VIRGINIA REGISTER OF REGULATIONS

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TABLE OF CONTENTS

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Table of Contents

THE 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

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing 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 proposed regulation 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 of Regulations 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 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 the final regulation contains changes made after publication of the proposed regulation that 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*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, 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 alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency may adopt emergency regulations if necessitated by an emergency situation or when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or fewer from its enactment. In either situation, approval of the Governor is required. The emergency regulation is effective upon its filing with the Registrar of Regulations, unless a later date is specified per § 2.2-4012 of the Code of Virginia. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under the circumstances noted in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Virginia Register* and are on the Register of Regulations website at register.dls.virgina.gov.

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. 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).

March 2021 through March 2022

Volume: Issue	Material Submitted By Noon*	Will Be Published On
37:14	February 10, 2021	March 1, 2021
37:15	February 24, 2021	March 15, 2021
37:16	March 10, 2021	March 29, 2021
37:17	March 24, 2021	April 12, 2021
37:18	April 7, 2021	April 26, 2021
37:19	April 21, 2021	May 10, 2021
37:20	May 5, 2021	May 24, 2021
37:21	May 19, 2021	June 7, 2021
37:22	June 2, 2021	June 21, 2021
37:23	June 16, 2021	July 5, 2021
37:24	June 30, 2021	July 19, 2021
37:25	July 14, 2021	August 2, 2021
37:26	July 28, 2021	August 16, 2021
38:1	August 11, 2021	August 30, 2021
38:2	August 25, 2021	September 13, 2021
38:3	September 8, 2021	September 27, 2021
38:4	September 22, 2021	October 11, 2021
38:5	October 6, 2021	October 25, 2021
38:6	October 20, 2021	November 8, 2021
38:7	November 3, 2021	November 22, 2021
38:8	November 15, 2021 **(Monday)**	December 6, 2021
38:9	December 1, 2021	December 20, 2021
38:10	December 15, 2021	January 3, 2022
38:11	December 29, 2021	January 17, 2022
38:12	January 12, 2022	January 31, 2022
38:13	January 26, 2022	February 14, 2022
38:14	February 9, 2022	February 28, 2022
38:15	February 23, 2022	March 14, 2022

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF SOCIAL WORK

Initial Agency Notice

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work.**

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

Name of Petitioner: Florine Edmunds.

Nature of Petitioner's Request: To extend the requirement for passage of the licensing examination and allow an additional one to three years for remediation, training, and equitable opportunities. To reduce the passing score by 10 points and provide study sheets for retaking examination.

Agency Plan for Disposition of Request: The petition will be published on February 15, 2021, with a comment period ending March 10, 2021. The board will consider the petition and any comment received at its meeting on March 12, 2021.

Public Comment Deadline: March 10, 2021.

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

VA.R. Doc. No. PFR21-337; Filed January 26, 2021, 3:03 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

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 following regulation is undergoing a periodic review and a small business impact review: **12VAC5-600, Waterworks Operation Fee**. 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.

Public comment period begins February 15, 2021, and ends March 8, 2021.

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

Contact Information: Nelson Daniel, Policy and Program Director, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7210.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals conducted a periodic review and a small business impact review of **18VAC160-30, Waterworks and Wastewater Works Operators Licensing Regulations**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated January 22, 2021, to support this decision.

The General Assembly has charged the board with the responsibility for regulating operators of waterworks or wastewater works by requiring that the board examine such individuals and issue licenses to those who have demonstrated sufficient competency to operate and supervise the operation of waterworks or wastewater works, while protecting the public health, welfare, and property and conserving and protecting the water resources of the Commonwealth. Waterworks or wastewater works that are not properly operated may pose a risk to the public health. The regulation helps fulfill this mandate from the General Assembly by ensuring that those who receive a license from the board meet minimum requirements for education and experience in order to operate and supervise the operation of waterworks or wastewater works.

The regulation meets the criteria set forth in Executive Order 14 (2018). The regulation contains the requirements for licensure of waterworks and wastewater works operators. The regulation is necessary to interpret and apply the requirements imposed upon the board by Chapter 23 of Title 54.1 (§ 54.1-2300 et seq.) of the Code of Virginia. The regulation is clearly written and understandable. The regulation is designed to achieve its objective in the most efficient and cost effective manner.

Waterworks and wastewater works operator licenses are issued to individuals. These individuals do not fall within the meaning of the term small business as defined in § 2.2-4007.1 of the Code of Virginia.

Section 54.1-2301 of the Code of Virginia mandates that the board examine waterworks and wastewater works operators and issue licenses in order to protect the public health, welfare, and property and conserving while protecting the water resources of the Commonwealth. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The board provides protection to the public welfare of the citizens of the Commonwealth by ensuring that those who receive a license from the board meet minimum requirements for education, experience, and competency in order to operate and supervise the operation of waterworks or wastewater works. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. Based on the comments received during the public comment period, there does not appear to be a reason to repeal the regulation. There also does not appear to be a reason to amend the regulation at this time. However, the decision to retain a regulation in its current form does not prevent the board from conducting review or amendment of the regulation in the future.

This is the first periodic review of this regulation since it became effective in 2017. On January 14, 2021, the board discussed the regulation and for the reasons stated determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Trisha Henshaw, Executive Director, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals conducted a periodic review and a small business impact review of **18VAC160-40, Onsite Sewage System Professionals Licensing Regulations**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated January 22, 2021, to support this decision.

The General Assembly has charged the board with the responsibility for regulating installers or operators of onsite sewage systems and onsite soil evaluators by requiring that such individuals obtain a license in order to engage in these occupations. Residences that do not have access to public water systems must rely on onsite septic systems to properly and safely dispose of wastewater they produce. Installation and operation of onsite septic systems by those who lack sufficient expertise in these tasks poses a risk to the public health. Soil evaluators are responsible for testing soils to determine whether sites are appropriate for installation of a disposal system, designing such systems, and certifying that such systems comply with applicable state regulations and local ordinances. Soil evaluators who lack sufficient expertise to perform these duties may pose a risk to the public health. In addition, the improper installation or operation of an onsite septic system can pose a substantial risk of financial harm to homeowners who will be responsible for assuming the costs to remediate damage and repair or replace defective systems.

The regulation meets the criteria set forth in Executive Order 14 (2018). The regulation contains the requirements for licensure of onsite sewage system installers, onsite sewage system operators, and onsite soil evaluators. The regulation is necessary to interpret and apply the requirements imposed upon the board by Chapter 23 of Title 54.1 (§ 54.1-2300 et seq.) of the Code of Virginia and to protect the public welfare, in part by ensuring those who install and operate onsite sewage systems meet minimum requirements for education, experience, and competency. The regulation is clearly written and understandable. The regulation is designed to achieve its objective in the most efficient and cost effective manner.

Onsite sewage system installer, onsite sewage system operator, and onsite soil evaluator licenses are issued to individuals. These individuals do not fall within the meaning of the term small business as defined in § 2.2-4007.1 of the Code of Virginia. Individuals who are required to be licensed may be owners or employees of business entities that fall within the meaning of small business. Business entities that perform installation, repair, improvement, or removal of septic tanks, septic systems, and other onsite sewage disposal systems annexed to real property are subject to regulation by the Board for Contractors as contractors and are required to have a contractor license issued by that agency. Some of these business entities may fall within the meaning of the term small business. The Board for Contractors requires contractors who offer and engage in this type of contracting work to have a specialty designation on the contractor license for sewage disposal systems contracting. The Board for Contractors requires certain personnel of the contractor to be licensed as an onsite sewage system installer in order for the business entity to qualify for a contractor license with such designation.

Section 54.1-2301 of the Code of Virginia mandates that the board license and regulate onsite sewage system professionals in order to protect the public health and welfare. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The board provides protection to the public welfare of the citizens of the Commonwealth by ensuring that those who receive a license from the board meet minimum requirements for education, experience, and competency in order to install or operate onsite septic systems, or perform the duties of an onsite soil evaluator. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. Based on the comment received during the public comment period, there does not appear to be a reason to repeal the regulation. There also does not appear to be a reason to amend the regulation at this time. However, the decision to retain a regulation in its current form does not prevent the board from conducting review or amendment of the regulation in the future.

This is the first periodic review of this regulation since it became effective in 2017. On January 14, 2021, the board discussed the regulation and for the reasons stated determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Trisha Henshaw, Executive Director, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Waste Management Board intends to consider amending **9VAC20-81, Solid Waste Management Regulations**. The purpose of the proposed action is to consider the results of the 2019 periodic review of the regulation. Proposed amendments to the siting, design, and operation requirements of solid waste management facilities, primarily landfills, and to the requirements pertaining to the open burning of household trash will be considered. Minor clarifications or revisions may also be made to other areas of the regulation. Proposed amendments may also include areas identified in the August 2019 final report of the Office of the Secretary of Natural Resources to Governor Ralph Northam pursuant to the Governor's Executive Order 6 (2018).

The agency does not intend to hold a public hearing at the proposed stage unless requests for a public hearing are received during the Notice of Intended Regulatory Action public comment period from at least 25 persons.

Statutory Authority: §§ 10.1-1402 and 10.1-1408.1 of the Code of Virginia; 42 USC § 6941 et seq.; 40 CFR Part 258.

Public Comment Deadline: April 16, 2021.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4178, or email melissa.porterfield@deq.virginia.gov.

VA.R. Doc. No. R21-6661; Filed January 1, 0001, 12:00 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

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

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

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

Effective Date: February 1, 2021.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23551, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments modify landing dates, possession limits, and landing limits for summer flounder commercially harvested offshore (federal waters) and landed in Virginia.

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

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

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of 10% by weight of Atlantic croaker or the combined landings, on board a vessel, of black sea bass, scup, squid, scallops, and Atlantic mackerel.

2. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of 1,500 pounds landed in combination with Atlantic croaker.

3. Fail to sell the vessel's entire harvest of all species at the point of landing.

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

C. From February ~~24~~ 25 through ~~March 31~~ April 7, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

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

2. Land in Virginia more than a total of ~~12,500~~ 15,000 pounds of summer flounder.

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

D. From September 8 through October 31, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

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

2. Land in Virginia more than a total of 12,000 pounds of summer flounder.

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

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

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

2. Land in Virginia more than a total of 12,000 pounds of summer flounder.

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

F. From January 1 through December 31, any boat or vessel issued a valid federal summer flounder moratorium permit and owned and operated by a legal Virginia Commercial Hook-and-Line Licensee that possesses a Restricted Summer

Flounder Endorsement shall be restricted to a possession and landing limit of 200 pounds of summer flounder, except as described in 4VAC20-620-30 F.

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

H. Any possession limit described in this section shall be determined by the weight in pounds of summer flounder as customarily packed, boxed, and weighed by the seafood buyer or processor. The weight of any summer flounder in pounds found in excess of any possession limit described in this section shall be prima facie evidence of violation of this chapter. Persons in possession of summer flounder aboard any vessel in excess of the possession limit shall be in violation of this chapter unless that vessel has requested and been granted safe harbor. Any buyer or processor offloading or accepting any quantity of summer flounder from any vessel in excess of the possession limit shall be in violation of this chapter, except as described by subsection K of this section. A buyer or processor may accept or buy summer flounder from a vessel that has secured safe harbor, provided that vessel has satisfied the requirements described in subsection K of this section.

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

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

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

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

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

VA.R. Doc. No. R21-6681; Filed January 26, 2021, 4:28 p.m.

Final Regulation

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

Title of Regulation: **4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-20, 4VAC20-950-40, 4VAC20-950-45).**

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

Effective Date: February 1, 2021.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23551, telephone (757) 247-2248, email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments modify the reporting requirements for the February recreational season and clarify the size of the degradable panel required on commercial fish pots.

4VAC20-950-20. Definitions.

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

"Annual quota" means ~~the Commonwealth's~~ Virginia's 20% share of the annual coastwide commercial black sea bass quota managed by the Atlantic States Marine Fisheries Commission.

"Black sea bass" means any fish of the species Centropristis striata.

"Land" or "landing" means to (i) enter port with finfish, shellfish, crustaceans, or other marine seafood on board any boat or vessel; (ii) begin offloading finfish, shellfish,

crustaceans, or other marine seafood; or (iii) offload finfish, shellfish, crustaceans, or other marine seafood.

"Recreational vessel" means any vessel, kayak, charter vessel, or headboat ~~participating in the recreational black sea bass fishery~~ fishing recreationally.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, excluding the caudal fin filament, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

"Virginia Saltwater Fisherman's Journal" means the online web-based resource provided by the Marine Resources Commission to report recreational harvest of seafood at https://www.vasaltwaterjournal.com.

4VAC20-950-40. Gear restrictions.

