shall make supplemental payments to Carilion Medical Center for two psychiatric~~ qualified graduate medical residencies. Residency programs and hospital partners shall submit applications for this funding each year. Applications are available on the DMAS website at http://leg1.state.va.us/000/noc/www.dmas.virginia.gov/%23/gmefunding. The applications shall be scored, and the top applicants shall receive funding. The supplemental payment for each new qualifying residency ~~shall~~ slot will be $100,000 annually ~~minus any Medicare residency payment for which the hospital is eligible. Supplemental payments~~ and ~~shall~~ will be made for up to four years ~~for each new qualifying resident. A hospital will be eligible for the supplemental payments as long as the hospital maintains the number of residency slots in total and by category.~~ Payments shall be made quarterly

~~following the same schedule for other medical education payments. Subsequent to the new award of a supplemental payment, the hospital must provide documentation annually by August 1, 2017, that it continues to meet the criteria for the supplemental payments and must report any changes during the year to the number of residents.~~ Additional criteria include:

1. Sponsoring institutions or the primary clinical site must be:

a. Physically located in Virginia;

b. An enrolled hospital provider in Virginia Medicaid and continue as a Medicaid-enrolled provider for the duration of the funding;

c. Not subject to a limit on Medicaid payments by the Centers for Medicare and Medicaid Services; and

d. Accredited through either the American Osteopathic Association or the American Council for Graduate Medical Education.

2. Applications must:

a. Be complete and submitted by the posted deadline;

b. Request funding for primary care, such as general pediatrics, general internal medicine, or family practice, or high-need specialty residencies; and

c. Provide substantiation of the need for the requested primary care or specialty residency.

3. Programs that are awarded funding in the fall must attest by June 1 that the residents have been hired for the start of the academic year and have continued employment with the program each year thereafter.

12VAC30-70-331. Statewide operating rate per case.

A. The statewide operating rate per case shall be equal to the base year standardized operating costs per case, as determined in 12VAC30-70-361, times the inflation values specified in 12VAC30-70-351 times the adjustment factor specified in subsection B of this section.

B. The adjustment factor shall be determined separately for Type One and Type Two hospitals:

1. For Type One hospitals the adjustment factor shall be a calculated percentage that causes the Type One hospital statewide operating rate per case to equal the Type Two hospital statewide operating rate per case;

2. For Type Two hospitals the adjustment factor shall be:

a. 0.7800 effective July 1, 2006, through June 30, 2010.

b. 0.7500 effective July 1, 2010, through September 30, 2010.

c. 0.7800 effective October 1, 2010.

C. The operating rate for critical access hospitals shall be based on an adjustment factor of 1.0, effective July 1, 2019.

12VAC30-70-341. Statewide operating rate per day.

A. The statewide operating rate per day shall be equal to the base year standardized operating costs per day, as determined in subsection B of 12VAC30-70-371, times the inflation values specified in 12VAC30-70-351, times the adjustment factor specified in subsection B or C of this section.

B. The adjustment factor for acute care rehabilitation cases shall be the one specified in subsection B of 12VAC30-70-331.

C. The adjustment factor for acute care psychiatric cases for:

1. Type One hospitals shall be the one specified in subdivision B 1 of 12VAC30-70-331, times the factor in subdivision 2 this subsection, divided by the factor in subdivision B 2 of 12VAC30-70-331.

2. Type Two hospitals shall be:

a. 0.7800 effective July 1, 2006, through June 30, 2007.

b. 0.8400 effective July 1, 2007, through June 30, 2010.

c. 0.8100 effective July 1, 2010, through September 30, 2010.

d. 0.8400 effective October 1, 2010.

3. For critical access hospitals, effective July 1, 2019, the inpatient operating rate per day shall be based on an adjustment factor equal to 100% of cost reimbursement.

D. Effective July 1, 2009, for freestanding psychiatric facilities, the adjustment factor shall be 1.0000.

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

FORMS (12VAC30-70)

Computation of Inpatient Operating Cost, HCFA-2552-92 D-1 (12/92).

Apportionment of Cost of Services Rendered by Interns and Residents, HCFA-2552-92 D-2 (12/92).

Cost Reporting Forms for Hospitals (Map 783 Series), eff. 10/15/93

Certification by Officer or Administrator of Provider

Analysis of Interim Payments for Title XIX Services

Computation of Title XIX Ratio of Cost to Charges

Computation of Inpatient and Outpatient Ancillary Service Costs

Computation of Outpatient Capital Reduction

Computation of Title XIX Outpatient Costs

Computation of Charges for Lower of Cost or Charge Comparison

Computation of Title XIX Reimbursement Settlement

Computation of Net Medicaid Inpatient Operating Cost Adjustment

Calculation of Medicaid Inpatient Profit Incentive for Hospitals

Plant Costs

Education Costs

Obstetrical Care Requirements Certification

Computation for Separating the Allowable Plant and Education Cost (pass-throughs) from the Inpatient Medicaid Hospital Costs

Cost Reporting Form Residential Treatment Facilities, RTF-608 (undated, filed 9/2016)

Graduate Medical Education Application (eff. 8/2019)

12VAC30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12VAC30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public). Except as otherwise noted in this section, state developed fee schedule rates are the same for both governmental and private individual practitioners. The state agency fee schedule is published on the ~~DMAS~~ Department of Medical Assistance Services (DMAS) website at http://www.dmas.virginia.gov/#/searchcptcodes.

1. Physicians' services. Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public).

2. Dentists' services. Dental services, dental provider qualifications, and dental service limits are identified in 12VAC30-50-190. Dental services are paid based on procedure codes, which are listed in the agency's fee schedule. Except as otherwise noted, state-developed fee schedule rates are the same for both governmental and private individual practitioners.

3. Mental health services.

a. Professional services furnished by nonphysicians as described in 12VAC30-50-150. These services are reimbursed using current procedural technology (CPT) codes. The agency's fee schedule rate is based on the methodology as described in subsection A of this section.

(1) Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists in subdivision A 1 of this section.

(2) Services provided by independently enrolled licensed clinical social workers, licensed professional counselors, licensed clinical nurse specialists-psychiatric, or licensed marriage and family therapists shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

b. Intensive in-home services are reimbursed on an hourly unit of service. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

c. Therapeutic day treatment services are reimbursed based on the following units of service: one unit equals two to 2.99 hours per day; two units equals three to 4.99 hours per day; three units equals five or more hours per day. No room and board is included in the rates for therapeutic day treatment. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

d. Therapeutic group home services (formerly called level A and level B group home services) shall be reimbursed based on a daily unit of service. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

e. Therapeutic day treatment or partial hospitalization services shall be reimbursed based on the following units of service: one unit equals two to three hours per day; two units equals four to 6.99 hours per day; three units equals seven or more hours per day. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

f. Psychosocial rehabilitation services shall be reimbursed based on the following units of service: one unit equals two to 3.99 hours per day; two units equals four to 6.99 hours per day; three units equals seven or more hours per day. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

g. Crisis intervention services shall be reimbursed on the following units of service: one unit equals two to 3.99 hours per day; two units equals four to 6.99 hours per day; three units equals seven or more hours per day. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

h. Intensive community treatment services shall be reimbursed on an hourly unit of service. The agency's

rates are set as of July 1, 2011, and are effective for services on or after that date.

i. Crisis stabilization services shall be reimbursed on an hourly unit of service. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

j. Independent living and recovery services (previously called mental health skill building services) shall be reimbursed based on the following units of service: one unit equals one to 2.99 hours per day; two units equals three to 4.99 hours per day. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME) and supplies.

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

"DMERC" means the Durable Medical Equipment Regional Carrier rate as published by the Centers for Medicare and Medicaid Services at http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/DMEPOSFeeSched/DMEPOS-Fee-Schedule.html.

"HCPCS" means the Healthcare Common Procedure Coding System, Medicare's National Level II Codes, HCPCS 2006 (Eighteenth edition), as published by Ingenix, as may be periodically updated.

a. Obtaining prior authorization shall not guarantee Medicaid reimbursement for DME.

b. The following shall be the reimbursement method used for DME services:

(1) If the DME item has a DMERC rate, the reimbursement rate shall be the DMERC rate minus 10%. For dates of service on or after July 1, 2014, DME items subject to the Medicare competitive bidding program shall be reimbursed the lower of:

(a) The current DMERC rate minus 10%; or

(b) The average of the Medicare competitive bid rates in Virginia markets.

(2) For DME items with no DMERC rate, the agency shall use the agency fee schedule amount. The reimbursement rates for DME and supplies shall be listed in the DMAS Medicaid Durable Medical Equipment (DME) and Supplies Listing and updated periodically. The agency fee schedule shall be available on the agency website at http://leg1.state.va.us/000/noc/www.dmas.virginia.gov.