It shall be unlawful for any person to place, set, or fish any fish pot in Virginia tidal waters for the purposes of harvesting black sea bass or to possess or to land in Virginia black sea bass harvested by fish pots which are not constructed as follows:

1. With two escape vents of 2-1/2 inches diameter circular dimension, or 2 inches square dimension, or 1-3/8 inches by 5-3/4 inches rectangular dimension.

2. With hinges or fasteners on one side panel or door , which measures at least 3 inches by 6 inches, made of the following materials:

a. Untreated hemp, jute, or cotton string of 3/16 inches or less diameter;

b. Magnesium alloy, timed float releases (pop-up devices), or similar magnesium alloy fasteners; or

c. Ungalvanized or uncoated iron wire of 0.094 inches or less in diameter.

4VAC20-950-45. Recreational possession limits and seasons.

A. It shall be unlawful for any person fishing with ~~hook and line~~ hook-and-line, rod and reel, spear, gig, or other recreational gear to possess more than 15 black sea bass. When fishing ~~is~~ from a ~~boat or~~ recreational vessel where the entire catch is held in a common hold or container, the possession limit shall be for that ~~boat or~~ vessel and shall be equal to the number of persons on board legally licensed to fish, multiplied by 15. The captain or operator of the ~~boat or~~ vessel shall be responsible for that ~~boat or~~ vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.

B. Possession of any quantity of black sea bass that exceeds the possession limit described in subsection A of this section shall be presumed to be for commercial purposes.

C. The open recreational fishing season shall be from February 1 through the last day of February ~~29~~, May 15 through May 31, and June 22 through December 31.

D. It shall be unlawful for any person fishing recreationally to take, catch, or possess any black sea bass, except during an open recreational season.

E. From February 1 through the last day of February ~~29~~, it shall be unlawful for any person to possess or land any black sea bass harvested from a recreational vessel, unless the captain or operator of that recreational vessel has obtained a Recreational Black Sea Bass Permit from the Marine Resources Commission. ~~The captain or operator shall be responsible for reporting for all anglers on the recreational vessel and shall provide that captain's or that operator's Marine Resources Commission identification (MRC ID) number, the date of fishing, the number of persons on board, the mode of fishing, and the number of black sea bass kept or released. That report shall be submitted to the commission or to the Standard Atlantic Fisheries Information System as described in this subsection. It shall be unlawful for any permittee to fail to report trips where black sea bass were caught, whether harvested, released, or possessed in accordance with this section, on forms provided by the commission or through the Virginia Saltwater Fisherman's Journal within seven days after the trip occurred. It shall be unlawful for any permittee to fail to report trips where black sea bass were targeted but not successfully caught by March 15 of the current calendar year. Any permittee who did not participate in the recreational black sea bass season during February shall notify the commission of the permittee's lack of participation by March 15 of the current calendar year.~~

1. The captain or operator shall be responsible for reporting for all anglers on the recreational vessel and shall provide that captain's or that operator's Marine Resources Commission identification (MRC ID) number, the date of fishing, the number of persons on board, the mode of fishing, and the number of black sea bass kept or released. That report shall be submitted to the Marine Resources Commission (commission) on forms provided by the commission or through the Virginia Saltwater Fisherman's Journal.

a. It shall be unlawful for any permittee to fail to report each trip where black sea bass were targeted, whether black sea bass were harvested, released, or not caught, by March 15 of the current calendar year.

b. It shall be unlawful for any permittee who did not take any fishing trips to target black sea bass in the February recreational black sea bass season to fail to report lack of participation by March 15 of the current calendar year.

~~F.~~ 2. It shall be unlawful for any permittee to fail to contact the Law Enforcement Operations at 1-800-541-4646 before or immediately after the start of each fishing trip. The permittee shall provide the Law Enforcement Operations with the permittee's name, MRC ID number, the point of landing, a description of the vessel, estimated return to shore time, and a contact phone number. ~~Any authorized permittee shall allow commission staff to sample the catch to obtain biological information for scientific and management purposes only.~~

3. Any permittee shall allow the commission to sample the vessel's catch to obtain biological information for scientific and management purposes.

VA.R. Doc. No. R21-6680; Filed January 26, 2021, 4:28 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Forms

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

Title of Regulation: **9VAC25-800. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters.**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act.

Agency Contact: Debra Harris, Policy and Planning Specialist, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, FAX (804) 698-4178, or email debra.harris@deq.virginia.gov.

FORMS (9VAC25-800)

Pesticide Discharge Management Plan (PDMP) VAG-87 (rev. 2019)

VA.R. Doc. No. R21-6246; Filed January 26, 2021, 1:59 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-210).**

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

Public Hearing Information: No public hearings are currently scheduled.

Public Comment Deadline: March 17, 2021.

Effective Date: April 4, 2021.

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

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the State Plan for Medical Assistance and to promulgate regulations. Section 32.1-324 of the Code of Virginia grants the Director of the Department of Medical Assistance Services (DMAS) the authority of the board when it is not in session.

Purpose: The regulation is essential to protect the health, safety, and welfare of citizens in that it ensures that DMAS can continue to obtain state supplemental drug rebates and that the rules for such rebates are transparent to all parties.

Rationale for Using Fast-Track Rulemaking Process: These regulatory changes are expected to be noncontroversial because they do not represent changes in practice and do not involve any costs to Medicaid providers or the Commonwealth. The changes align the language in the Virginia Administrative Code to language that was approved by the Centers for Medicare and Medicaid Services (CMS) in the Virginia State Plan.

Substance: This regulation updates the text related to supplemental drug rebates in accordance with text changes requested by CMS. No changes are made to practices related to drug rebates, and no costs are associated with these changes. The amendments align the regulation with the CMS-approved language in the state plan.

Issues: The primary advantage of this regulatory action is that it provides clarity on the CMS-approved rules relating to supplemental drug rebate agreements. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medical Assistance Services proposes to remove limiting language that predicates that a supplemental drug rebate agreement can only be between the Commonwealth and manufacturers and to clarify the regulatory text.

Background. This regulation establishes the authority for the Department of Medical Assistance Services (DMAS) to seek supplemental rebates from pharmaceutical manufacturers for drug purchases for fee-for-service claims and for Medicaid member utilization through managed care organizations (MCO). Supplemental rebates are cash rebates that offset Virginia Medicaid expenditures and that supplement federal rebates. The amount of supplemental rebates is negotiated with drug manufacturers.

With the expansion of managed care, utilization of drugs has shifted significantly away from fee-for-service to managed care over the last two decades. As a result, the amount of supplemental rebates collected from drug purchases for the fee-for-service population shrunk, which in turn caused an erosion in the individual negotiating power of most states.[1] In response, some states have formed multi-state purchasing pools when negotiating supplemental rebates to maximize the amount of rebates they can collect.

In preparation for joining a multi-state purchasing pool, DMAS submitted a state plan amendment that would authorize it, and was subsequently advised by the Centers for Medicare and Medicaid Services (CMS) to resubmit the changes when such a plan was impending rather than being a future possibility.[2] However, during its review, CMS suggested amendments governing the supplemental rebates because some of the language was outdated and not consistent with federal rules. In addition, CMS agreed to amend the language that predicated that an agreement could only be between the Commonwealth and the manufacturers.

Estimated Benefits and Costs. One of the proposed amendments would remove the predicating language. As it stands now, the predicating language is limiting in the sense that it does not accommodate the Commonwealth's membership in a multi-state purchasing pool. Removal of this limitation however would not authorize DMAS to join such a pool. For DMAS to join such a pool, additional approval from CMS and further regulatory action would be needed. Therefore, although this change would remove limiting language, it would have no practical economic impact at this time.

Likewise, the removal of outdated language would also have no practical economic effect other than improving the clarity and accuracy of the regulatory text and satisfying the request from CMS.

Businesses and Other Entities Affected. Virginia Medicaid has supplemental rebate agreements with approximately 35 manufacturers. The amount of supplemental rebates collected in the second half of 2019 was approximately $12.8 million for 218,176 prescriptions. No adverse economic impact[3] on manufacturers is indicated.

Small Businesses[4] Affected. This regulatory action does not impact small businesses since the supplemental rebate agreements are with large national pharmaceutical manufacturers.[5]

Localities[6] Affected.[7] The proposed amendments do not affect any particular locality and do not introduce costs for local governments.

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

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

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[1]Supplemental rebates for the managed care drug utilization are retained by MCOs.

[2]Currently, Magellan, DMAS's Pharmacy Benefit Management Services contractor, negotiates Virginia specific supplemental rebate agreements with manufacturers.

[3]Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

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

[5]Source: DMAS

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

[7]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget and raised no issues with this analysis.

Summary:

The amendment updates provisions regarding supplemental drug rebates in accordance with text changes requested by the Centers for Medicare and Medicaid Services to conform the regulation to language in the State Plan for Medical Assistance.

12VAC30-50-210. Prescribed drugs, dentures, and prosthetic devices, and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

A. Prescribed drugs.

1. Drugs for which Federal Financial Participation is not available, pursuant to the requirements of § 1927 of the Social Security Act (OBRA 90 § 4401), shall not be covered.

2. Nonlegend drugs shall be covered by Medicaid in the following situations:

a. Insulin, syringes, and needles for diabetic patients;

b. Diabetic test strips for Medicaid recipients younger than 21 years of age;

c. Family planning supplies;

d. Designated categories of nonlegend drugs for Medicaid recipients in nursing homes;

e. Designated drugs prescribed by a licensed prescriber to be used as less expensive therapeutic alternatives to covered legend drugs; and

f. U.S. Environmental Protection Agency-registered insect repellents with one of the following active ingredients: DEET, picaridin, IR3535, oil of lemon eucalyptus, or p-Menthane-3,8-diol for all Medicaid members of reproductive age (ages 14 through 44 years) and all pregnant women, when prescribed by an authorized health professional.

3. Legend drugs are covered for a maximum of a 34-day supply per prescription per patient with the exception of the drugs or classes of drugs identified in 12VAC30-50-520. FDA-approved drug therapies and agents for weight loss, when preauthorized, will be covered for recipients who meet the strict disability standards for obesity established by the Social Security Administration in effect on April 7, 1999, and whose condition is certified as life threatening, consistent with Department of Medical Assistance Services' medical necessity requirements, by the treating physician. For prescription orders for which quantity exceeds a 34-day supply, refills may be dispensed in sufficient quantity to fulfill the prescription order within the limits of federal and state laws and regulations.

4. Prescriptions for Medicaid recipients for multiple source drugs subject to 42 CFR 447.332 shall be filled with generic drug products unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written or unless the drug class is subject to the preferred drug list.

5. New drugs shall be covered in accordance with the Social Security Act § 1927(d) (OBRA 90 § 4401).

6. The number of refills shall be limited pursuant to § 54.1-3411 of the Drug Control Act.

7. Drug prior authorization.

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

"Clinical data" means drug monographs as well as any pertinent clinical studies, including peer review literature.

"Complex drug regimen" means treatment or course of therapy that typically includes multiple medications, co-morbidities, or caregivers.

"Department" or "DMAS" means the Department of Medical Assistance Services.

"Drug" shall have the same meaning, unless the context otherwise dictates or the board otherwise provides by regulation, as provided in the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

"Emergency supply" means 72-hour supplies of the prescribed medication that may be dispensed if the prescriber cannot readily obtain authorization, or if the physician is not available to consult with the pharmacist, including after hours, weekends, and holidays and the pharmacist, in his professional judgment consistent with current standards of practice, feels that the patient's health would be compromised without the benefit of the drug, or other criteria defined by the Pharmacy and Therapeutics Committee and DMAS.

"Nonpreferred drugs" means those drugs that were reviewed by the Pharmacy and Therapeutics Committee and not included on the preferred drug list. Nonpreferred drugs may be prescribed but require authorization prior to dispensing to the patient.

"Pharmacy and Therapeutics Committee," "P&T Committee" or "committee" means the committee formulated to review therapeutic classes, conduct clinical reviews of specific drugs, recommend additions or deletions to the preferred drug list, and perform other functions as required by the department.

"Preferred drug list" or "PDL" means the list of drugs that meet the safety, clinical efficacy, and pricing standards employed by the P&T Committee and adopted by the department for the Virginia Medicaid fee-for-service program. Most drugs on the PDL may be prescribed and dispensed in the Virginia Medicaid fee-for-service program without prior authorization; however, some drugs as recommended by the Pharmacy and Therapeutics Committee may require authorization prior to dispensing to the patient.

"Prior authorization," as it relates to the PDL, means the process of review by a clinical pharmacist of legend drugs that are not on the preferred drug list, or other drugs as recommended by the Pharmacy and Therapeutics Committee, to determine if medically justified.

"State supplemental rebate" means any cash rebate that offsets Virginia Medicaid expenditure and that supplements the federal rebate. State supplemental rebate amounts shall be calculated in accordance with the Virginia Supplemental Drug Rebate Agreement Contract and Addenda.

"Therapeutic class" means a grouping of medications sharing the same Specific Therapeutic Class Code (GC3)

within the Federal Drug Data File published by First Data Bank, Inc.

"Utilization review" means the prospective and retrospective processes employed by the agency to evaluate the medical necessity of reimbursing for certain covered services.

b. Medicaid Pharmacy and Therapeutics Committee.

(1) The department shall utilize a Pharmacy and Therapeutics Committee to assist in the development and ongoing administration of the preferred drug list and other pharmacy program issues. The committee may adopt bylaws that set out its make-up and functioning. A quorum for action of the committee shall consist of seven members.

(2) Vacancies on the committee shall be filled in the same manner as original appointments. DMAS shall appoint individuals for the committee that assures a cross-section of the physician and pharmacy community and remains compliant with General Assembly membership guidelines.

(3) Duties of the committee. The committee shall receive and review clinical and pricing data related to the drug classes. The committee's medical and pharmacy experts shall make recommendations to DMAS regarding various aspects of the pharmacy program. For the preferred drug list program, the committee shall select those drugs to be deemed preferred that are safe, clinically effective, as supported by available clinical data, and meet pricing standards. Cost effectiveness or any pricing standard shall be considered only after a drug is determined to be safe and clinically effective.

(4) As the U.S. Food and Drug Administration (FDA) approves new drug products, the department shall ensure that the Pharmacy and Therapeutics Committee will evaluate the drug for clinical effectiveness and safety. Based on clinical information and pricing standards, the P&T Committee will determine if the drug will be included in the PDL or require prior authorization.

(a) If the new drug product falls within a drug class previously reviewed by the P&T Committee, until the review of the new drug is completed, it will be classified as nonpreferred, requiring prior authorization in order to be dispensed. The new drug will be evaluated for inclusion in the PDL no later than at the next review of the drug class.

(b) If the new drug product does not fall within a drug class previously reviewed by the P&T Committee, the new drug shall be treated in the same manner as the other drugs in its class.

(5) To the extent feasible, the Pharmacy and Therapeutics Committee shall review all drug classes included in the preferred drug list at least every 12 months and may recommend additions to and deletions from the PDL.

(6) In formulating its recommendations to the department, the committee shall not be deemed to be formulating regulations for the purposes of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

(7) Immunity. The members of the committee, the staff of the department, and the contractor shall be immune, individually and jointly, from civil liability for any act, decision, or omission done or made in performance of their duties pursuant to this subsection while serving as a member of such board, committee, or staff provided that such act, decision, or omission is not done or made in bad faith or with malicious intent.

c. Pharmacy prior authorization program. Pursuant to § 1927 of the Act and 42 CFR 440.230, the department shall require the prior authorization of certain specified legend drugs. For those therapeutic classes of drugs subject to the PDL program, drugs with nonpreferred status included in the DMAS drug list shall be subject to prior authorization. The department also may require prior authorization of other drugs only if recommended by the P&T Committee. Providers who are licensed to prescribe legend drugs shall be required to obtain prior authorization for all nonpreferred drugs or other drugs as recommended by the P&T Committee.

(1) Prior authorization shall consist of prescription review by a licensed pharmacist or pharmacy technician to ensure that all predetermined clinically appropriate criteria, as established by the P&T Committee relative to each therapeutic class, have been met before the prescription may be dispensed. Prior authorization shall be obtained through a call center staffed with appropriate clinicians, or through written or electronic communications (e.g., faxes, mail). Responses by telephone or other telecommunications device within 24 hours of a request for prior authorization shall be provided. The dispensing of 72-hour emergency supplies of the prescribed drug may be permitted and dispensing fees shall be paid to the pharmacy for such emergency supply.

(2) The preferred drug list program shall include (i) provisions for an expedited review process of denials of requested prior authorization by the department; (ii) consumer and provider education; and (iii) training and information regarding the preferred drug list both prior to implementation as well as ongoing communications, to include computer and website access to information and multilingual material.

(3) Exclusion of protected groups from the pharmacy preferred drug list prior authorization requirements. The following groups of Medicaid eligibles shall be excluded from pharmacy prior authorization requirements: individuals enrolled in hospice care, services through PACE or pre-PACE programs; persons having comprehensive third party insurance coverage; minor children who are the responsibility of the juvenile justice

system; and refugees who are not otherwise eligible in a Medicaid covered group.

d. ~~State supplemental~~ Supplemental rebates. The department has the authority to seek supplemental rebates from pharmaceutical manufacturers. In addition to collecting supplemental rebates for fee-for-service claims, the department may, at its option, also collect supplemental rebates for Medicaid member utilization through MCOs under an agreement. ~~The contract regarding supplemental rebates shall exist between the manufacturer and the Commonwealth. Rebate~~ Supplemental rebate agreements ~~between the Commonwealth and a pharmaceutical manufacturer~~ shall be separate from the federal rebates and in compliance with federal law, §§ 1927(a)(1) and 1927(a)(4) of the Social Security Act. All rebates collected on behalf of the Commonwealth shall be collected for the sole benefit of the state share of costs. ~~One hundred percent of the supplemental rebates collected on behalf of the state shall be remitted to the state. Supplemental drug rebates received by the Commonwealth in excess of those required under the national drug rebate agreement will be shared with the federal government on the same percentage basis as applied under the national drug rebate agreement.~~

e. Pursuant to 42 USC § 1396r-8(b)(3)(D), information disclosed to the department or to the committee by a pharmaceutical manufacturer or wholesaler which discloses the identity of a specific manufacturer or wholesaler and the pricing information regarding the drugs by such manufacturer or wholesaler is confidential and shall not be subject to the disclosure requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

f. Appeals for denials of prior authorization shall be addressed pursuant to 12VAC30-110, Part I, Client Appeals.

8. Coverage of home infusion therapy. This service shall be covered consistent with the limits and requirements set out within home health services (12VAC30-50-160). Multiple applications of the same therapy (e.g., two antibiotics on the same day) shall be covered under one service day rate of reimbursement. Multiple applications of different therapies (e.g., chemotherapy, hydration, and pain management on the same day) shall be a full service day rate methodology as provided in pharmacy services reimbursement.

B. Dentures. Dentures are provided only as a result of EPSDT and subject to medical necessity and preauthorization requirements specified under Dental Services.

C. Prosthetic devices.

1. Prosthetic services shall mean the replacement of missing arms, legs, eyes, and breasts and the provision of any internal (implant) body part. Nothing in this regulation shall be construed to refer to orthotic services or devices or organ transplantation services.

2. Artificial arms and legs, and their necessary supportive attachments, implants and breasts are provided when prescribed by a physician or other licensed practitioner of the healing arts within the scope of their professional licenses as defined by state law. This service, when provided by an authorized vendor, must be medically necessary and preauthorized for the minimum applicable component necessary for the activities of daily living.

3. Eye prostheses are provided when eyeballs are missing regardless of the age of the recipient or the cause of the loss of the eyeball. Eye prostheses are provided regardless of the function of the eye.

D. Eyeglasses. Eyeglasses shall be reimbursed for all recipients younger than 21 years of age according to medical necessity when provided by practitioners as licensed under the Code of Virginia.

VA.R. Doc. No. R21-6283; Filed January 19, 2021, 8:50 a.m.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Fast-Track Regulation

Title of Regulation: **13VAC5-112. Enterprise Zone Grant Program Regulation (amending 13VAC5-112-290, 13VAC5-112-380).**

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

Public Hearing Information: No public hearings are currently scheduled.

Public Comment Deadline: March 17, 2021.

Effective Date: April 1, 2021.

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

Basis: The Board of Housing and Community Development is authorized to promulgate this regulation under § 59.1-541 of the Code of Virginia.

Purpose: This regulatory change provides additional flexibility for applicants and regulants and is necessary to protect the health, safety, and welfare of citizens as it removes provisions that require unneeded in-person interactions in the COVID-19 environment.

Rationale for Using Fast-Track Rulemaking Process: The regulatory change is noncontroversial as it allows for digital-

only applications, which is standard practice for many agencies and entities. Most program applicants already submit secondary digital applications.

Substance: This change eliminates the need to submit hard copies of Enterprise Zone applications, critical during the COVID-19 environment.

Issues: This regulatory action is advantageous to the public and the agency as it provides flexibility and eliminates the need for hard copies of applications. No disadvantages exist for the public, the agency, or Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Housing and Community Development (Board) proposes to no longer require that applications for grants under the Virginia Enterprise Zone (VEZ) program be submitted in hard copy.

Background. The VEZ program is a partnership between state and local government that is designed to encourage job creation and private investment. VEZ accomplishes this by designating enterprise zones throughout the state and providing two grant-based incentives, the Job Creation Grant (JCG) and the Real Property Investment Grant (RPIG), to qualified investors and job creators within those zones, while the locality provides local incentives.

The current regulation states that applications for the JCG and the RPIG must either be hand-delivered by the date specified in this section or sent by certified mail with a return receipt requested and postmarked no later than the date specified in this section. The Board proposes to amend the text to state that applications for the JCG and the RPIG must be received by the Department, as specified by the Department, no later than the date specified in this section. In practice, the Department of Housing and Community Development has indicated that it would accept applications either electronically or in hard copy.[1]

Estimated Benefits and Costs. The proposal in practice appears to be beneficial in that it would provide greater flexibility for firms in delivering applications for the JCG and the RPIG, and may moderately reduce costs. By sending applications electronically, travel and printing costs could be saved versus the hand delivery of applications, and the costs of postage and printing could be saved versus applying by certified mail.

Businesses and Other Entities Affected. The proposed amendments affect the approximate 200 annual applicants for VEZ grants, as well as about 40 certified public accountants.[2] The existing and proposed regulations require that the accuracy and validity of information provided in applications be attested to by an independent certified public accountant licensed by the Commonwealth. The proposal does not produce cost for any affected entity.

Small Businesses[3] Affected. The proposed amendments do not appear to adversely affect small businesses.

Localities[4] Affected.[5] The proposed regulation particularly affects localities with enterprise zones. The following cities contain enterprise zones: Bristol, Covington, Danville, Emporia, Franklin, Galax, Hampton, Hopewell, Lynchburg, Martinsville, Newport News, Norfolk, Petersburg, Portsmouth, Radford, Richmond, Roanoke, Staunton, Waynesboro, and Winchester. The following counties contain enterprise zones: Accomack, Alleghany, Bedford, Brunswick, Carroll, Dickenson, Grayson, Greensville, Halifax, Henrico, Henry, Isle of Wight, Lancaster, Lunenburg, Mecklenburg, Northampton, Northumberland, Page, Patrick, Pittsylvania, Prince Edward, Prince George, Pulaski, Richmond, Scott, Smyth, Southampton, Tazewell, Washington, Westmoreland, Wise, and Wythe.[6]

The proposal does not introduce costs for local governments.

Projected Impact on Employment. The proposal does not appear to affect total employment.

Effects on the Use and Value of Private Property. The proposal may modestly reduce application costs for private firms that apply for either the JCG or the RPIG, which may very modestly positively affect their value.

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[1]According to the Department of Housing and Community Development, this information would be in a guidance document.

[2]Data source: Department of Housing and Community Development

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

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

[5]§ 2.2-4007.04 defines particularly affected as bearing disproportionate material impact.

[6]Source: https://www.dhcd.virginia.gov/sites/default/files/Docx/vez/vez-map.pdf

Agency's Response to Economic Impact Analysis: The Board of Housing and Community Development and the Department of Housing and Community Development staff concur with the economic impact analysis.

Summary:

The amendments remove requirements for a hard copy application to be submitted for those seeking grants under the Enterprise Zone Program and allow applicants to submit digital-only applications.

13VAC5-112-290. Application submittal and processing.

A. In order to claim the grant, an application must be submitted to the department on a prescribed form. Applicants shall provide other documents as prescribed by the department.

B. Local zone administrators must verify that the location of the business is in the enterprise zone in a manner prescribed by the department.

C. The accuracy and validity of information provided in such applications, including that related to permanent full-time positions, wage rates, and provision of health benefits are to be attested to by an independent certified public accountant licensed in Virginia through an agreed-upon procedures engagement conducted in accordance with current attestation standards established by the American Institute of Certified Public Accountants, using procedures provided by the department as assurance that the firm has met the criteria for qualification prescribed in this section.

D. Business firms with base year employment of 100 or fewer permanent full-time positions and that create in a qualification year 25 or fewer grant eligible positions seeking to qualify for job creation grants as provided for in § 59.1-547 of the Code of Virginia shall be exempt from the attestation requirement for that qualification year. The permanent full-time positions, wage rates, and provision of health benefits of such business firms shall be subject to verification by the department.

E. In order to request job creation grants, business firms shall submit the application form, final attestation report, if an attestation is required, and all required documentation to the department by no later than April 1 of the calendar year subsequent to the qualification year.