(3) If a DME item has no DMERC rate or agency fee schedule rate, the reimbursement rate shall be the manufacturer's net charge to the provider, less shipping and handling, plus 30%. The manufacturer's net charge to the provider shall be the cost to the provider minus all available discounts to the provider. Additional information specific to how DME providers, including manufacturers who are enrolled as providers, establish and document their ~~cost or~~ costs for DME codes that do not have established rates can be found in the relevant agency guidance document.

c. DMAS shall have the authority to amend the agency fee schedule as it deems appropriate and with notice to providers. DMAS shall have the authority to determine alternate pricing, based on agency research, for any code that does not have a rate.

d. The reimbursement for incontinence supplies shall be by selective contract. Pursuant to § 1915(a)(1)(B) of the Social Security Act and 42 CFR 431.54(d), the Commonwealth assures that adequate services or devices shall be available under such arrangements.

e. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services or durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12VAC30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood

gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment that is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services.

8. Laboratory services (other than inpatient hospital). The agency's rates for clinical laboratory services were set as of July 1, 2014, and are effective for services on or after that date.

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-ray services.

11. Optometry services.

12. Reserved.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12VAC30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90, except for services in ambulatory surgery clinics reimbursed under 12VAC30-80-35.

16. Supplemental payments for services provided by Type I physicians.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS provides supplemental payments to Type I physicians for furnished services provided on or after July 2, 2002. A Type I physician is a member of a practice group organized by or under the control of a state academic health system or an academic health system that operates under a state authority and includes a hospital, who has entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10.

b. The methodology for determining the Medicare equivalent of the average commercial rate is described in 12VAC30-80-300.

c. Supplemental payments shall be made quarterly no later than 90 days after the end of the quarter.

d. Effective April 1, 2017, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 256% of Medicare rates. Effective May 1, 2017, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 258% of Medicare rates.

17. Supplemental payments for services provided by physicians at Virginia freestanding children's hospitals.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS provides supplemental payments to Virginia freestanding children's hospital physicians providing services at freestanding children's hospitals with greater than 50% Medicaid inpatient utilization in state fiscal year 2009 for furnished services provided on or after July 1, 2011. A freestanding children's hospital physician is a member of a practice group (i) organized by or under control of a qualifying Virginia freestanding children's hospital, or (ii) who has entered into contractual agreements for provision of physician services at the qualifying Virginia freestanding children's hospital and that is designated in writing by the Virginia freestanding children's hospital as a practice plan for the quarter for which the supplemental payment is made subject to DMAS approval. The freestanding children's hospital physicians also must have entered into contractual agreements with the practice plan for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 1, 2011, the supplemental payment amount for freestanding children's hospital physician services shall be the difference between the Medicaid payments otherwise made for freestanding children's hospital physician services and 143% of Medicare rates as defined in the supplemental payment calculation described in the Medicare equivalent of the average commercial rate methodology (see 12VAC30-80-300), subject to the following reduction. Final payments shall be reduced on a prorated basis so that total payments for freestanding children's hospital physician services are $400,000 less annually than would be calculated based on the formula in the previous sentence. Effective July 1,

2015, the supplemental payment amount for freestanding children's hospital physician services shall be the difference between the Medicaid payments otherwise made for freestanding children's hospital physician services and 178% of Medicare rates as defined in the supplemental payment calculation for Type I physician services. Payments shall be made on the same schedule as Type I physicians.

18. Supplemental payments for services provided by physicians affiliated with Eastern Virginia Medical Center.

a. In addition to payments for physician services specified elsewhere in this chapter, the Department of Medical Assistance Services provides supplemental payments to physicians affiliated with Eastern Virginia Medical Center for furnished services provided on or after October 1, 2012. A physician affiliated with Eastern Virginia Medical Center is a physician who is employed by a publicly funded medical school that is a political subdivision of the Commonwealth of Virginia, who provides clinical services through the faculty practice plan affiliated with the publicly funded medical school, and who has entered into contractual arrangements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective October 1, 2015, the supplemental payment amount shall be the difference between the Medicaid payments otherwise made for physician services and 137% of Medicare rates. The methodology for determining the Medicare equivalent of the average commercial rate is described in 12VAC30-80-300.

c. Supplemental payments shall be made quarterly, no later than 90 days after the end of the quarter.

19. Supplemental payments for services provided by physicians at freestanding children's hospitals serving children in Planning District 8.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS shall make supplemental payments for physicians employed at a freestanding children's hospital serving children in Planning District 8 with more than 50% Medicaid inpatient utilization in fiscal year 2014. This applies to physician practices affiliated with Children's National Health System.

b. The supplemental payment amount for qualifying physician services shall be the difference between the Medicaid payments otherwise made and 178% of Medicare rates but no more than $551,000 for all qualifying physicians. The methodology for determining allowable percent of Medicare rates is based on the Medicare equivalent of the average commercial rate described in this chapter.

c. Supplemental payments shall be made quarterly no later than 90 days after the end of the quarter. Any quarterly payment that would have been due prior to the approval date shall be made no later than 90 days after the approval date.

20. Supplemental payments to nonstate government-owned or operated clinics.

a. In addition to payments for clinic services specified elsewhere in this chapter, DMAS provides supplemental payments to qualifying nonstate government-owned or government-operated clinics for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist, or other medical professional acting within the scope of his license to an eligible individual. Effective July 1, 2005, a qualifying clinic is a clinic operated by a community services board. The state share for supplemental clinic payments will be funded by general fund appropriations.

b. The amount of the supplemental payment made to each qualifying nonstate government-owned or government-operated clinic is determined by:

(1) Calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 20 d of this subsection and the amount otherwise actually paid for the services by the Medicaid program;

(2) Dividing the difference determined in subdivision 20 b (1) of this subsection for each qualifying clinic by the aggregate difference for all such qualifying clinics; and

(3) Multiplying the proportion determined in subdivision 20 b (2) of this subsection by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section will be made annually in a lump sum during the last quarter of the fiscal year.

d. To determine the aggregate upper payment limit referred to in subdivision 20 b (3) of this subsection, Medicaid payments to nonstate government-owned or government-operated clinics will be divided by the "additional factor" whose calculation is described in 12VAC30-80-190 B 2 in regard to the state agency fee schedule for Resource Based Relative Value Scale. Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be

made for any program changes in Medicare or Medicaid payments.

21. Personal assistance services (PAS) or personal care services for individuals enrolled in the Medicaid Buy-In program described in 12VAC30-60-200 or covered under Early and Periodic Screening, Diagnosis, and Treatment. These services are reimbursed in accordance with the state agency fee schedule described in 12VAC30-80-190. The state agency fee schedule is published on the DMAS website at http://www.dmas.virginia.gov/. The agency's rates, based upon one-hour increments, were set as of July 1, 2019, and shall be effective for services on and after that date.

22. Supplemental payments to state-owned or state-operated clinics.

a. Effective for dates of service on or after July 1, 2015, DMAS shall make supplemental payments to qualifying state-owned or state-operated clinics for outpatient services provided to Medicaid patients on or after July 1, 2015. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist, or other medical professional acting within the scope of his license to an eligible individual.

b. The amount of the supplemental payment made to each qualifying state-owned or state-operated clinic is determined by calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 19 b of this subsection and the amount otherwise actually paid for the services by the Medicaid program.

c. Payments for furnished services made under this section shall be made annually in lump sum payments to each clinic.

d. To determine the upper payment limit for each clinic referred to in subdivision 19 b of this subsection, the state payment rate schedule shall be compared to the Medicare resource-based relative value scale nonfacility fee schedule per Current Procedural Terminology code for a base period of claims. The base period claims shall be extracted from the Medical Management Information System and exclude crossover claims.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility~~, equal to at least 95%~~. As of July 1, 2019, payments for hospice services in a nursing facility are 100% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

C. Effective July 1, 2019, the telehealth originating site facility fee shall be increased to 100% of the Medicare rate and shall reflect changes annually based on changes in the Medicare rate. Federally qualified health centers and rural health centers are exempt from this reimbursement change.

12VAC30-80-36. Fee-for-service providers: outpatient hospitals.

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

"Base year" means the state fiscal year for which data is used to establish the EAPG base rate. The base year will change when the EAPG payment system is rebased and recalibrated. In subsequent rebasings, ~~DMAS~~ the Department of Medical Assistance Services (DMAS) shall notify affected providers of the base year to be used in this calculation.

"Cost" means the reported cost as described in 12VAC30-80-20 A and B.

"Cost-to-charge ratio" equals the hospital's total costs divided by the hospital's total charges. The cost-to-charge ratio shall be calculated using data from cost reports from hospital fiscal years ending in the state fiscal year used as the base year.

"Enhanced ambulatory patient group" or "EAPG" means a defined group of outpatient procedures, encounters, or ancillary services that incorporates International Classification of Diseases (ICD) diagnosis codes, Current Procedural Terminology (CPT) codes, and Healthcare Common Procedure Coding System (HCPCS) codes.

"EAPG relative weight" means the expected average costs for each EAPG divided by the relative expected average costs for visits assigned to all EAPGs.

"Medicare wage index" means the Medicare wage index published annually in the Federal Register by the Centers for Medicare and Medicaid Services. The indices used in this section shall be those in effect in the base year.