F. If the April 1 due date falls on a weekend or holiday, applications are due the next business day.

G. Applications submitted by April 1 without the required attestation report shall be considered late applications and processed according to subsection I of this section.

H. The department shall notify the business in writing of any incomplete or missing required documentation or request written clarification from the business firm on information provided by no later than May 15. Business firms must respond to any unresolved issues by no later than June 1. If the department does not meet its May 15 date for notification, then businesses must respond to any unresolved issues within 10 calendar days of the actual notification.

I. Any applications with the required final attestation report and required documentation submitted after the April 1 due date but before May 15 of the calendar year subsequent to the qualification year will be held until the department determines that funds remain and it will not have to prorate grant awards. At such time, the department will review and process such applications and any applications pursuant to subsection F of this section on a first-come first served basis.

J. The department shall award job creation grants and notify all applicants by June 30 as to the amount of the grant they shall receive.

K. Applications must ~~either~~ be ~~hand-delivered by the date specified in this section or sent by certified mail with a return receipt requested and postmarked~~ received by the department, as specified by the department, no later than the date specified in this section.

L. Applicants may only apply for grants that they are otherwise eligible to claim for such calendar year, subject to the limitations provided by 13VAC5-112-400.

13VAC5-112-380. Application submittal and processing.

A. In order to claim the grant an application must be submitted to the department on prescribed ~~form or~~ forms. Applicants shall provide other documents as prescribed by the department.

B. Local zone administrators must verify that the location of the building or facility is in the enterprise zone in a manner prescribed by the department.

C. The accuracy and validity of information provided in such applications, including that related to qualified real property investments are to be attested to by an independent certified public accountant licensed in Virginia through an agreed-upon procedures engagement conducted in accordance with current attestation standards established by the American Institute of Certified Public Accountants, using procedures provided by the department as assurance that the firm has met the criteria for qualification prescribed in this section.

D. In order to request real property investment grants, zone investors shall submit the application form, final attestation report, and all required documentation to the department by no later than April 1 of the calendar year subsequent to the qualification year.

E. If the April 1 due date falls on a weekend or holiday, applications are due the next business day.

F. Applications submitted by April 1 without the required attestation report shall be considered late applications and processed according to subsection H of this section.

G. The department shall notify zone investors in writing of any incomplete or missing required documentation or request written clarification from the business firms on information provided by no later than May 15. Zone investors must respond to any unresolved issues by no later than June 1. If the department does not meet its May 15 date for notification, then businesses must respond to any unresolved issues within 10 calendar days of the actual notification.

H. Any applications with the required final attestation report and required documentation submitted after the April 1 due date but before May 15 of the calendar year subsequent to the qualification year will be held until the department determines that funds remain and it will not have to prorate grant awards. At such time, the department will review and process such applications and any applications pursuant to subsection F of this section on a first-come first served basis.

I. The department shall award real property investment grants and notify all applicants by June 30 as to the amount of the grant they shall receive.

J. Applications must ~~either~~ be ~~hand-delivered by the date specified in this section or sent by certified mail with a return receipt requested and postmarked~~ received by the department, as specified by the department, no later than the date specified in this section.

K. Applicants may only apply for grants that they are otherwise eligible to claim for such calendar year, subject to the limitations provided by 13VAC5-112-400.

VA.R. Doc. No. R21-6544; Filed January 19, 2021, 2:37 p.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

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

Title of Regulation: **14VAC5-45. Rules Governing Suitability in Annuity Transactions (amending 14VAC5-45-10 through 14VAC5-45-47).**

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

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: March 19, 2021.

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

Summary:

The proposed amendments incorporate provisions contained in the National Association of Insurance Commissioners' Suitability in Annuity Transactions Model Regulation and include several new definitions, require insurers and agents to follow specified best interest obligations when recommending an annuity, require agents to use consumer disclosure forms, and require agents to complete a one-time four-credit annuity suitability training course that includes the best interest standard.

AT RICHMOND, JANUARY 19, 2021

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2021-00001

Ex Parte: In the matter of
Adopting Revisions to the Rules
Governing Suitability in Annuity Transactions

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy may also be found at the Commission's website: https://scc.virginia.gov/case.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed revisions to rules set forth in Chapter 45 of Title 14 of the Virginia Administrative Code, entitled Rules Governing Suitability in Annuity Transactions ("Rules"), which revise the Rules set out at 14 VAC 5-45-10 through 14 VAC 5-45-47 and adds new forms.

The proposed revisions to Chapter 45 are necessary to incorporate provisions contained in the revised National Association of Insurance Commissioners' Suitability in Annuity Transactions Model Regulation. These revisions add several new definitions, require insurers and agents to follow specified best interest obligations when recommending an annuity, require agents to use consumer disclosure forms, and require agents to complete a one-time four-credit annuity suitability training course that includes the best interest standard.

NOW THE COMMISSION is of the opinion that the proposed revisions submitted by the Bureau to amend the Rules set out at 14 VAC 5-45-10 through 14 VAC 5-45-47 should be considered for adoption with a proposed effective date of May 1, 2021.

Accordingly, IT IS ORDERED THAT:

(1) The proposal to amend Chapter 45 of Title 14 of the Virginia Administrative Code, by revising the Rules set out at 14 VAC 5-45-10 through 14 VAC 5-45-47 and adding new forms are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose amendments to Chapter 45 shall file such comments or hearing requests on or before March 19, 2021, with Bernard Logan,

Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2021-00001. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: https://scc.virginia.gov/case. All comments shall refer to Case No. INS-2021-00001.

(3) If no written request for a hearing on the proposal to amend rules as outlined in this Order is received on or before March 19, 2021, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt the amendments in Chapter 45 of Title 14 of the Virginia Administrative Code as submitted by the Bureau.

(4) The Bureau shall provide notice of the proposal to all companies, agencies, and agents licensed by the Commission to sell annuities or variable annuities in Virginia and to all interested persons.

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

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposal on the Commission's website: https://scc.virginia.gov/case.

(7) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the requirements of Ordering Paragraph (4) above.

(8) This matter is continued.

A COPY hereof shall be sent by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, mbrowder@oag.state.va.us, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Julie S. Blauvelt.

14VAC5-45-10. Purpose and scope.

The purpose of this chapter is to ~~set forth rules and procedures for recommendations to consumers that result in a transaction involving annuity products~~ require agents, as defined in this chapter, to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are ~~appropriately~~ effectively addressed. This chapter shall apply to any sale or recommendation ~~to purchase, exchange, or replace~~ of an annuity ~~made to a consumer by an agent, or insurer where no agent is involved, that results in the purchase, exchange, or replacement recommended~~.

14VAC5-45-20. Definitions.

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

~~"Agent" or "insurance agent"~~ "Agent," "insurance agent," "producer," or "insurance producer," when used without qualification, means an individual or business entity that sells, solicits, or negotiates contracts of insurance or annuity in this Commonwealth.

"Annuity" means a fixed, variable, or modified guaranteed annuity that is individually solicited, whether the product is classified as an individual ~~annuity~~ or group annuity.

"Board" means the Virginia Insurance Continuing Education Board established pursuant to § 38.2-1867 of the Code of Virginia.

"Cash compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by an agent in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.

"Commission" means the State Corporation Commission.

"Consumer profile information" means information that is reasonably appropriate to determine whether a recommendation addresses the consumer's financial situation, insurance needs, and financial objectives, including, at a minimum, the following:

1. Age;

2. Annual income;

3. Financial situation and needs, including debts and other obligations;

4. Financial experience;

5. Insurance needs;

6. Financial objectives;

7. Intended use of the annuity;

8. Financial time horizon;

9. Existing assets or financial products, including investment, annuity, and insurance holdings;

10. Liquidity needs;

11. Liquid net worth;

12. Risk tolerance, including willingness to accept non-guaranteed elements in the annuity;

13. Financial resources used to fund the annuity; and

14. Tax status.

"Continuing education credit" or "CE credit" means one continuing education credit as defined in § 38.2-1867 of the Code of Virginia.

"Continuing education provider" or "CE provider" means an individual or entity that is approved to offer continuing education courses pursuant to § 38.2-1867 of the Code of Virginia.

"FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

"Insurer" means an insurance company required to be licensed under the laws of this Commonwealth to provide insurance products, including annuities.

"Intermediary" means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by agents.

"Material conflict of interest" means a financial interest of the agent in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation. "Material conflict of interest" does not include cash compensation or non-cash compensation.

"Non-cash compensation" means any form of compensation that is not cash compensation, including health insurance, office rent, office support, and retirement benefits.

"Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, dividends, non-interest based credits, charges, or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

"Recommendation" means advice provided by an agent~~, or an insurer where no agent is involved,~~ to an individual consumer that ~~results~~ was intended to result or does result in a purchase, exchange, ~~or~~ replacement, or surrender of an annuity in accordance with that advice. Recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

"Replacement" means a transaction in which a new ~~policy or contract~~ annuity is to be purchased, and it is known or should be known to the proposing agent, or to the proposing insurer ~~if there is no~~ whether or not an agent is involved, that by reason of the transaction, an existing annuity or other insurance policy ~~or contract,~~ has been or is to be any of the following:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

3. Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

4. Reissued with any reduction in cash value; or

5. Used in a financed purchase.

~~"Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:~~

~~1. Age;~~

~~2. Annual income;~~

~~3. Financial situation and needs, including the financial resources used for the funding of the annuity;~~

~~4. Financial experience;~~

~~5. Financial objectives;~~

~~6. Intended use of the annuity;~~

~~7. Financial time horizon;~~

~~8. Existing assets, including investment and life insurance holdings;~~

~~9. Liquidity needs;~~

~~10. Liquid net worth;~~

~~11. Risk tolerance; and~~

~~12. Tax status.~~

"SEC" means the U.S. Securities and Exchange Commission.

"Virginia Securities Act" means § 13.1-501 et seq. of the Code of Virginia.

14VAC5-45-30. Exemptions.

Unless otherwise specifically included, this chapter shall not apply to transactions involving:

1. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this chapter.

2. Contracts used to fund:

a. An employee pension or welfare benefit plan that is covered by the Employee Retirement Income Security Act of 1974 (29 USC § 1001 et seq.);

b. A plan described by 26 USC § 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code, if established or maintained by an employer;

c. A government or church plan defined in 26 USC § 414 of the Internal Revenue Code, a government or church

welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under 26 USC § 457 of the Internal Revenue Code; or

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

~~e.~~ 3. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

~~f.~~ 4. Preneed funeral contracts as defined in § 54.1-2800 of the Code of Virginia.

14VAC5-45-40. Duties of insurers and agents.

A. ~~In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the agent, or the insurer where no agent is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his investments and other insurance products and as to his financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:~~ Best interest obligations. An agent, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the agent's or the insurer's financial interest ahead of the consumer's interest. An agent has acted in the best interest of the consumer if the agent has satisfied the following obligations regarding care, disclosure, conflict of interest, and documentation:

1. Care Obligation.

a. The agent, in making a recommendation shall exercise reasonable diligence, care, and skill to:

(1) Know the consumer's financial situation, insurance needs, and financial objectives;

(2) Understand the available recommendation options after making a reasonable inquiry into options available to the agent;

(3) Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs, and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and

(4) Communicate the basis of the recommendation.

b. The requirements under subdivision 1 a of this subsection include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.

c. The requirements under subdivision 1 a of this subsection require an agent to consider the types of products the agent is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs, and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the agent or other possible alternative products or strategies available in the market at the time of the recommendation. Agents shall be held to standards applicable to agents with similar authority and licensure.

d. The requirements under this subdivision 1 of this subsection do not create a fiduciary obligation or relationship.

e. The consumer profile information, characteristics of the insurer, and product costs, rates, benefits, and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs, and financial objectives, but the level of importance of each factor under the care obligation of this subdivision 1 may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

f. The requirements under subdivision 1 a of this subsection include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit, or other insurance-related features.

g. The requirements under subdivision 1 a of this subsection apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar agent enhancements, if any.

h. The requirements under subdivision 1 a of this subsection do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.

i. The requirements under subdivision 1 a of this subsection do not mean the agent has ongoing monitoring obligations under the care obligation under subdivision 1 a of this subsection, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising, or financial planning agreement between the consumer and the agent.

j. In the case of an exchange or replacement of an annuity, the agent shall consider the whole transaction, which includes taking into consideration whether:

(1) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living, or other contractual benefits, or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

(2) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and

(3) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

k. Nothing in this chapter should be construed to require an agent to obtain any license other than an agent license with the appropriate line of authority to sell, solicit, or negotiate insurance in this Commonwealth, including any securities license, in order to fulfill the duties and obligations contained in this chapter; provided the agent does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

2. Disclosure obligation.

a. Prior to the recommendation or sale of an annuity, the agent shall prominently disclose to the consumer on the commission's Insurance Agent (Producer) Disclosure for Annuities form:

(1) A description of the scope and terms of the relationship with the consumer and the role of the agent in the transaction;

(2) An affirmative statement on whether the agent is licensed and authorized to sell the following products:

(a) Fixed annuities;

(b) Fixed indexed annuities;

(c) Variable annuities;

(d) Life insurance;

(e) Mutual funds;

(f) Any securities as defined in the Virginia Securities Act; and

(g) Certificates of deposit;

(3) An affirmative statement describing the insurers the agent is authorized, contracted (or appointed), or otherwise able to sell insurance products for, using the following descriptions:

(a) From one insurer;

(b) From two or more insurers; or

(c) From two or more insurers although primarily contracted with one insurer;

(4) A description of the sources and types of cash compensation and non-cash compensation to be received by the agent, including whether the agent is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary, or other agent or by fee as a result of a contract for advice or consulting services; and

(5) A notice of the consumer's right to request additional information regarding cash compensation described in subdivision 2 b of this subsection;

b. Upon request of the consumer or the consumer's designated representative, the agent shall disclose:

(1) A reasonable estimate of the amount of cash compensation to be received by the agent, which may be stated as a range of amounts or percentages; and

(2) Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages; and

~~1. The~~ c. Prior to or at the time of the recommendation or sale of an annuity, the agent shall have a reasonable basis to believe the consumer has been ~~reasonably~~ informed of various features of the annuity, such as the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity; mortality and expense fees; investment advisory fees; any annual fees; potential charges for and features of riders of other options of the annuity; limitations on interest returns; potential changes in nonguaranteed elements of the annuity; insurance and investment components; and market risk~~;~~.

~~2. The consumer would benefit from certain features of the annuity, such as tax deferred growth, annuitization, or death or living benefit;~~

~~3. The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on the consumer's suitability information; and~~

~~4. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, including taking into consideration whether:~~

~~a. The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living, or other contractual benefits), or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;~~

~~b. The consumer would benefit from product enhancements and improvements; and~~

~~c. The consumer has had another annuity exchange or replacement, and, in particular, an exchange or replacement within the preceding 36 months.~~

3. Conflict of interest obligation. An agent shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.

4. Documentation obligation. An agent shall at the time of recommendation or sale:

a. Make a written record of any recommendation and the basis for the recommendation subject to this chapter;

b. Obtain a consumer signed statement on the commission's Consumer Refusal to Provide Information form documenting:

(1) A customer's refusal to provide the consumer profile information, if any; and

(2) A customer's understanding of the ramifications of not providing their consumer profile information or providing insufficient consumer profile information; and

c. Obtain a consumer signed statement on the commission's Consumer Decision to Purchase an Annuity Not Based on a Recommendation form acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the agent's recommendation.

5. Application of the best interest obligation. Any requirement applicable to an agent under this subsection shall apply to every agent who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the agent has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of an agent do not, in and of themselves, constitute material control or influence.

B. ~~Prior to the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, an agent, or insurer where no agent is involved, shall make reasonable efforts to obtain the consumer's suitability information. C. Except as permitted under subsection D of this section, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information. D.~~ Transactions not based on a recommendation.

1. Except as provided in subdivision 2 of this subsection, ~~neither an agent, nor an insurer where no agent is involved,~~ an agent shall have ~~any~~ no obligation to a consumer under ~~subsection~~ subdivision A ~~or C~~ 1 of this section related to any annuity transaction if any of the following occurs:

a. No recommendation is made;

b. A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

c. A consumer refuses to provide relevant ~~suitability~~ consumer profile information requested by the insurer or agent and the annuity transaction is not recommended;

d. A consumer decides to enter into an annuity transaction that is not based on a recommendation of the ~~insurer or~~ agent; or

e. A consumer fails to provide complete or accurate information.

2. An insurer or agent's recommendation subject to subdivision 1 of this subsection shall be reasonable under all the circumstances actually known to the insurer or agent at the time of the recommendation.

~~E. An agent, or where no agent is involved the responsible insurer representative, shall at the time of sale:~~

~~1. Make a record of any recommendation subject to subsection A of this section;~~

~~2. Obtain a customer signed statement, documenting a customer's refusal to provide suitability information, if any; and~~

~~3. Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the agent's or insurer's recommendation.~~

~~F. 1.~~ C. Supervision system.

1. Except as permitted under subsection B of this section, an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives based on the consumer's consumer profile information.

2. An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this chapter is established and maintained by complying with subdivisions ~~3~~ 4 and ~~4~~ 5 of this subsection or shall establish and maintain such a system, including the following:

a. The insurer shall establish and maintain reasonable procedures to inform its agents of the requirements of this chapter and shall incorporate the requirements of this chapter into relevant agent training manuals;

b. The insurer shall establish and maintain standards for agent product training and shall establish and maintain reasonable procedures to require its agents to comply with the requirements of 14VAC5-45-45;

c. The insurer shall provide product-specific training and training materials that explain all material features of its annuity products to its agents;

d. The insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure ~~that~~ there is a reasonable basis to determine that ~~a recommendation is suitable~~ the recommended annuity would effectively address the particular consumer's financial situation,

insurance needs, and financial objectives. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

e. The insurer shall establish and maintain reasonable procedures to detect recommendations that are not ~~suitable~~ in compliance with subsections A, B, D, and E of this section. This may include confirmation of ~~consumer suitability~~ the consumer's consumer profile information, systematic customer surveys, agent and consumer interviews, confirmation letters, agent statements or attestations, and programs of internal monitoring. Nothing in this subdivision prevents an insurer from complying with this subdivision by applying sampling procedures, or by confirming ~~suitability~~ the consumer profile information or other required information under this section after issuance or delivery of the annuity; ~~and~~

f. The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether an agent has provided to the consumer the information required to be provided under this section;

g. The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;

h. The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subdivision are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits, or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and

i. The insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

~~2.~~ 3. An agent ~~and independent agency~~ either shall adopt a system established by an insurer to supervise recommendations of its agents that is reasonably designed to achieve compliance with this chapter or shall establish and maintain such a system, including~~, but not limited to~~:

a. Maintaining written procedures; and

b. Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this chapter.

~~3.~~ 4. An insurer may contract with a third party, including an agent ~~or independent agency~~, to establish and maintain a system of supervision as required by subdivision ~~1~~ 2 of this subsection with respect to agents under contract with or employed by the third party.

~~4.~~ 5. An insurer shall make reasonable inquiry to assure that the third party contracting under subdivision ~~3~~ 4 of this subsection is performing the functions required under subdivision ~~1~~ 2 of this subsection and shall take action that is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

a. The insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

b. The insurer, based on reasonable selection criteria, periodically selects third parties contracting under subdivision ~~3~~ 4 of this subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

~~5.~~ 6. An insurer that contracts with a third party pursuant to subdivision ~~3~~ 4 of this subsection and that complies with the requirements to supervise in subdivision ~~4~~ 5 of this subsection shall have fulfilled its responsibilities under subdivision ~~1~~ 2 of this subsection.

~~6.~~ 7. An insurer~~,~~ or agent~~, or independent agency~~ is not required by subdivision ~~1~~ 2 or ~~2~~ 3 of this subsection to:

a. Review, or provide for review of, all agent-solicited transactions; ~~or~~

b. Include in its system of supervision an agent's recommendations to consumers of products other than the annuities offered by the insurer~~,~~ or agent~~, or independent agency~~; or

c. Consider or compare options available to the agent or compensation relating to those options other than annuities or other products offered by the insurer.

~~7.~~ 8. An agent ~~or independent agency~~ contracting with an insurer pursuant to subdivision ~~3~~ 4 of this subsection, when requested by the insurer pursuant to subdivision ~~4~~ 5 of this subsection, shall promptly give a certification as described in subdivision ~~4~~ 5 or give a clear statement that it is unable to meet the certification criteria.

~~8.~~ 9. No person may provide a certification under subdivision ~~4~~ 5 a of this subsection unless:

a. The person is a senior manager with responsibility for the delegated functions; and

b. The person has a reasonable basis for making the certification.

~~C.~~ D. An agent or insurer shall not dissuade or attempt to dissuade a consumer from:

1. Truthfully responding to an insurer's request for confirmation of ~~suitability~~ the consumer profile information;

2. Filing a complaint; or

3. Cooperating with the investigation of a complaint.

~~H. Sales~~ E. Safe harbor. Recommendations and sales of annuities made in compliance with ~~FINRA requirements pertaining to suitability and supervision of annuity transactions~~ comparable standards shall satisfy the requirements under this chapter:

1. This subsection applies to ~~FINRA broker-dealer~~ all recommendations and sales of annuities ~~if the suitability and supervision is similar to those applied to variable annuity sales~~ made by financial professionals in compliance with business rules, controls, and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue. However, nothing in this subsection shall limit the commission's ability to investigate and enforce ~~(including investigate)~~ the provisions of this chapter.

2. Nothing in subdivision 1 of this subsection shall limit the insurer's obligation to comply with subdivision C 1 of this section, although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

3. For subdivision 1 of this subsection to apply, an insurer shall:

a. Monitor the ~~FINRA member broker-dealer~~ relevant conduct of the financial professional seeking to rely on subdivision 1 of this subsection or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal securities laws or the Virginia Securities Act using information collected in the normal course of an insurer's business; and

b. Provide to the ~~FINRA member broker-dealer~~ entity responsible for supervising the financial professional seeking to rely on subdivision 1 of this subsection, such as the financial professional's broker-dealer or investment adviser registered under federal securities laws or the Virginia Securities Act, information and reports that are reasonably appropriate to assist ~~the FINRA member broker-dealer~~ such entity to maintain its supervision system.

4. For purposes of this subsection, "financial professional" means an agent that is regulated and acting as:

a. A broker-dealer registered under federal securities laws or the Virginia Securities Act or a registered representative of a broker-dealer;

b. An investment adviser registered under federal securities laws or the Virginia Securities Act or an investment adviser representative associated with the federal or Virginia registered investment adviser; or

c. A plan fiduciary under § 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) or fiduciary under § 4975(e)(3) of the Internal Revenue Code (IRC) or any amendments or successor statutes thereto.

5. For purposes of this subsection, "comparable standards" means:

a. With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including Regulation Best Interest (17 CFR Part 240.15l1) and any amendments or successor regulations thereto;

b. With respect to investment advisers registered under federal securities laws or the Virginia Securities Act or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940 (15 USC §80a-1 et seq.) or the Virginia Securities Act, including the Form ADV (https://www.sec.gov/divisions/investment/iard/ia-forms.shtml) and interpretations; and

c. With respect to plan fiduciaries or fiduciaries, means the duties, obligations, prohibitions and all other requirements attendant to such status under ERISA or the IRC and any amendments or successor statutes thereto.

~~I.~~ F. Compliance with FINRA Rule 2111 (https://www.finra.org/rules-guidance/rulebooks/finra-rules/2111) pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the commission's ability to enforce the provisions of this chapter.

14VAC5-45-45. Agent training.

A. An agent shall not solicit the sale of an annuity product unless the agent has adequate knowledge of the product to recommend the annuity and the agent is in compliance with the insurer's standards for product training. An agent may rely on insurer-provided product specific training standards and materials to comply with this subsection.

B. Training requirements are as follows:

1. ~~An agent~~ Agents who ~~engages~~ hold a life insurance line of authority and engage in the sale of annuity products shall complete a one-time four-credit annuity suitability training course that includes the best interest standard approved as continuing education by the ~~Insurance Continuing Education Board~~ board in accordance with § 38.2-1867 of the Code of Virginia and provided by the ~~Insurance Continuing Education Board~~ board approved education provider.

2. Agents who hold a life insurance line of authority prior to May 1, 2021, and ~~who desire to sell annuities~~ engage in the sale of annuity products shall complete the requirements of this subsection ~~by January 1, 2018~~ within six months after May 1, 2021. Individuals who obtain a life insurance line of authority on or after ~~January 1, 2018,~~ May 1, 2021, may not engage in the sale of annuities until the one-time four-credit annuity suitability training course that includes the best interest standard required under this subsection has been completed.

3. The minimum length of the training required under this subsection shall be sufficient to qualify for at least four CE credits, but may be longer.

4. The training required under this subsection shall include information on the following topics:

a. The types of annuities and various classifications of annuities;

b. Identification of the parties to an annuity;

c. How product specific annuity contract features affect consumers;

d. The application of income taxation of qualified and nonqualified annuities;

e. The primary uses of annuities; and

f. Appropriate standard of conduct, sales practices ~~and~~, replacement, and disclosure requirements.

5. Providers of courses intended to comply with this subsection shall cover all topics listed in subdivision 4 of this subsection and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to those in subdivision 4 of this subsection.

6. A provider of an annuity training course intended to comply with this subsection shall register as a CE provider in this Commonwealth and comply with the rules and guidelines applicable to agent continuing education courses as set forth in § 38.2-1867 of the Code of Virginia.