B. Effective January 1, 2014, the prospective enhanced ambulatory patient group (EAPG) based payment system described in this subsection shall apply to reimbursement for outpatient hospital services (with the exception of laboratory services referred to the hospital but not associated with an outpatient hospital visit, which will be reimbursed according to the laboratory fee schedule).

1. The payments for outpatient hospital visits shall be determined on the basis of a hospital-specific base rate per visit multiplied by the relative weight of the EAPG (and the payment action) assigned for each of the services performed during a hospital visit.

2. The EAPG relative weights shall be the weights determined and published periodically by DMAS and shall be consistent with applicable Medicaid reimbursement limits and policies. The weights shall be updated at least every three years.

3. The statewide base rate shall be equal to the total costs described in this subdivision divided by the wage-adjusted sum of the EAPG weights for each facility. The wage-adjusted sum of the EAPG weights shall equal the sum of the EAPG weights multiplied by the labor percentage times the hospital's Medicare wage index plus the sum of the EAPG weights multiplied by the nonlabor percentage. The base rate shall be determined for outpatient hospital services at least every three years so that total expenditures will equal the following:

a. When using base years prior to January 1, 2014, for all services, excluding all laboratory services and emergency services described in subdivision 3 c of this subsection, a percentage of costs as reported in the available cost reports for the base period for each type of hospital as defined in 12VAC30-70-221.

(1) Type One hospitals. Effective January 1, 2014, hospital outpatient operating reimbursement shall be calculated at 90.2% of cost, and capital reimbursement shall be at 86% of cost inflated to the rate year.

(2) Type Two hospitals. Effective January 1, 2014, hospital outpatient operating and capital reimbursement shall be calculated at 76% of cost inflated to the rate year.

(3) When using base years after January 1, 2014, the percentages described in subdivision 3 a of this subsection shall be adjusted according to subdivision 3 c of this subsection.

(4) For critical access hospitals, effective July 1, 2019, the operating rate shall be based on an adjustment factor equal to 100% of cost reimbursement.

b. Laboratory services, excluding laboratory services referred to the hospital but not associated with a hospital visit, are calculated at the fee schedule in effect for the rate year.

c. Services rendered in emergency departments determined to be nonemergencies as prescribed in 12VAC30-80-20 D 1 b shall be calculated at the nonemergency reduced rate reported in the base year for base years prior to January 1, 2014. For base years after January 1, 2014, the cost percentages in subdivision 3 a of this subsection shall be adjusted to reflect services paid at the nonemergency reduced rate in the last year prior to January 1, 2014.

4. Inflation adjustment to base year costs. Each July, the Virginia moving average values as compiled and published by Global Insight (or its successor), under contract with DMAS, shall be used to update the base year costs to the midpoint of the rate year. The most current table available prior to the effective date of the new rates shall be used to inflate base year amounts to the upcoming rate year. Thus, corrections made by Global Insight (or its successor) in the moving averages that were used to update rates for previous state fiscal years shall be automatically incorporated into the moving averages that are being used to update rates for the upcoming state fiscal year. Inflation shall be applied to the costs identified in subdivision 3 a of this subsection. The inflation adjustment for state fiscal year 2017 shall be 50% of the full inflation adjustment calculated according to this section. There shall be no inflation adjustment for state fiscal year 2018. A full inflation adjustment shall be made in both fiscal year 2017 and fiscal year 2018 to Virginia freestanding children's hospitals with greater than 50% Medicaid utilization in 2009.

5. Hospital-specific base rate. The hospital-specific base rate per case shall be adjusted for geographic variation. The hospital-specific base rate shall be equal to the labor portion of the statewide base rate multiplied by the hospital's Medicare wage index plus the nonlabor percentage of the statewide base rate. The labor percentage shall be determined at each rebasing based on the most recently reliable data. For rural hospitals, the hospital's Medicare wage index used to calculate the base rate shall be the Medicare wage index of the nearest metropolitan wage area or the effective Medicare wage index, whichever is higher. A base rate differential of 5.0% shall be established for freestanding Type Two children's hospitals. The base rate for non-cost-reporting hospitals shall be the average of the hospital-specific base rates of in-state Type Two hospitals.

6. The total payment shall represent the total allowable amount for a visit including ancillary services and capital.

7. The transition from cost-based reimbursement to EAPG reimbursement shall be transitioned over a four-year period. DMAS shall calculate a cost-based base rate at January 1, 2014, and at each rebasing during the transition.

a. Effective for dates of service on or after January 1, 2014, DMAS shall calculate the hospital-specific base rate as the sum of 75% of the cost-based base rate and 25% of the EAPG base rate.

b. Effective for dates of service on or after July 1, 2014, DMAS shall calculate the hospital-specific base rate as the sum of 50% of the cost-based base rate and 50% of the EAPG base rate.

c. Effective for dates of service on or after July 1, 2015, DMAS shall calculate the hospital-specific base rate as

the sum of 25% of the cost-based base rate and 75% of the EAPG base rate.

d. Effective for dates of service on or after July 1, 2016, DMAS shall calculate the hospital-specific base rate as the EAPG base rate.

8. To maintain budget neutrality during the first six years of the transition to EAPG reimbursement, DMAS shall compare the total reimbursement of hospital claims based on the parameters in subdivision 3 of this subsection to EAPG reimbursement every six months based on the six months of claims ending three months prior to the potential adjustment. If the percentage difference between the reimbursement target in subdivision 3 of this subsection and EAPG reimbursement is greater than 1.0%, plus or minus, DMAS shall adjust the statewide base rate by the percentage difference the following July 1 or January 1. The first possible adjustment would be January 1, 2015, using reimbursement between January 1, 2014, and October 31, 2014.

C. The enhanced ambulatory patient group (EAPG) grouper version used for outpatient hospital services shall be determined by DMAS. Providers or provider representatives shall be given notice prior to implementing a new grouper.

D. The primary data sources used in the development of the EAPG payment methodology are the DMAS hospital computerized claims history file and the cost report file. The claims history file captures available claims data from all enrolled, cost-reporting general acute care hospitals. The cost report file captures audited cost and charge data from all enrolled general acute care hospitals. The following table identifies key data elements that are used to develop the EAPG payment methodology. DMAS may supplement this data with similar data for Medicaid services furnished by managed care organizations if DMAS determines that it is reliable.

Data Elements for EAPG Payment Methodology	
Data Elements	Source
Total charges for each outpatient hospital visit	Claims history file
Number of groupable claims lines in each EAPG	Claims history file
Total number of groupable claim lines	Claims history file
Total charges for each outpatient hospital revenue line	Claims history file
Total number of EAPG assignments	Claims history file
Cost-to-charge ratio for each hospital	Cost report file
Medicare wage index for each hospital	Federal Register

12VAC30-80-190. State agency fee schedule for RBRVS.

A. Reimbursement of fee-for-service providers. Effective for dates of service on or after July 1, 1995, the Department of Medical Assistance Services (DMAS) shall reimburse fee-for-service providers, with the exception of home health services (see 12VAC30-80-180) and durable medical equipment services (see 12VAC30-80-30), using a fee schedule that is based on a Resource Based Relative Value Scale (RBRVS).

B. Fee schedule.

1. For those services or procedures ~~which~~ that are included in the RBRVS published by the Centers for Medicare and Medicaid Services (CMS) as amended from time to time, ~~DMAS'~~ the DMAS fee schedule shall employ the Relative Value Units (RVUs) developed by CMS as periodically updated.

a. Effective for dates of service on or after July 1, 2008, DMAS shall implement site of service differentials and employ both nonfacility and facility RVUs. The implementation shall be budget neutral using the methodology in subdivision 2 of this subsection.

b. The implementation of site of service shall be transitioned over a four-year period.

(1) Effective for dates of service on or after July 1, 2008, DMAS shall calculate the transitioned facility RVU by adding 75% of the difference between the nonfacility RVU and nonfacility RVU to the facility RVU.

(2) Effective for dates of service on or after July 1, 2009, DMAS shall calculate the transitioned facility RVU by adding 50% of the difference between the nonfacility RVU and nonfacility RVU to the facility RVU.

(3) Effective for dates of service on or after July 1, 2010, DMAS shall calculate the transitioned facility RVU by adding 25% of the difference between the nonfacility RVU and nonfacility RVU to the facility RVU.

(4) Effective for dates of service on or after July 1, 2011, DMAS shall use the unadjusted Medicare facility RVU.

2. DMAS shall calculate the RBRVS-based fees using conversion factors (CFs) published from time to time by CMS. DMAS shall adjust ~~CMS'~~ the CMS CFs by additional factors so that no change in expenditure will result solely from the implementation of the RBRVS-based fee schedule. DMAS may revise the additional factors when CMS updates its RVUs or CFs so that no change in expenditure will result solely from such updates. Except

for this adjustment, ~~DMAS'~~ the DMAS CFs shall be the same as those published from time to time by CMS. The calculation of the additional factors shall be based on the assumption that no change in services provided will occur as a result of these changes to the fee schedule. The determination of the additional factors required ~~above~~ in this subdivision shall be accomplished by means of the following calculation:

a. The estimated amount of DMAS expenditures if DMAS were to use Medicare's RVUs and CFs without modification, is equal to the sum, across all relevant procedure codes, of the RVU value published by the CMS, multiplied by the applicable conversion factor published by the CMS, multiplied by the number of occurrences of the procedure code in DMAS patient claims in the most recent period of time (at least six months).

b. The estimated amount of DMAS expenditures, if DMAS were not to calculate new fees based on the new CMS RVUs and CFs, is equal to the sum, across all relevant procedure codes, of the existing DMAS fee multiplied by the number of occurrences of the procedures code in DMAS patient claims in the period of time used in subdivision 2 a of this subsection.

c. The relevant additional factor is equal to the ratio of the expenditure estimate (based on DMAS fees in subdivision 2 b of this subsection) to the expenditure estimate based on unmodified CMS values in subdivision 2 a of this subsection.

d. DMAS shall calculate a separate additional factor for:

(1) Emergency room services (defined as the American Medical Association's (AMA) publication of the Current Procedural Terminology (CPT) codes 99281, 99282, 99283, 99284, and 992851 in effect at the time the service is provided);

(2) Obstetrical/gynecological services (defined as maternity care and delivery procedures, female genital system procedures, obstetrical/gynecological-related radiological procedures, and mammography procedures, as defined by the American Medical Association's (AMA) publication of the Current Procedural Terminology (CPT) manual in effect at the time the service is provided);

(3) Pediatric preventive services (defined as preventive E&M procedures, excluding those listed in subdivision 2 d (1) of this subsection, as defined by the AMA's publication of the CPT manual, in effect at the time the service is provided, for recipients ~~under age~~ younger than 21 years of age);

(4) Pediatric primary services (defined as evaluation and management (E&M) procedures, excluding those listed in subdivisions 2 d (1) and 2 d (3) of this subsection, as defined by the AMA's publication of the CPT manual, in effect at the time the service is provided, for recipients ~~under age~~ younger than 21 years of age);

(5) Adult primary and preventive services (defined as E&M procedures, excluding those listed in subdivision 2 d (1) of this subsection, as defined by the AMA's publication of the CPT manual, in effect at the time the service is provided, for recipients ~~age~~ 21 ~~and over)~~ years of age and older); ~~and~~

(6) Effective July 1, 2019, psychiatric services as defined by the AMA's publication of the CPT manual, in effect at the time the service is provided; and

(7) All other procedures set through the RBRVS process combined.

3. For those services or procedures for which there are no established RVUs, DMAS shall approximate a reasonable relative value payment level by looking to similar existing relative value fees. If DMAS is unable to establish a relative value payment level for any service or procedure, the fee shall not be based on a RBRVS, but shall instead be based on the previous fee-for-service methodology.

4. Fees shall not vary by geographic locality.

5. Effective for dates of service on or after July 1, 2007, fees for emergency room services (defined in subdivision 2 d (1) of this subsection) shall be increased by 5.0% relative to the fees that would otherwise be in effect.

C. Effective for dates of service on or after May 1, 2006, fees for obstetrical/gynecological services (defined in subdivision B 2 d (2) of this section) shall be increased by 2.5% relative to the fees in effect on July 1, 2005.

D. Effective for dates of service on or after May 1, 2006, fees for pediatric services (defined in subdivisions B 2 d (3) and (4) of this section) shall be increased by 5.0% relative to the fees in effect on July 1, 2005. Effective for dates of service on or after July 1, 2006, fees for pediatric services (defined in subdivisions B 2 d (3) and (4) of this section) shall be increased by 5.0% relative to the fees in effect on May 1, 2006. Effective for dates of service on or after July 1, 2007, fees for pediatric primary services (defined in subdivision B 2 d (4) of this section) shall be increased by 10% relative to the fees that would otherwise be in effect.

E. Effective for dates of service on or after July 1, 2007, fees for pediatric preventive services (defined in subdivision B 2 d (3) of this section) shall be increased by 10% relative to the fees that would otherwise be in effect.

F. Effective for dates of service on or after May 1, 2006, fees for adult primary and preventive services (defined in subdivision B 2 d (4) of this section) shall be increased by 5.0% relative to the fees in effect on July 1, 2005. Effective

for dates of service on or after July 1, 2007, fees for adult primary and preventive services (defined in subdivision B 2 d (5) of this section) shall be increased by 5.0% relative to the fees that would otherwise be in effect.

G. Effective for dates of service on or after July 1, 2007, fees for all other procedures set through the RBRVS process combined (defined in subdivision B 2 d (6) of this section) shall be increased by 5.0% relative to the fees that would otherwise be in effect.

H. Effective for dates of service on or after July 1, 2010, fees for all procedures set through the RBRVS process shall be decreased by 3.0% relative to the fees that would otherwise be in effect.

I. Effective for dates of service on or after October 1, 2010, through June 30, 2011, the 3.0% fee decrease in subsection H of this section shall no longer be in effect.

J. Effective for dates of service on or after July 1, 2019, rates for adult primary care services shall be increased by 5.0% and rates for emergency department services shall be increased by 1.0%.

K. Effective for dates of service on or after July 1, 2019, rates for psychiatric services shall be increased by 21%.

VA.R. Doc. No. R20-6109; Filed November 13, 2019, 7:38 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PSYCHOLOGY

Final Regulation

REGISTRAR'S NOTICE: The Board of Psychology is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Health Professions pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board of Psychology will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **18VAC125-20. Regulations Governing the Practice of Psychology (amending 18VAC125-20-30).**

18VAC125-30. Regulations Governing the Certification of Sex Offender Treatment Providers (amending 18VAC125-30-20).

Statutory Authority: §§ 54.1-2400 and 54.1-3605 of the Code of Virginia.

Effective Date: January 8, 2020.

Agency Contact: Jaime Hoyle, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 327-4435, or email jaime.hoyle@dhp.virginia.gov.

Summary:

The amendments provide a one-time fee reduction applicable to the 2020 renewal cycle for licensees and certificate holders.

18VAC125-20-30. Fees required by the board.

A. The board has established fees for the following:

	Applied psychologists, Clinical psychologists, School psychologists	School psychologists-limited
1. Registration of residency (per residency request)	$50	- -
2. Add or change supervisor	$25	- -
3. Application processing and initial licensure	$200	$85
4. Annual renewal of active license	$140	$70
5. Annual renewal of inactive license	$70	$35
6. Late renewal	$50	$25
7. Verification of license to another jurisdiction	$25	$25
8. Duplicate license	$5	$5
9. Additional or replacement wall certificate	$15	$15
10. Returned check	$35	$35
11. Reinstatement of a lapsed license	$270	$125
12. Reinstatement following revocation or suspension	$500	$500

B. Fees shall be made payable to the Treasurer of Virginia and forwarded to the board. All fees are nonrefundable.

C. Between May 1, ~~2018~~ 2020, and June 30, ~~2018~~ 2020, the following renewal fees shall be in effect:

1. For annual renewal of an active license as a clinical, applied, or school psychologist, it shall be ~~$84~~ $100. For an inactive license as a clinical, applied, or school psychologist, it shall be ~~$42~~ $50.

2. For annual renewal of an active license as a school psychologist-limited, it shall be ~~$42~~ $50. For an inactive license as a school psychologist-limited, it shall be ~~$21~~ $25.

18VAC125-30-20. Fees required by the board.

A. The board has established the following fees applicable to the certification of sex offender treatment providers:

Registration of supervision	$50
Add or change supervisor	$25
Application processing and initial certification fee	$90
Certification renewal	$75
Duplicate certificate	$5
Late renewal	$25
Reinstatement of an expired certificate	$125
Replacement of or additional wall certificate	$15
Returned check	$35
Reinstatement following revocation or suspension	$500
One-time reduction in fee for renewal on June 30, ~~2018~~ 2020	~~$45~~ $55

B. Fees shall be made payable to the Treasurer of Virginia. All fees are nonrefundable.

VA.R. Doc. No. R20-6228; Filed November 13, 2019, 6:48 a.m.

REAL ESTATE APPRAISER BOARD

Final Regulation

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

Title of Regulation: **18VAC130-30. Appraisal Management Company Regulations (amending 18VAC130-30-30).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Date: January 15, 2020.

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

Summary:

The amendment conforms the regulation to federal law by changing the 10% ownership limit to any ownership interest of an appraisal management company by an individual who has had an appraiser license refused, denied, canceled, or revoked, or has surrendered a license in lieu of revocation, in order for the board to deny licensure to the appraisal management company.

18VAC130-30-30. Qualifications for licensure as an appraisal management company.

A. Firms that meet the definition of appraisal management company as defined in § 54.1-2020 of the Code of Virginia shall submit an application on a form prescribed by the board and shall meet the requirements set forth in § 54.1-2021.1 of the Code of Virginia, as well as the additional qualifications of this section.