7. An agent who has completed the one-time four-credit annuity suitability training course approved by the board prior to May 1, 2021, shall, within six months after May 1, 2021, complete either:

a. A new four-credit training course that includes the best interest standard approved by the board; or

b. An additional one-time one-credit best interest standard training course approved by the board and provided by the board-approved education provider on appropriate sales practices, replacement, and disclosure requirements under this chapter.

8. Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with the rules and guidelines set forth in § 38.2-1867 of the Code of Virginia.

~~8.~~ 9. Providers of annuity training shall comply with the reporting requirements in § 38.2-1867 of the Code of Virginia and shall issue certificates of completion ~~in accordance with § 38.2-1867 of the Code of Virginia~~.

~~9.~~ 10. The satisfaction of the training requirements of another state that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this Commonwealth.

~~10.~~ 11. An insurer shall verify that an agent has completed the annuity training course required under this subsection before allowing the agent to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commission-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

14VAC5-45-47. Recordkeeping.

A. Insurers, agencies, and agents shall maintain or be able to make available to the commission records of the information collected from the consumer; disclosures made to the consumer, including summaries of oral disclosures; and other information used in making the recommendations that were the basis for insurance transactions for five years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an agent.

B. Records required to be maintained by this chapter may be maintained in paper, photographic, micro-process, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (14VAC5-45)

Insurance Agent (Producer) Disclosure for Annuities, CN01 (eff. 5/2021)

Consumer Refusal to Provide Information, CN02 (eff. 5/2021)

Consumer Decision to Purchase an Annuity Not Based on a Recommendation, CN03 (eff. 5/2021)

VA.R. Doc. No. R21-6588; Filed January 22, 2021, 4:07 p.m.

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TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Final Regulation

REGISTRAR'S NOTICE: Pursuant to subdivision (6a) of § 40.1-22 of the Code of Virginia, the Safety and Health Codes Board may adopt an emergency temporary standard to take immediate effect upon publication in a newspaper of general circulation, published in the City of Richmond, Virginia, if the board determines that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and that such emergency standard is necessary to protect employees from such danger. Such emergency standard was published 36:26 VA.R. 2770-2789 August 17, 2020. The newspaper publication constituted notice that the board intends to adopt such standard within a period of six months. The board by similar publication shall prior to the expiration of six months give notice of the time and date of, and conduct a hearing on, the adoption of a permanent standard. This permanent standard supersedes the emergency standard.

Title of Regulation: **16VAC25-220. Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus that Causes COVID-19 (adding 16VAC25-220-10 through 16VAC25-220-90).**

Statutory Authority: § 40.1-22 of the Code of Virginia.

Effective Date: January 27, 2021.

Agency Contact: Princy Doss, Director of Policy, Planning, and Public Information, Department of Labor and Industry, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, or email princy.doss@doli.virginia.gov.

Summary:

This action is taken pursuant to Executive Order 63, Order of Public Health Emergency Five, Requirement to Wear Face Covering While Inside Buildings. The Safety and Health Codes Board adopted the final standard to establish requirements for employers to control, prevent, and mitigate the spread of SARS-CoV-2, thereby protecting employees and the general public. SARS-CoV-2 is the virus that causes coronavirus disease 2019 (COVID-19). The final standard replaces the Emergency Temporary Standard (ETS) for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 (16VAC25-220) that was adopted by the board effective July 2020.

Chapter 220
Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus that Causes COVID-19

16VAC25-220-10. Purpose, scope, and applicability.

A. This standard is designed to establish requirements for employers to control, prevent, and mitigate the spread of SARS-CoV-2, the virus that causes coronavirus disease 2019 (COVID-19) to and among employees and employers.

B. This standard is adopted in accordance with subdivision 6 a of § 40.1-22 of the Code of Virginia and shall apply to every employer, employee, and place of employment in the Commonwealth of Virginia within the jurisdiction of the VOSH program as described in 16VAC25-60-20 and 16VAC25-60-30.

C. This standard is designed to supplement and enhance existing VOSH laws, rules, regulations, and standards applicable directly or indirectly to SARS-CoV-2 virus or COVID-19 disease-related hazards such as, but not limited to, those dealing with personal protective equipment, respiratory protective equipment, sanitation, access to employee exposure and medical records, occupational exposure to hazardous chemicals in laboratories, hazard communication, § 40.1-51.1 A of the Code of Virginia, etc. Should this standard conflict with an existing VOSH rule, regulation, or standard, the more stringent requirement from an occupational safety and health hazard prevention standpoint shall apply. Notwithstanding anything to the contrary in this standard, no enforcement action shall be brought against an employer or institution for failure to provide PPE required by this standard if such PPE is not readily available on commercially reasonable terms and the employer or institution makes a good faith effort to acquire or provide such PPE as is readily available on commercially reasonable terms. The Department of Labor and Industry shall consult with the Virginia Department of Health as to the ready availability of PPE on commercially reasonable terms and, in the event there are limited supplies of PPE, whether such supplies are being allocated to high risk or very high risk workplaces.

D. Application of this standard to a place of employment will be based on the exposure risk level presented by SARS-CoV-2 virus-related and COVID-19 disease-related hazards present or job tasks undertaken by employees at the place of employment as defined in this standard (i.e., very high, high, medium, and lower risk levels).

1. It is recognized that various hazards or job tasks at the same place of employment can be designated as very high,

high, medium, or lower exposure risk for purposes of application of the requirements of this standard. It is further recognized that various required job tasks prohibit an employee from being able to observe physical distancing from other persons.

2. Factors that shall be considered in determining exposure risk level include, but are not limited to:

a. The job tasks being undertaken, the work environment (e.g., indoors or outdoors), the known or suspected presence of the SARS-CoV-2 virus, the presence of a person known or suspected to be infected with the SARS-CoV-2 virus, the number of employees and other persons in relation to the size of the work area, the working distance between employees and other employees or persons, and the duration and frequency of employee exposure through contact inside of six feet with other employees or persons (e.g., including shift work exceeding eight hours per day); and

b. The type of hazards encountered, including exposure to respiratory droplets and potential exposure to the airborne transmission of SARS-CoV-2 virus; contact with contaminated surfaces or objects, such as tools, workstations, or break room tables, and shared spaces such as shared workstations, break rooms, locker rooms, and entrances and exits to the facility; shared work vehicles; and industries or places of employment where employer sponsored shared transportation is a common practice, such as ride-share vans or shuttle vehicles, car-pools, and public transportation, etc.

E. To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard. An employer's actual compliance with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by a provision of this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard. The Commissioner of Labor and Industry shall consult with the State Health Commissioner for advice and technical aid before making a determination related to compliance with CDC guidelines.

F. A public or private institution of higher education that has received certification from the State Council of Higher Education for Virginia that the institution's reopening plans are in compliance with guidance documents, whether mandatory or non-mandatory, developed by the Governor's Office in conjunction with the Virginia Department of Health shall be considered in compliance with this standard, provided the institution operates in compliance with its certified reopening plans and the certified reopening plans provide equivalent or greater levels of employee protection than this standard.

G. A public school division or private school that submits its plans to the Virginia Department of Education to move to Phase II and Phase III that are aligned with CDC guidance for reopening of schools that provide equivalent or greater levels of employee protection than a provision of this standard and that operate in compliance with the public school division's or private school's submitted plans shall be considered in compliance with this standard. An institution's actual compliance with recommendations contained in CDC guidelines or the Virginia Department of Education guidance, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by a provision of this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard. The Commissioner of Labor and Industry shall consult with the State Health Commissioner for advice and technical aid before making a determination related to compliance with CDC guidelines.

H. Nothing in the standard shall be construed to require employers to conduct contact tracing of the SARS-CoV-2 virus or COVID-19 disease.

16VAC25-220-20. Effective dates.

A. Adoption process.

1. This standard shall take effect upon review by the Governor, and if no revisions are requested, filing with the Registrar of Regulations and publication in a newspaper of general circulation published in the City of Richmond, Virginia.

2. If the Governor's review results in one or more requested revisions to the standard, the Safety and Health Codes Board shall reconvene to approve, amend, or reject the requested revisions.

3. If the Safety and Health Codes Board approves the requested revisions to the standard as submitted, the standard shall take effect upon filing with the Registrar of Regulations and publication in a newspaper of general circulation published in the City of Richmond, Virginia.

4. Should the Governor fail to review the standard under subdivision A 1 of this section within 30 days of its approval by the Safety and Health Codes Board, the board will not need to reconvene to take further action, and the standard shall take effect upon filing with the Registrar of Regulations and publication in a newspaper of general circulation published in the City of Richmond, Virginia.

5. The Governor reviewed the standard under subdivision A 1 of this section, and the effective date is January 27, 2021.

B. The requirements for 16VAC25-220-70 shall take effect on March 26, 2021. The training requirements in 16VAC25-220-80 shall take effect on March 26, 2021.

C. Within 14 days of the expiration of the Governor's COVID-19 State of Emergency and Commissioner of Health's COVID-19 Declaration of Public Emergency, the Safety and Health Codes Board shall notice a regular, special, or emergency meeting/conduct a regular, special, or emergency meeting to determine whether there is a continued need for the standard.

16VAC25-220-30. Definitions.

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

"Administrative control" means any procedure that significantly limits daily exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks by control or manipulation of the work schedule or manner in which work is performed. The use of personal protective equipment is not considered a means of administrative control.

"Airborne infection isolation room" or "AIIR," formerly a negative pressure isolation room, means a single-occupancy patient-care room used to isolate persons with a suspected or confirmed airborne infectious disease. Environmental factors are controlled in AIIRs to minimize the transmission of infectious agents that are usually transmitted from person to person by droplet nuclei associated with coughing or aerosolization of contaminated fluids. AIIRs provide (i) negative pressure in the room so that air flows under the door gap into the room, (ii) an air flow rate of six to 12 air changes per hour (ACH) (six ACH for existing structures, 12 ACH for new construction or renovation), and (iii) direct exhaust of air from the room to the outside of the building or recirculation of air through a high efficiency particulate air (HEPA) filter before returning to circulation.

"Asymptomatic" means a person who does not have symptoms.

"Building or facility owner" means the legal entity, including a lessee, that exercises control over management and recordkeeping functions relating to a building or facility in which activities covered by this standard take place.

"CDC" means Centers for Disease Control and Prevention.

"Cleaning" means the removal of dirt and impurities, including germs, from surfaces. Cleaning alone does not kill germs. But by removing the germs, cleaning decreases their number and therefore the risk of spreading infection.

"Community transmission," also called "community spread," means people have been infected with SARS-CoV-2 in an area, including some who are not sure how or where they became infected. The level of community transmission is classified by the CDC as:

1. "No to minimal" where there is evidence of isolated cases or limited community transmission, case investigations are underway, and no evidence of exposure in large communal settings;

2. "Moderate" where there is sustained community transmission with high likelihood or confirmed exposure within communal settings and potential for rapid increase in cases;

3. "Substantial, controlled" where there is large scale, controlled community transmission, including communal settings (e.g., schools, workplaces, etc.); or

4. "Substantial, uncontrolled" where there is large scale, uncontrolled community transmission, including communal settings (e.g., schools, workplaces, etc.).

"COVID-19" means Coronavirus Disease 2019, which is primarily a respiratory disease, caused by the SARS-CoV-2 virus.

"Disinfecting" means using chemicals approved for use against SARS-CoV-2 virus, for example EPA-registered disinfectants, or non-EPA-registered disinfectants that otherwise meet the EPA criteria for use against SARS-CoV-2 virus, to kill germs on surfaces. The process of disinfecting does not necessarily clean dirty surfaces or remove germs, but killing germs remaining on a surface after cleaning further reduces any risk of spreading infection.

"Duration and frequency of employee exposure" means how long ("duration") and how often ("frequency") an employee is potentially exposed to the SARS-CoV-2 virus or COVID-19 disease. Generally, the greater the frequency or length of time of the exposure, the greater the probability is for potential infection to occur. Frequency of exposure is generally more significant for acute acting agents or situations, while duration of exposure is generally more significant for chronic acting agents or situations. An example of an acute SARS-CoV-2 virus or COVID-19 disease situation could involve a customer, patient, or other person not wearing a face covering or personal protective equipment or coughing or sneezing directly into the face of an employee. An example of a chronic situation could involve a job task that requires an employee to interact either for an extended period of time inside six feet with a smaller static group of other employees or persons or for an extended period of time inside six feet with a larger group of other employees or persons in succession but for periods of shorter duration.

"Economic feasibility" means the employer is financially able to undertake the measures necessary to comply with one or more requirements in this standard. The cost of corrective measures to be taken will not usually be considered as a factor in determining whether a violation of this standard has

occurred. If an employer's level of compliance lags significantly behind that of its industry, an employer's claim of economic infeasibility will not support a VOSH decision to decline to take enforcement action.