B. Any firm acting as an appraisal management company as defined in § 54.1-2020 of the Code of Virginia shall hold a license as an appraisal management company. All names under which the appraisal management company conducts business shall be disclosed on the application. The name under which the firm conducts business and holds itself out to the public (i.e., the trade or fictitious name) shall also be disclosed on the application. Firms shall be organized as business entities under the laws of the Commonwealth of Virginia or otherwise authorized to transact business in Virginia. Firms shall register any trade or fictitious names with the State Corporation Commission or the clerk of the court in the county or jurisdiction where the business is to be conducted in accordance with §§ 59.1-69 through 59.1-76 of the Code of Virginia before submitting an application to the board.

C. The applicant for an appraisal management company license shall disclose the firm's mailing address and the firm's physical address. A post office box is only acceptable as a mailing address when a physical address is also provided.

D. In accordance with § 54.1-204 of the Code of Virginia, each applicant for an appraisal management company license shall have any person who owns 10% or more of the firm and the controlling person of the firm submit to fingerprinting and

a background investigation and disclose the following information:

1. All felony convictions.

2. All misdemeanor convictions in any jurisdiction that occurred within five years of the date of application.

3. Any plea of nolo contendere or finding of guilt regardless of adjudication or deferred adjudication shall be considered a conviction for the purposes of this section. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

E. The applicant for an appraisal management company license, the controlling person, the responsible person, and any person who owns 10% or more of the firm shall be in good standing in Virginia and in every jurisdiction and with every board or administrative body where licensed, certified, or registered, and the board, in its discretion, may deny licensure to any applicant who has been subject to, or whose controlling person or responsible person has been subject to, or any person who owns 10% or more of the firm has been subject to, any form of adverse disciplinary action, including ~~but not limited to~~ (i) reprimand; revocation, suspension, or denial of license; imposition of a monetary penalty; requirement to complete remedial education, or any other corrective action in any jurisdiction or by any board or administrative body or (ii) surrender of a license, a certificate, or registration in connection with any disciplinary action in any jurisdiction prior to obtaining licensure in Virginia.

F. The board shall deny the application for licensure of an applicant for an appraisal management company if any person or entity that owns ~~10% or more or~~ any part of the appraisal management company has had ~~an appraiser~~ a license to act as an appraiser refused, denied, canceled, surrendered in lieu of revocation, or revoked in Virginia or any jurisdiction.

G. The applicant for an appraisal management company license shall be in compliance with the standards of conduct and practice set forth in Part V (18VAC130-30-120 et seq.) of this chapter at the time of application, while the application is under review by the board, and at all times when the license is in effect.

H. The applicant for an appraisal management company license shall submit evidence of a bond or letter of credit in accordance with § 54.1-2021.1 D of the Code of Virginia. Proof of current bond or letter of credit with the appraisal management company as the named bond holder or letter of credit holder must be submitted to obtain or renew the license. The bond or letter of credit must be in force no later than the effective date of the license and shall remain in effect through the date of expiration of the license. The bond or letter of credit shall include:

1. The principal of the bond or letter of credit;

2. The beneficiary of the bond or letter of credit;

3. The name of the surety or financial institution that issued the bond or letter of credit;

4. The bond or letter of credit number as assigned by the issuer;

5. The dollar amount; and

6. The expiration date or, if self-renewing, the date by which the bond or letter of credit shall be renewed.

I. The firm shall provide the name, address, and contact information for any person or entity that owns 10% or more of the appraisal management company.

J. The firm shall designate a responsible person.

VA.R. Doc. No. R20-6227; Filed November 12, 2019, 2:31 p.m.

REAL ESTATE BOARD

Final Regulation

REGISTRAR'S NOTICE: The Real Estate Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Real Estate Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC135-20. Virginia Real Estate Board Licensing Regulations (amending 18VAC135-20-155, 18VAC135-20-180).**

Statutory Authority: §§ 54.1-201 and 54.1-2105 of the Code of Virginia.

Effective Date: January 15, 2020.

Agency Contact: Christine Martine, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4299, or email reboard@dpor.virginia.gov.

Summary:

The amendments update the Virginia Real Estate Board Licensing Regulations to reflect the changes to the Code of Virginia resulting from the recodification of Title 55 of the Code of Virginia pursuant to Chapter 712 of the 2019 Acts of Assembly.

Part V
Standards of Practice and Conduct

18VAC135-20-155. Grounds for disciplinary action.

The board has the power to fine any licensee or certificate holder and to suspend or revoke any license or certificate issued under the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia and this chapter in accordance with subdivision A 7 of § 54.1-201 and § 54.1-202 of the Code of Virginia and the provisions of the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia, where the licensee or certificate holder has been found to have violated or cooperated with others in violating any provision of Chapters 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), and 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, Chapter ~~27.3 (§ 55-525.16 et seq.) of Title 55~~ 10 (§ 55.1-1000 et seq.) of Title 55.1 of the Code of Virginia, or any regulation of the board. Any licensee failing to comply with the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the Real Estate Board in performing any acts covered by §§ 54.1-2100 and 54.1-2101 of the Code of Virginia may be charged with a violation, regardless of whether those acts are in the licensee's personal capacity or in his capacity as a real estate licensee.

18VAC135-20-180. Maintenance and management of escrow accounts.

A. Maintenance of escrow accounts.

1. If money is to be held in escrow, each firm or sole proprietorship shall maintain in the name by which it is licensed one or more federally insured separate escrow accounts in a federally insured depository into which all down payments, earnest money deposits, money received upon final settlement, application deposits as defined by ~~§ 55-248.4~~ § 55.1-1200 of the Code of Virginia, rental payments, rental security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of real estate transactions, money advanced by the broker's client or expended on behalf of the client, or other escrow funds received by ~~him~~ the broker or his associates on behalf of his client or any other person shall be deposited unless all principals to the transaction have agreed otherwise in writing. The balance in the escrow accounts shall be sufficient at all times to account for all funds that are designated to be held by the firm or sole proprietorship. The principal broker shall be held responsible for these accounts, including having signatory authority on these accounts. The supervising broker and any other licensee with escrow account authority may be held responsible for these accounts. All such accounts, checks, and bank statements shall be labeled "escrow" and the accounts shall be designated as "escrow" accounts with the financial institution where such accounts are established.

2. Funds to be deposited in the escrow account may include moneys ~~which~~ that shall ultimately belong to the licensee, but such moneys shall be separately identified in the escrow account records and shall be paid to the firm by a check drawn on the escrow account when the funds become due to the licensee. Funds in an escrow account shall not be paid directly to the licensees of the firm. The fact that an escrow account contains money ~~which~~ that may ultimately belong to the licensee does not constitute "commingling of funds" as set forth by subdivision C 2 of this section, provided that there are periodic withdrawals of said funds at intervals of not more than six months~~,~~ and that the licensee can at all times accurately identify the total funds in that account ~~which~~ that belong to the licensee and the firm.

3. If escrow funds are used to purchase a certificate of deposit, the pledging or hypothecation of such certificate, or the absence of the original certificate from the direct control of the principal or supervising broker, shall constitute commingling as prohibited by subdivision C 2 of this section.

4. Lease transactions: application deposits. Any application deposit as defined by ~~§ 55-248.4~~ § 55.1-1200 of the Code of Virginia paid by a prospective tenant for the purpose of being considered as a tenant for a dwelling unit to a licensee acting on behalf of a landlord client shall be placed in escrow by the end of the fifth business banking day following approval of the rental application by the landlord unless all principals to the lease transaction have agreed otherwise in writing.

B. Disbursement of funds from escrow accounts.

1. a. Purchase transactions. Upon the ratification of a contract, an earnest money deposit received by the principal broker or supervising broker or his associates shall be placed in an escrow account by the end of the fifth business banking day following ratification, unless otherwise agreed to in writing by the principals to the transaction, and shall remain in that account until the transaction has been consummated or terminated. In the event that the transaction is not consummated, the principal broker or supervising broker shall hold such funds in escrow until (i) all principals to the transaction have agreed in a written agreement as to their disposition, upon which the funds shall be returned to the agreed upon principal as provided in such written agreement~~,~~; (ii) a court of competent jurisdiction orders such disbursement of the funds~~,~~; (iii) the funds are successfully interpleaded into a court of competent jurisdiction pursuant to this section~~,~~; or (iv) the broker releases the funds to the principal to the transaction who is entitled to receive them in accordance with the clear and explicit terms of the contract that

established the earnest money deposit. At the option of a broker, written notice may be sent by the broker that release of such funds shall be made unless a written protest is received from the principal who is not receiving the funds by such broker within 15 calendar days of the date of such notice. Notice of a disbursement shall be given to the parties to the transaction in accordance with the contract, but if the contract does not specify a method of delivery, one of the following methods complies with this section: (i) hand delivery; (ii) United States mail, postage prepaid, provided that the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing; (iii) electronic means, provided that the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or (iv) overnight delivery using a commercial service or the United States Postal Service. Except as provided in the clear and explicit terms of the contract, no broker shall be required to make a determination as to the party entitled to receive the earnest money deposit. A broker who complies with this section shall be immune from liability to any of the parties to the contract.

A principal broker or supervising broker holding escrow funds for a principal to the transaction may seek to have a court of competent jurisdiction take custody of disputed or unclaimed escrow funds via an interpleader action pursuant to § 16.1-77 of the Code of Virginia.

If a principal broker or supervising broker is holding escrow funds for the owner of real property and such property is foreclosed upon by a lender, the principal broker or supervising broker shall have the right to file an interpleader action pursuant to § 16.1-77 of the Code of Virginia and otherwise comply with the provisions of § 54.1-2108.1 of the Code of Virginia.

If there is in effect at the date of the foreclosure sale a real estate purchase contract to buy the property foreclosed upon and the real estate purchase contract provides that the earnest money deposit held in escrow by a firm or sole proprietorship shall be paid to a principal to the contract in the event of a termination of the real estate purchase contract, the foreclosure shall be deemed a termination of the real estate purchase contract, and the principal broker or supervising broker may, absent any default on the part of the purchaser, disburse the earnest money deposit to the purchaser pursuant to such provisions of the real estate purchase contract without further consent from~~,~~ or notice to~~,~~ the principals.

b. Lease transactions: security deposits. Any security deposit held by a firm or sole proprietorship shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to the transaction. Each such security deposit shall be treated in accordance with the security deposit provisions of the Virginia Residential Landlord and Tenant Act, Chapter ~~13.2 (§ 55-248.2 et seq.) of Title 55~~ 12 (§ 55.1-1200 et seq.) of Title 55.1 of the Code of Virginia, unless exempted therefrom, in which case the terms of the lease or other applicable law shall control. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant. If there is in effect at the date of the foreclosure sale a tenant in a residential dwelling unit foreclosed upon and the landlord is holding a security deposit of the tenant, the landlord shall handle the security deposit in accordance with applicable law, which requires the holder of the landlord's interest in the dwelling unit at the time of termination of tenancy to return any security deposit and any accrued interest that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, and regardless of any contractual agreements between the original landlord and his successors in interest. Nothing in this section shall be construed to prevent the landlord from making lawful deductions from the security deposit in accordance with applicable law.

c. Lease transactions: prepaid rent or escrow fund advances. Unless otherwise agreed in writing by all principals to the transaction, all prepaid rent and other money paid to the licensee in connection with the lease shall be placed in an escrow account by the end of the fifth business banking day following receipt and remain in that account until paid in accordance with the terms of the lease and the property management agreement, as applicable, except the prepaid rent, which shall be treated in accordance with the prepaid rent provision of the Virginia Residential Landlord and Tenant Act, Chapter ~~13.2 (§ 55-248.2 et seq.) of Title 55~~ 12 (§ 55.1-1200 et seq.) of Title 55.1 of the Code of Virginia.

d. Lease transactions: rent payments. If there is in effect at the date of the foreclosure sale a tenant in a residential dwelling unit foreclosed upon and the rent is paid to a licensee acting on behalf of the landlord pursuant to a properly executed property management agreement, the licensee may collect the rent in accordance with § 54.1-2108.1 A 4 of the Code of Virginia.

2. a. Purchase transactions. Unless otherwise agreed in writing by all principals to the transaction, a licensee shall not be entitled to any part of the earnest money deposit or to any other money paid to the licensee in connection with

any real estate transaction as part of the licensee's commission until the transaction has been consummated.

b. Lease transactions. Unless otherwise agreed in writing by the principals to the lease or property management agreement, as applicable, a licensee shall not be entitled to any part of the security deposit or to any other money paid to the licensee in connection with any real estate lease as part of the licensee's commission except in accordance with the terms of the lease or the property management agreement, as applicable. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant. Except in the event of a foreclosure, if a licensee elects to terminate the property management agreement with the landlord, the licensee may transfer any funds held in escrow on behalf of the landlord in accordance with § 54.1-2108.1 B 5 of the Code of Virginia. If there is in effect at the date of the foreclosure sale a written property management agreement between the licensee and the landlord, the property management agreement shall continue in accordance with § 54.1-2108.1 A 5 of the Code of Virginia.

3. On funds placed in an account bearing interest, written disclosure in the contract of sale or lease at the time of contract or lease writing shall be made to the principals to the transaction regarding the disbursement of interest.

4. A licensee shall not disburse or cause to be disbursed moneys from an escrow or property management escrow account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.

5. Unless otherwise agreed in writing by all principals to the transaction, expenses incidental to closing a transaction (e.g., fees for appraisal, insurance, credit report~~, etc.~~) shall not be deducted from a deposit or down payment.

C. Actions including improper maintenance of escrow funds include:

1. Accepting any note, nonnegotiable instrument, or anything of value not readily negotiable, as a deposit on a contract, offer to purchase, or lease~~,~~ without acknowledging its acceptance in the agreement;

2. Commingling the funds of any person by a principal or supervising broker or his employees or associates or any licensee with his own funds, or those of his corporation, firm, or association;

3. Failure to deposit escrow funds in an account ~~or accounts~~ designated to receive only such funds as required by subdivision A 1 of this section;

4. Failure to have sufficient balances in an escrow account ~~or accounts~~ at all times for all funds that are designated to be held by the firm or sole proprietorship as required by this chapter; and

5. Failing~~,~~ as principal broker~~,~~ to report to the board within three business days instances where the principal broker reasonably believes the improper conduct of a licensee, independent contractor, or employee has caused noncompliance with this section.

VA.R. Doc. No. R20-6222; Filed November 15, 2019, 3:08 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Final Regulation

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

Title of Regulation: **20VAC5-310. Rules for Filing an Application to Provide Electric and Gas Service under a Special Rate, Contract or Incentive (amending 20VAC5-310-10).**

Statutory Authority: §§ 12.1-13 and 56-235.2 of the Code of Virginia.

Effective Date: December 9, 2019.

Agency Contact: Andrea Macgill, Associate General Counsel, Office of General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9064, FAX (804) 371-9211, or email andrea.macgill@scc.virginia.gov.

Summary:

The amendments update cross references in the regulation to § 56-235.2 of the Code of Virginia.

20VAC5-310-10. Guidelines for special rates, contracts, or incentives.

Any application for approval of a special rate, contract or incentive filed pursuant to § 56-235.2 of the Code of Virginia shall:

1. Explain in detail the intended purpose of the special rate, contract, or incentive and why current tariffs of the utility are insufficient. Explain how the proposed special rate, contract, or incentive (i) will protect the public interest, (ii) will not unreasonably prejudice or disadvantage any customer or class of customers, and (iii) will not jeopardize the continuation of reliable utility service.

2. Provide a copy of the proposed special rate, contract, or incentive. The applicant shall clearly mark any part of the application or supporting information which it deems should not be subject to public disclosure as "confidential information." Unredacted copies of documents containing information so marked shall be withheld from public disclosure by the clerk of the commission for commission and staff review unless disclosure is ordered by the commission. Copies of documents redacted to exclude confidential information shall be filed and placed in the public file. By commission order or agreement with the applicant, other participants may be provided unredacted copies of documents containing confidential information but shall not disclose confidential information to any person unless permitted to do so by the commission order. The burden for proving the need to maintain confidential treatment will remain with the party seeking it. No commission order shall be issued under this subdivision without notice to the applicant and the owner of such confidential information and an opportunity for them to address the commission with respect to its confidentiality.

3. Describe the characteristics of the customers to whom the proposed special rate, contract, or incentive would apply and, if applicable, identify the tariff under which each such customer would otherwise have taken service. Such characteristics should include~~, but not be limited to,~~ load factor, load diversity, energy use, and peak demand, and may include energy conservation alternatives.

4. Provide in detail the estimated direct costs incurred to implement the special rate, contract, or incentive.

5. Describe in detail the estimated effect that service provided under the proposed special rate, contract, or incentive will have on total company revenues, total company expenses, and, if appropriate, on the return on rate base for the customer class in which the participating customer resides.

6. Describe in detail the rate impact of the proposal on the company's other customers and explain how the company will ensure that other customers will be protected from bearing any increased rates as a result of the proposed special rate, contract, or incentive. Explain how the utility will allocate or use any resulting benefits.

Utilities may seek an exemption from the analysis required in subdivisions 5 and 6 of this section for customers with total loads aggregating no more than ~~5 MW~~ five megawatts. Any such request shall provide an alternative analysis to support the findings required by § 56-235.2 ~~C~~ B and ~~D~~ C of the Code of Virginia.

VA.R. Doc. No. R20-6242; Filed November 18, 2019, 12:11 p.m.

EXECUTIVE ORDER NUMBER FORTY-FIVE (2019)

Floodplain Management Requirements and Planning Standards for State Agencies, Institutions, and Property

Importance of the Initiative

Executive Order 24 "Increasing Virginia's Resilience to Sea Level Rise and Natural Hazards," issued in November 2018, set the Commonwealth on a course towards addressing its risk and resilience to natural hazards, including flooding. A key element of that Order required an analysis of flooding and flood preparedness in the Commonwealth. Based on that analysis, the Commonwealth must establish new policies and directives to ensure that necessary actions are taken to protect state property from the risk of floods.

Background

Flooding remains the most common and costly natural disaster in Virginia and the United States. With more than 100,000 miles of streams and rivers, as well as 10,000 miles of estuarine and coastal shoreline, Virginia's flood risk is statewide, comes in many forms, and is increasing because of climate change and increased development in flood-prone areas. In 1987, in order to improve Virginia's flood protection programs and to consolidate all related programs in one agency, responsibility for coordination of all state floodplain programs was transferred from the State Water Control Board to the Department of Conservation and Recreation (DCR). Section 10.1-602 of the Code of Virginia names DCR as the manager of the state's floodplain program and the designated coordinating agency of the National Flood Insurance Program (NFIP). The Code stipulates that the Director of DCR or his designee shall serve as the State Coordinator for the NFIP.

DCR's Floodplain Management Program was created to minimize Virginia's flood hazards. In particular, it aims to prevent loss of life, reduce property damage, and conserve natural and beneficial values of state rivers and coastal floodplains. To achieve these goals, DCR promotes NFIP compliance and participation, offers technical assistance and community education, coordinates with other local, state and federal agencies, and provides funding through the Dam Safety, Flood Prevention and Protection Assistance Fund (§ 10.1-603.16 et. seq. of the Code of Virginia).

Participation in the NFIP allows the Commonwealth to receive many types of disaster assistance, development loans, and other financial resources. The continued availability of these resources is dependent on compliance with the NFIP. Lack of compliance with the NFIP could result in the Commonwealth's suspension from the program, increased flood insurance costs, loss of NFIP flood insurance policies, inability to secure federally-backed mortgages and loans, and increased unreimbursed disaster costs for the Commonwealth.

The floodplain management policies identified in this Order are intended to avoid unnecessary costs from flooding, to reduce risks to human health, safety, and welfare, and to protect, preserve, and enhance the natural and beneficial uses of properly-managed floodplains to property and development under state ownership.

Virginia state government agencies have been operating under Executive Memorandum 2-97. Much has changed since then-Governor George Allen issued that memorandum. Now, in light of those changed conditions, it is necessary to establish clear policies and standards for state agencies.

Requirements for State-owned Properties in Flood-Prone Areas

Participation in the NFIP is contingent on a community voluntarily adopting floodplain management regulations that meet NFIP minimums as established by the Federal Emergency Management Agency (FEMA). In order to ensure the Commonwealth, as a participating community, complies with the NFIP as outlined in 44 CFR § 60.11-13 and is prepared for current and future flood conditions, this Order establishes mandatory standards for development[1] of state-owned properties in Flood-Prone Areas, which include Special Flood Hazard Areas,[2] Shaded X Zones,[3] and the Sea Level Rise Inundation Area.[4] These standards shall apply to all state agencies.[5]

1. Development in Special Flood Hazard Areas and Shaded X Zones

A. All development, including buildings, on state-owned property shall comply with the locally-adopted floodplain management ordinance of the community in which the state-owned property is located and any flood-related standards identified in the Virginia Uniform Statewide Building Code.

B. If any state-owned property is located in a community that does not participate in the NFIP, all development, including buildings, on such state-owned property shall comply with the NFIP requirements as defined in 44 CFR §§ 60.3, 60.4, and 60.5 and any flood-related standards identified in the Virginia Uniform Statewide Building Code.

(1) These projects shall be submitted to the Department of General Services (DGS), for review and approval.

(2) DGS shall not approve any project until the State NFIP Coordinator has reviewed and approved the application for NFIP compliance.

(3) DGS shall provide a written determination on project requests to the applicant and the State NFIP Coordinator. The State NFIP Coordinator shall maintain all documentation associated with the project in perpetuity.

C. No new state-owned buildings, or buildings constructed on state-owned property, shall be constructed, reconstructed,[6] purchased, or acquired by the Commonwealth within a

Special Flood Hazard Area or Shaded X Zone in any community unless a variance is granted by the Director of DGS, as outlined in this Order.

2. Variance Process

A. The Director of DGS may consider a variance to the requirements listed above if the following conditions are met:

(1) It has been demonstrated that granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or in the case of NFIP participating communities, conflicts with their existing local floodplain ordinances.

(2) The design of the building or structure complies with the freeboard standards adopted in this Order.

(3) Buildings or structures are demonstrated to be a functionally dependent use, such as water treatment facilities, boat houses, fish hatcheries, and other similar uses, or

(4) Buildings or structures are historic and require repair or rehabilitation and it has been demonstrated that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure, or

(5) Buildings or structures are demonstrated to be necessary to protect public health, safety, and welfare.

B. The Director of DGS shall not approve any variance to the requirements set forth in Section 1 until the State NFIP Coordinator has reviewed and approved the application for NFIP compliance.

C. A variance to the requirements set forth in Section 1 does not waive the requirement to comply with a local floodplain ordinance, Virginia Uniform Statewide Building Code, or the requirements outlined in 44 CFR §§ 60.3, 60.4, or 60.5, as applicable.

D. The Director of DGS shall provide written rulings on variance requests to the applicant, the local community, and the State NFIP Coordinator. The State NFIP Coordinator shall maintain all documentation associated with the variance in perpetuity.

E. Any state agency that has received a variance prior to this Order shall provide the variance documentation to the State NFIP Coordinator to be maintained in perpetuity.

3. Freeboard[7] Standards for State-Owned Buildings in Flood-Prone Areas

A. Riverine Areas

(1) All new state-owned buildings located in a Special Flood Hazard Area shall be constructed so that the top of the lowest floor, including all equipment, is no less than three (3) feet above the Base Flood Elevation (or Flood Depth if an AO Zone), based on the effective Flood Insurance Rate Map and Flood Insurance Study for that area.

(2) All new state-owned buildings located in a Shaded X Zone shall be constructed so that the top of the lowest floor, including all equipment, is no less than three (3) feet above the Water Surface Elevation or the Base Flood Elevation of the adjacent Special Flood Hazard Area, whichever is less, based on the effective Flood Insurance Rate Map and Flood Insurance Study for that area.

B. Coastal Areas

(1) All new state-owned buildings located in a Special Flood Hazard Area shall be constructed so that the bottom of the lowest horizontal structural member of the lowest floor, including all equipment, is no less than three (3) feet above the Base Flood Elevation (or Flood Depth if an AO Zone), based on the effective Flood Insurance Rate Map and Flood Insurance Study for that area.

(2) All new state-owned buildings located in a Shaded X Zone shall be constructed so that the bottom of the lowest horizontal structural member of the lowest floor, including all equipment, is no less than three (3) feet above the Water Surface Elevation or the Base Flood Elevation of the adjacent Special Flood Hazard Area, whichever is less, based on the effective Flood Insurance Rate Map and Flood Insurance Study for that area. Wave action must be accounted for in the Water Surface Elevation.

C. Sea Level Rise Inundation Areas

(1) All new state-owned buildings located in a Sea Level Rise Inundation Area and any Special Flood Hazard Area shall be constructed so that the bottom of the lowest horizontal structural member of the lowest floor, including all equipment, is no less than eight (8) feet above the Base Flood Elevation (or Flood Depth if an AO Zone), based on the effective Flood Insurance Rate Map and Flood Insurance Study for that area.

(2) All new state-owned buildings located in a Sea Level Rise Inundation Area and any Shaded X Zone shall be constructed so that the bottom of the lowest horizontal structural member of the lowest floor, including all equipment, is no less than eight (8) feet above the Water Surface Elevation or the Base Flood Elevation of the adjacent Special Flood Hazard Area, whichever is less, based on the effective Flood Insurance Rate Map and Flood Insurance Study for that area. Wave action must be accounted for in the Water Surface Elevation in coastal areas.

(3) All new state-owned buildings located in a Sea Level Rise Inundation Area but not in a Special Flood Hazard

Area or Shaded X Zone shall be built so that the bottom of the lowest horizontal structural member of the lowest floor, including all equipment, is no less than five (5) feet above the mean sea level to account for future flood conditions. This freeboard standard is based on the Sea Level Rise Planning Standards identified in Section 4 below.

(4) The freeboard standards outlined in paragraphs 3C(1) and 3C(2) above is to account for future flood conditions and is based on three (3) feet of freeboard and the Sea Level Rise Planning Standards identified in Section 4 below.

D. If a Base Flood Elevation or Water Surface Elevation is not available, the state agency constructing the new state-owned building or structure shall have this elevation determined by a professional engineer in accordance with current hydrologic and hydraulic engineering analyses.

E. To reduce flood damages and allow for future adaptation opportunities, all new state-owned buildings located in Flood-Prone Areas shall be built using adaptive designs below the lowest floor.

F. The freeboard standards identified in this section shall apply to all new state-owned buildings receiving funding authorization on or after January 1, 2021.

4. Sea Level Rise Planning Standards

A. Based on recommendations from the Virginia Institute of Marine Science and the Commonwealth Center for Recurrent Flooding Resilience, the Commonwealth shall use the National Oceanographic and Atmospheric Administration (NOAA) Intermediate-High scenario curve, last updated in 2017, as the state standard for predicting sea level rise.

B. When scoping, designing, siting, and constructing state-owned buildings, a 50-year mid-life estimate for building longevity shall be used, which, under the NOAA Intermediate-High scenario curve, last updated in 2017, equates to nearly four (4) feet of sea level rise by 2070. This standard has been incorporated into the freeboard standards above, with an additional one (1) foot added to account for high tide.

C. The sea level rise planning standards identified in A and B of this section shall apply to all new state-owned buildings receiving funding authorization on or after January 1, 2021.

D. Additional studies and periodic updates of these planning standards shall be at the discretion of the Chief Resilience Officer.

5. Establishing Guidance Documentation

A. The Department of Conservation and Recreation, after consulting with DGS, shall develop a guidance document by October 1, 2020 to provide state agencies the methodology for complying with the freeboard standards and sea level rise planning standards adopted in this Order.

Establishing State-level Floodplain Management Standards for State Agencies

The Chief Resilience Officer shall convene a workgroup to establish state-level, NFIP compliant requirements for all development activities by state agencies on state-owned property within Flood-Prone Areas. The Secretaries of Administration, Commerce and Trade, Education, Natural Resources, Agricultural and Forestry, Public Safety and Homeland Security, Transportation, and Health and Human Resources, as well as the Special Assistant to the Governor for Coastal Adaptation and Protection or their designees, and any additional state officials designated by the Chief Resilience Officer shall comprise the members of the workgroup. The requirements and standards developed by the workgroup and approved by the Chief Resilience Officer shall replace the requirements in paragraphs 1A and 1B and shall incorporate the standards for state-owned buildings adopted in this Order.

1. As the state NFIP coordinating agency, the Department of Conservation and Recreation shall serve as lead staff to the workgroup.

2. The workgroup shall develop mandatory standards applicable to all state development in order to conform such development to the minimum requirements of the NFIP. The workgroup may also develop standards that exceed NFIP minimums that will enhance protection of life and property after analyzing short and long term costs to the Commonwealth.

3. Such standards shall include a process for permitting development in accordance with the established standards, a process for enforcing the established standards, and a process for documenting and maintaining records of any variances and development.

4. Such standards will incorporate the freeboard and sea level rise planning standards adopted in this Order.

5. Such standards shall include a process by which agencies may seek a variance from the standards developed by this workgroup. The process shall include a final review and approval process of any requests for a variance, which shall be done by the Department of Conservation and Recreation.

Effective Date of the Executive Order

This Executive Order rescinds Executive Memorandum 2-97: Floodplain Management Program for State Agencies, issued by Governor George Allen.

This Executive Order shall be effective November 15, 2019, and shall remain in full force and effect until superseded or rescinded by further executive action.

/s/ Ralph S. Northam
Governor

[1]Development for NFIP purposes is defined in 44 CFR § 59.1 as "Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials."

[2]The Special Flood Hazard Area may also be referred to as the 1% annual chance floodplain or the 100-year floodplain, as identified on the effective Flood Insurance Rate Map and Flood Insurance Study. This includes the following flood zones: A, AO, AH, AE, A99, AR, AR/AE, AR/AO, AR/AH, AR/A, VO, VE, or V.

[3]The Shaded X Zone may also be referred to as the 0.2% annual chance floodplain or the 500-year floodplain, as identified on the effective Flood Insurance Rate Map and Flood Insurance Study.

[4]The Sea Level Rise Inundation Area referenced in this Order shall be mapped based on the National Oceanic and Atmospheric Administration Intermediate-High scenario curve for 2100, last updated in 2017, and is intended to denote the maximum inland boundary of anticipated sea level rise.

[5]"State agency" shall mean all entities in the executive branch, including agencies, offices, authorities, commissions, departments, and all institutions of higher education.

[6]"Reconstructed" means a building that has been substantially damaged or substantially improved, as defined by the NFIP and the Virginia Uniform Statewide Building Code.

[7]"Freeboard" is a factor of safety usually expressed in feet above a flood level for purposes of floodplain management, as defined by FEMA.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (http://www.townhall.virginia.gov) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

STATE BOARD OF EDUCATION

Titles of Documents:

Proposed Revisions to the Guidelines for Uniform Performance Standards and Evaluation Criteria for Principals.

Proposed Revisions to the Guidelines for Uniform Performance Standards and Evaluation Criteria for Superintendents.

Public Comment Deadline: January 8, 2020.

Effective Date: January 9, 2020.

Agency Contact: Emily V. Webb, Director for Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2924, or email emily.webb@doe.virginia.gov.

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Title of Document: Proposed Revisions to the Guidelines for Uniform Performance Standards and Evaluation Criteria for Teachers.

Public Comment Deadline: January 8, 2020.

Effective Date: January 9, 2020.

Agency Contact: Patty Pitts, Assistant Superintendent for Teacher Education and Licensure, Department of Education, James Monroe Building, 101 North 14th Street, Richmond, VA 23219, telephone (804) 371-2522, or email patty.pitts@doe.virginia.gov.

STATE BOARD OF HEALTH

Title of Document: Disaster Exemption for Temporary Bed Increases.

Public Comment Deadline: January 8, 2020.

Effective Date: January 9, 2020.

Agency Contact: Rebekah E. Allen, Senior Policy Analyst, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2157, or email regulatorycomment@vdh.virginia.gov.

BOARD OF OPTOMETRY

Title of Document: Virginia Board of Optometry Bylaws.

Public Comment Deadline: January 8, 2020.

Effective Date: January 9, 2020.

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.

BOARD OF PHYSICAL THERAPY

Title of Document: Guidelines for Processing Applications for Licensure: Examination, Endorsement, and Reinstatement.

Public Comment Deadline: January 8, 2020.

Effective Date: January 9, 2020.

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.

SAFETY AND HEALTH CODES BOARD

Titles of Documents:

29 CFR Part 1915, Subpart B, Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment.

Cranes and Derricks in Construction, §§ 1926.1400 through 1926.1442.

Shipyard Employment "Tool Bag" Directive.

Standards Improvement Project - Phase IV (SIP - IV) Parts 1904, 1910, 1915, and 1926.

Subpart I, Personal Protective Equipment (PPE) for Shipyard Employment (Public Sector)--Inspection Procedures and Interpretive Guidelines.

Public Comment Deadline: January 8, 2020.

Effective Date: January 9, 2020.

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

STATE BOARD OF SOCIAL SERVICES

Title of Document: Child Care Subsidy Program Guidance Manual.

Public Comment Deadline: January 8, 2020.

Effective Date: January 9, 2020.

Agency Contact: Jennifer Gibbons, Senior Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-6749, or email jennifer.gibbons@dss.virginia.gov.

BOARD OF VETERINARY MEDICINE

Title of Document: Veterinary Establishment Inspection Report.

Public Comment Deadline: January 8, 2020.

Effective Date: January 9, 2020.

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 WATER CONTROL BOARD AND VIRGINIA WASTE MANAGEMENT BOARD

Proposed Consent Order for Frederick County

An enforcement action has been proposed for Frederick County for violations at the Frederick County landfill in Winchester, Virginia. The State Water Control Board and the Virginia Waste Management Board propose to issue a consent order with penalty to Frederick County to address noncompliance with the State Water Control Law, the Virginia Waste Management Act, and applicable regulations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Tiffany Severs will accept comments by email at tiffany.severs@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, from December 9, 2019, to January 8, 2020.

STATE WATER CONTROL BOARD

Proposed Consent Special Order for AdvanSix Inc.

An enforcement action is proposed for AdvanSix Inc. for alleged violations of the State Water Control Law occurring in Hopewell, Virginia. The State Water Control Board proposes to issue a consent special order to AdvanSix Inc. that is available for review and comment at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Comments can be made from December 9, 2019, to January 11, 2020, 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.

Proposed Consent Special Order for Browns Bluff LLC

An enforcement action has been proposed for Browns Bluff LLC for alleged violations that occurred at the Colony Pointe Subdivision in Chesterfield, Virginia. The State Water Control Board proposes to issue a consent special order to Browns Bluff LLC to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Cynthia Akers will accept comments by email at cynthia.akers@deq.virginia.gov, FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from December 9, 2019, to January 8, 2020.

Proposed Consent Special Order for Colony Construction Inc.

An enforcement action is proposed for Colony Construction Inc. for alleged violations of the State Water Control Law occurring at site location 37.5184-77.7849 in Powhatan County, Virginia. The State Water Control Board proposes to issue a consent special order to Colony Construction that is available for review and comment at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Comments can be made from December 9, 2019, to January 10, 2020, by email at jefferson.reynolds@deq.virginia.gov or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia 23060.

Proposed Consent Order for TAI Oak Hall Ltd. LLC

An enforcement action has been proposed for TAI Oak Hall Ltd. LLC for violations of State Water Control Law in Accomack County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. John Brandt will accept comments by email at john.brandt@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from December 9, 2019, to January 8, 2020.

Proposed Consent Order for Virginia Moons LLC

An enforcement action has been proposed for Virginia Moons LLC for violations at the Restless Moons Brewery. The State Water Control Board proposes to issue a consent order with penalty to Virginia Moons LLC to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Eric Millard will accept comments by email at eric.millard@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, from December 9, 2019, to January 8, 2020.

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.