"Elimination" means a method of exposure control that removes the employee completely from exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks.

"Employee" means an employee of an employer who is employed in a business of his employer. Reference to the term "employee" in this standard also includes, but is not limited to, temporary employees and other joint employment relationships, persons in supervisory or management positions with the employer, etc., in accordance with Virginia occupational safety and health laws, standards, regulations, and court rulings.

"Engineering control" means the use of substitution, isolation, ventilation, and equipment modification to reduce exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks.

"Exposure risk level" means the level of possibility that an employee could be exposed to the hazards associated with SARS-CoV-2 virus and the COVID-19 disease. The exposure risk level assessment should address all risks and all modes of transmission, including airborne transmission, as well as transmission by asymptomatic and presymptomatic individuals. Risk levels should be based on the risk factors present that increase risk exposure to COVID-19 and are present during the course of employment regardless of location. Hazards and job tasks have been divided into four risk exposure levels: very high, high, medium, and lower:

"Very high" exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure to known or suspected sources of the SARS-CoV-2 virus (e.g., laboratory samples) or persons known or suspected to be infected with the SARS-CoV-2 virus, including, but not limited to, during specific medical, postmortem, or laboratory procedures:

1. Aerosol-generating procedures (e.g., intubation, cough induction procedures, bronchoscopies, some dental procedures and exams, or invasive specimen collection) on a patient or person known or suspected to be infected with the SARS-CoV-2 virus;

2. Collecting or handling specimens from a patient or person known or suspected to be infected with the SARS-CoV-2 virus (e.g., manipulating cultures from patients known or suspected to be infected with the SARS-CoV-2 virus); and

3. Performing an autopsy that involves aerosol-generating procedures on the body of a person known or suspected to be infected with the SARS-CoV-2 virus at the time of their death.

"High" exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure inside six feet with known or suspected sources of SARS-CoV-2, or with persons known or suspected to be infected with the SARS-CoV-2 virus that are not otherwise classified as very high exposure risk, including, but not limited to:

1. Health care (physical and mental health) delivery and support services provided to a patient known or suspected to be infected with the SARS-CoV-2 virus, including field hospitals (e.g., doctors, nurses, cleaners, and other hospital staff who must enter patient rooms or areas);

2. Health care (physical and mental) delivery, care, and support services, wellness services, non-medical support services, physical assistance, etc., provided to a patient, resident, or other person known or suspected to be infected with the SARS-CoV-2 virus involving skilled nursing services, outpatient medical services, clinical services, drug treatment programs, medical outreach services, mental health services, home health care, nursing home care, assisted living care, memory care support and services, hospice care, rehabilitation services, primary and specialty medical care, dental care, COVID-19 testing services, blood donation services, and chiropractic services;

3. First responder services provided to a patient, resident, or other person known or suspected to be infected with the SARS-CoV-2 virus;

4. Medical transport services (loading, transporting, unloading, etc.) provided to patients known or suspected to be infected with the SARS-CoV-2 virus (e.g., ground or air emergency transport, staff, operators, drivers, pilots, etc.);

5. Mortuary services involved in preparing (e.g., for burial or cremation) the bodies of persons who are known or suspected to be infected with the SARS-CoV-2 virus at the time of their death; and

6. Correctional facilities, jails detention centers, and juvenile detention centers.

"Medium" exposure risk hazards or job tasks are those not otherwise classified as very high or high exposure risk in places of employment that require more than minimal occupational contact inside six feet with other employees, other persons, or the general public who may be infected with SARS-CoV-2, but who are not known or suspected to be infected with the SARS-CoV-2 virus. Medium exposure risk hazards or job tasks may include, but are not limited to, operations and services in:

1. Poultry, meat, and seafood processing; agricultural and hand labor; commercial transportation of passengers by air, land, and water; on campus educational settings in schools, colleges, and universities; daycare and afterschool settings; restaurants and bars; grocery stores, convenience stores, and food banks; drug stores and pharmacies; manufacturing

settings; indoor and outdoor construction settings; work performed in customer premises, such as homes or businesses; retail stores; call centers; package processing settings; veterinary settings; personal care, personal grooming , salon, and spa settings; venues for sports, entertainment, movies, theaters, and other forms of mass gatherings; homeless shelters; fitness, gym, and exercise facilities; airports, and train and bus stations; etc.; and

2. Situations not involving exposure to known or suspected sources of SARS-CoV-2: hospitals, other health care (physical and mental) delivery and support services in a non-hospital setting, wellness services, physical assistance, etc.; skilled nursing facilities; outpatient medical facilities; clinics, drug treatment programs, and medical outreach services; non-medical support services; mental health facilities; home health care, nursing homes, assisted living facilities, memory care facilities, and hospice care; rehabilitation centers, doctors' offices, dentists' offices, and chiropractors' offices; first responders services provided by police, fire, paramedic and emergency medical services providers, medical transport; contact tracers; correctional facilities, jails, detentions centers, and juvenile detention centers, etc.

"Lower" exposure risk hazards or job tasks are those not otherwise classified as very high, high, or medium exposure risk that do not require contact inside six feet with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2. Employees in this category have minimal occupational contact with other employees, other persons, or the general public, such as in an office building setting, or are able to achieve minimal occupational contact with others through the implementation of engineering, administrative and work practice controls, such as, but not limited to:

1. Installation of floor to ceiling physical barriers constructed of impermeable material and not subject to unintentional displacement (e.g., such as clear plastic walls at convenience stores behind which only one employee is working at any one time);

2. Telecommuting;

3. Staggered work shifts that allow employees to maintain physical distancing from other employees, other persons, and the general public;

4. Delivering services remotely by phone, audio, video, mail, package delivery, curbside pickup or delivery, etc., that allows employees to maintain physical distancing from other employees, other persons, and the general public; and

5. Mandatory physical distancing of employees from other employees, other persons, and the general public.

Employee use of face coverings for contact inside six feet of coworkers, customers, or other persons is not an acceptable administrative or work practice control to achieve minimal occupational contact.

"Face covering" means an item made of two or more layers of washable, breathable fabric that fits snugly against the sides of the face without any gaps, completely covering the nose and mouth and fitting securely under the chin. Neck gaiters made of two or more layers of washable, breathable fabric, or folded to make two such layers are considered acceptable face coverings. Face coverings shall not have exhalation valves or vents, which allow virus particles to escape, and shall not be made of material that makes it hard to breathe, such as vinyl. A face covering is not a surgical/medical procedure mask or respirator. A face covering is not subject to testing and approval by a state or government agency, so it is not considered a form of personal protective equipment or respiratory protection equipment under VOSH laws, rules, regulations, and standards.

"Face shield" means a form of personal protective equipment made of transparent, impermeable materials primarily used for eye protection from droplets or splashes for the person wearing it. A face shield is not a substitute for a face covering, surgical/medical procedure mask, or respirator.

"Feasible" as used in this standard includes both technical and economic feasibility.

"Filtering facepiece respirator" means a negative pressure air purifying particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium. Filtering facepiece respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH).

"Hand sanitizer" means an alcohol-based hand rub containing at least 60% alcohol, unless otherwise provided for in this standard.

"HIPAA" means Health Insurance Portability and Accountability Act.

"Known to be infected with the SARS-CoV-2 virus" means a person, whether symptomatic or asymptomatic, who has tested positive for SARS-CoV-2, and the employer knew or with reasonable diligence should have known that the person has tested positive for SARS-CoV-2.

"May be infected with SARS-CoV-2 virus" means any person not currently known or suspected to be infected with SARS-CoV-2 virus.

"Minimal occupational contact" means no or very limited, brief, and infrequent contact with employees or other persons at the place of employment. Examples include, but are not limited to, remote work (i.e., those working from home); employees with no more than brief contact with others inside six feet (e.g., passing another person in a hallway that does not allow physical distancing of six feet); health care employees

providing only telemedicine services; a long distance truck driver.

"Occupational exposure" means the state of being actually or potentially exposed to contact with SARS-CoV-2 virus or COVID-19 disease related hazards at the work location or while engaged in work activities at another location.

"Personal protective equipment" means equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses. These injuries and illnesses may result from contact with chemical, radiological, physical, electrical, mechanical, biological, or other workplace hazards. Personal protective equipment for actual or potential exposure to SARS-CoV-2 or COVID-19 exposure may include, but is not limited to, gloves, safety glasses, goggles, shoes, earplugs or muffs, hard hats, respirators, surgical/medical procedure masks, impermeable gowns or coveralls, face shields, vests, and full body suits.

"Physical distancing" also called "social distancing" means a person keeping space between himself and other persons while conducting work-related activities inside and outside of the physical establishment by staying at least six feet from other persons. Physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall (e.g., an office setting) constitutes one form of physical distancing from an employee or other person stationed on the other side of the wall, provided that six feet of travel distance is maintained from others around the edges or sides of the wall as well.

"Respirator" means a protective device that covers the nose and mouth or the entire face or head to guard the wearer against hazardous atmospheres. Respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH). Respirators may be (i) tight-fitting, which means either a half mask that covers the mouth and nose or a full face piece that covers the face from the hairline to below the chin or (ii) loose-fitting, such as hoods or helmets that cover the head completely.

There are two major classes of respirators:

1. Air-purifying, which remove contaminants from the air; and

2. Atmosphere-supplying, which provide clean, breathable air from an uncontaminated source. As a general rule, atmosphere-supplying respirators are used for more hazardous exposures.

"Respirator user" means an employee who in the scope of their current job may be assigned to tasks that may require the use of a respirator in accordance with this standard or required by other provisions in the VOSH and OSHA standards.

"SARS-CoV-2" means the novel virus that causes coronavirus disease 2019, or COVID-19. Coronaviruses are named for the crown-like spikes on their surfaces.

"Severely immunocompromised" means a seriously weakened immune system that lowers the body's ability to fight infection and may increase the risk of getting severely sick from SARS-CoV-2, from being on chemotherapy for cancer, being within one year out from receiving a hematopoietic stem cell or solid organ transplant, untreated HIV infection with CD4 T lymphocyte count less than 200, combined primary immunodeficiency disorder, and receipt of prednisone greater than 20mg per day for more than 14 days. The degree of immunocompromise is determined by the treating provider, and preventive actions are tailored to each individual and situation.

"Signs of COVID-19" are medical conditions that can be objectively observed and may include fever, trouble breathing or shortness of breath, cough, vomiting, new confusion, bluish lips or face, etc.

"Surgical/medical procedure mask" means a mask to be worn over the wearer's nose and mouth that is fluid resistant and provides the wearer protection against large droplets, splashes, or sprays of bodily or other hazardous fluids, and prevents the wearer from exposing others in the same fashion. A surgical/medical procedure mask protects others from the wearer's respiratory emissions. A surgical/medical procedure mask has a looser fitting face seal than a tight-fitting respirator. A surgical/medical procedure mask does not provide the wearer with a reliable level of protection from inhaling smaller airborne particles. A surgical/medical procedure mask is considered a form of personal protective equipment, but is not considered respiratory protection equipment under VOSH laws, rules, regulations, and standards. Testing and approval is cleared by the U.S. Food and Drug Administration (FDA).

"Suspected to be infected with SARS-CoV-2 virus" means a person who has signs or symptoms of COVID-19 but has not tested positive for SARS-CoV-2, and no alternative diagnosis has been made (e.g., tested positive for influenza).

"Symptomatic" means a person is experiencing signs or symptoms attributed to COVID-19. A person may become symptomatic two to 14 days after exposure to the SARS-CoV-2 virus.

"Symptoms of COVID-19" are medical conditions that are subjective to the person and not observable to others and may include chills, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, nausea, congestion or runny nose, or diarrhea, etc.

"Technical feasibility" means the existence of technical know-how as to materials and methods available or adaptable to specific circumstances that can be applied to one or more requirements in this standard with a reasonable possibility that employee exposure to the SARS-CoV-2 virus and COVID-19 disease hazards will be reduced. If an employer's level of compliance lags significantly behind that of the employer's

industry, allegations of technical infeasibility will not be accepted.

"USBC" means Virginia Uniform Statewide Building Code.

"VDH" means Virginia Department of Health.

"VOSH" means Virginia Occupational Safety and Health.

"Work practice control" means a type of administrative control by which the employer modifies the manner in which the employee performs assigned work. Such modification may result in a reduction of exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks through such methods as changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job.

16VAC25-220-40. Mandatory requirements for all employers.

A. Employers shall ensure compliance with the requirements in this section to protect employees in all exposure risk levels from workplace exposure to the SARS-CoV-2 virus that causes the COVID-19 disease.

B. Exposure assessment and determination, notification requirements, and employee access to exposure and medical records.

1. Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. Employers shall classify each job task according to the hazards employees are potentially exposed to and ensure compliance with the applicable sections of this standard for very high, high, medium, or lower risk levels of exposure. Tasks that are similar in nature and expose employees to the same hazard may be grouped for classification purposes.

2. Employers shall inform employees of the methods of and encourage employees to self-monitor for signs and symptoms of COVID-19 if employees suspect possible exposure or are experiencing signs or symptoms of illness.

3. Serological testing, also known as antibody testing, is a test to determine if persons have been infected with SARS-CoV-2 virus. It has not been determined that persons who test positive for the presence of antibodies by serological testing are immune from infection.

a. Serologic test results shall not be used to make decisions about returning employees to work who were previously classified as known or suspected to be infected with the SARS-CoV-2 virus.

b. Serologic test results shall not be used to make decisions concerning employees who were previously classified as known or suspected to be infected with the SARS-CoV-2 virus about grouping, residing in, or being admitted to congregate settings, such as schools, dormitories, etc.

4. Employers shall develop and implement policies and procedures for employees to report when they are experiencing signs or symptoms consistent with COVID-19, and no alternative diagnosis has been made (e.g., tested positive for influenza). Such employees shall be designated by the employer as "suspected to be infected with SARS-CoV-2 virus."

5. Employers shall not permit employees or other persons known or suspected to be infected with SARS-CoV-2 virus to report to or remain at the work site or engage in work at a customer or client location until cleared for return to work (see subsection C of this section). Nothing in this standard shall prohibit an employer from permitting an employee known or suspected to be infected with SARS-CoV-2 virus from engaging in teleworking or other form of work isolation that would not result in potentially exposing other employees to the SARS-CoV-2 virus.

6. Employers shall discuss with subcontractors and companies that provide contract or temporary employees the importance and requirement to exclude from work employees or other persons (e.g., volunteers) who are known or suspected to be infected with the SARS-CoV-2 virus. Subcontractor, contract, or temporary employees known or suspected to be infected with the SARS-CoV-2 virus shall not report to or be allowed to remain at the work site until cleared for return to work. Subcontractors shall not allow their employees known or suspected to be infected with the SARS-CoV-2 virus to report to or be allowed to remain at work or on a job site until cleared for return to work.

7. To the extent permitted by law, including HIPAA, employers shall establish a system to receive reports of positive SARS-CoV-2 tests by employees, subcontractors, contract employees, and temporary employees (excluding patients hospitalized on the basis of being known or suspected to be infected with SARS-CoV-2 virus) present at the place of employment within two days prior to symptom onset (or positive test if the employee is asymptomatic) until 10 days after onset (or positive test). Employers shall notify:

a. The employer's own employees who may have been exposed, within 24 hours of discovery of the employees' possible exposure, while keeping confidential the identity of the person known to be infected with SARS-CoV-2 virus in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable federal and Virginia laws and regulations;

b. In the same manner as subdivision 7 a of this subsection, other employers whose employees were present at the work site during the same time period;

c. In the same manner as subdivision 7 a of this subsection, the building or facility owner. The building or facility owner will require all employer tenants to notify the owner of the occurrence of a SARS-CoV-2-positive test for any employees or residents in the building. This notification

will allow the owner to take the necessary steps to sanitize the common areas of the building. In addition, the building or facility owner will notify all employer tenants in the building that one or more cases have been discovered and the floor or work area where the case was located. The identity of the individual will be kept confidential in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable federal and Virginia laws and regulations;

d. The Virginia Department of Health during a declaration of an emergency by the Governor pursuant to § 44-146.17 of the Code of Virginia. Every employer as defined by § 40.1-2 of the Code of Virginia shall report to the Virginia Department of Health (VDH) when the work site has had two or more confirmed cases of COVID-19 of its own employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period. Employers shall make such a report in a manner specified by VDH, including name, date of birth, and contact information of each case, within 24 hours of becoming aware of such cases. Employers shall continue to report all cases until the local health department has closed the outbreak. After the outbreak is closed, subsequent identification of two or more confirmed cases of COVID-19 during a declared emergency shall be reported, as required by this subdivision B 7 d. The following employers are exempt from this provision because of separate outbreak reporting requirements contained in 12VAC5-90-90: any residential or day program, service, or facility licensed or operated by any agency of the Commonwealth, school, child care center, or summer camp; and

e. The Virginia Department of Labor and Industry within 24 hours of the discovery of three or more of its own employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period. A reported positive SARS-CoV-2 test does not need to be reported more than once and will not be used for the purpose of identifying more than one grouping of three or more cases, or more than one 14-day period.

8. Employers shall ensure employee access to the employee's own SARS-CoV-2 virus and COVID-19 disease related exposure and medical records in accordance with the standard applicable to its industry. Employers in the agriculture, public sector marine terminal, and public sector longshoring industries shall ensure employees' access to the employees' own SARS-CoV-2 virus and COVID-19 disease related exposure and medical records in accordance with 16VAC25-90-1910.1020, Access to Employee Exposure and Medical Records.

C. Return to work. Employers shall develop and implement policies and procedures for employees known or suspected to be infected with the SARS-CoV-2 virus to return to work.

1. Symptomatic employees known or suspected to be infected with the SARS-CoV-2 virus are excluded from returning to work until all three of the following conditions have been met:

a. The employee is fever-free (below 100.0° F) for at least 24 hours, without the use of fever-reducing medications;

b. Respiratory symptoms, such as cough and shortness of breath have improved; and

c. At least 10 days have passed since symptoms first appeared.

However, a limited number of employees with severe illness may produce replication-competent virus beyond 10 days that may warrant extending duration of isolation for up to 20 days after symptom onset. Employees who are severely immunocompromised may require testing to determine when they can return to work, and the employer shall consider consultation with infection control experts. VOSH will consult with VDH when identifying severe employee illnesses that may warrant extended duration of isolation or severely immunocompromised employees required to undergo testing.

2. Employees known to be infected with SARS-CoV-2 who never develop signs or symptoms are excluded from returning to work until 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

3. For purposes of this section, COVID-19 testing is considered a "medical examination" under § 40.1-28 of the Code of Virginia. Employers shall not require employees to pay for the cost of COVID-19 testing for return to work determinations. If an employer's health insurance covers the entire cost of COVID-19 testing, use of the insurance coverage would not be considered a violation of this subdivision C 3.

D. Unless otherwise provided in this standard, employers shall establish and implement policies and procedures that ensure employees observe physical distancing while on the job and during paid breaks on the employer's property, including policies and procedures that:

1. Use verbal announcements, signage, or visual cues to promote physical distancing.

2. Decrease worksite density by limiting non-employee access to the place of employment or restrict access to only certain workplace areas to reduce the risk of exposure. An employer's compliance with occupancy limits contained in any applicable Virginia executive order or order of public health emergency will constitute compliance with the requirements in this subsection.

E. Access to common areas, breakrooms, or lunchrooms shall be closed or controlled. If the nature of an employer's work or the work area does not allow employees to consume meals in the employee's workspace while observing physical

distancing, an employer may designate, reconfigure, and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc., with controlled access, provided the following conditions are met:

1. At the entrance of the designated common area or room, employers shall clearly post the policy limiting the occupancy of the space and requirements for physical distancing, hand washing and hand sanitizing, and cleaning and disinfecting of shared surfaces.

2. Employers shall limit occupancy of the designated common area or room so that occupants can maintain physical distancing from each other. Employers shall enforce the occupancy limit.

3. Employees shall be required to clean and disinfect the immediate area in which they were located prior to leaving, or employers may provide for cleaning and disinfecting of the common area or room at regular intervals throughout the day and between shifts of employees using the same common area or room (i.e., where an employee or groups of employees have a designated lunch period and the common area or room can be cleaned in between occupancies).

4. Handwashing facilities, and hand sanitizer where feasible, are available to employees. Hand sanitizers required for use to protect against SARS-CoV-2 are flammable and use and storage in hot environments can result in a hazard.

F. When multiple employees are occupying a vehicle for work purposes, employers shall use the hierarchy of hazard controls to mitigate the hazards associated with SARS-CoV-2 and COVID-19 to prevent employee exposures in the following order:

1. Eliminate the need for employees to share work vehicles and arrange for alternative means for additional employees to travel to work sites.

2. Provide access to fresh air ventilation (e.g., windows). Do not recirculate cabin air.

3. When physical distancing cannot be maintained, establish procedures to maximize separation between employees during travel (e.g., setting occupancy limits, sitting in alternate seats, etc.).

4. When employees must share work vehicles because no other alternatives are available, employees shall be provided with respiratory protection, such as an N95 filtering face piece respirator. The employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry.

5. Until adequate supplies of respiratory protection and/or personal protective equipment become readily available for non-medical and non-first responder employers and employees, employers shall provide and employees shall wear face coverings while occupying a work vehicle with other employees or persons.

Notwithstanding anything to the contrary in this standard, the Secretary of Commerce and Trade may exercise discretion in the enforcement of an employer's failure to provide PPE required by this standard, if the employer demonstrates that the employer:

a. Is exercising due diligence to come into compliance with such requirement; and

b. Is implementing alternative methods and measures to protect employees that are satisfactory to the Secretary of Commerce and Trade after consultation with the commissioner and the Secretary of Health and Human Services.

G. Where the nature of an employee's work or the work area does not allow the employee to observe physical distancing requirements, employers shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry.

H. When it is necessary for employees solely exposed to lower risk hazards or job tasks to have brief contact with others inside six feet (e.g., passing another person in a hallway that does not allow physical distancing of six feet), a face covering is required.

I. When required by this standard, face coverings shall be worn over the wearer's nose and mouth and extend under the chin.

J. Nothing in this standard shall require the use of a respirator, surgical/medical procedure mask, or face covering by any employee for whom doing so would be contrary to the employee's health or safety because of a medical condition; however, nothing in this standard shall negate an employer's obligations to comply with personal protective equipment and respiratory protection standards applicable to its industry.

1. Although face shields are not considered a substitute for face coverings as a method of source control and not used as a replacement for face coverings among people without medical contraindications, face shields may provide some level of protection against contact with respiratory droplets. In situations where a face covering cannot be worn due to medical contraindications, employers shall provide and employees shall wear either:

a. A face shield that wraps around the sides of the wearer's face and extends below the chin; or

b. A hooded face shield.

2. To the extent feasible, employees wearing face shields in accordance with this subsection shall observe physical distancing requirements in this standard.

3. Face shield wearers shall wash their hands before and after removing the face shield and avoid touching their eyes, nose, and mouth when removing it.

4. Disposable face shields shall only be worn for a single use and disposed of according to manufacturer instructions.

5. Reusable face shields shall be cleaned and disinfected after each use according to manufacturer instructions.

K. Requests to the Department of Labor and Industry for religious waivers from the required use of respirators, surgical/medical procedure masks, or face coverings will be handled in accordance with the requirements of applicable federal and state law, standards, regulations and the U.S. and Virginia Constitutions, after Department of Labor and Industry consultation with the Office of the Attorney General.

L. Sanitation and disinfecting.

1. In addition to the requirements contained in this standard, employers shall comply with the VOSH sanitation standard applicable to its industry.

2. Employees that interact with customers, the general public, contractors, and other persons shall be provided with and immediately use supplies to clean and disinfectant surfaces contacted during the interaction where there is the potential for exposure to the SARS-CoV-2 virus by themselves or other employees.

3. In addition to the requirements contained in this standard, employers shall comply with the VOSH hazard communication standard applicable to the employers' industry for cleaning and disinfecting materials and hand sanitizers.

4. Areas in the place of employment where employees or other persons known or suspected to be infected with the SARS-CoV-2 virus accessed or worked shall be cleaned and disinfected prior to allowing other employees access to the areas. Where feasible, a period of 24 hours will be observed prior to cleaning and disinfecting. This requirement shall not apply if the areas in question have been unoccupied for seven or more days.

5. All common spaces, including bathrooms (including port-a-johns, privies, etc.), frequently touched surfaces, and doors, shall at a minimum be cleaned and disinfected at least once during or at the end of the shift. Where multiple shifts are employed, such spaces shall be cleaned and disinfected no less than once every 12 hours.

6. All shared tools, equipment, workspaces, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.

7. Employers shall ensure that cleaning and disinfecting products are readily available to employees to accomplish the required cleaning and disinfecting. In addition, employers shall ensure use of only disinfecting chemicals and products indicated in the Environmental Protection Agency (EPA) List N for use against SARS-CoV-2, or non-EPA-registered disinfectants that otherwise meet the EPA criteria for use against SARS-CoV-2.

8. Employers shall ensure that the manufacturer's instructions for use of all disinfecting chemicals and products are complied with (e.g., concentration, application method, contact time, PPE, etc.).

9. Employees shall have easy, frequent access and permission to use soap and water, and hand sanitizer where feasible, for the duration of work. Employees assigned to a work station where job tasks require frequent interaction inside six feet with other persons shall be provided with hand sanitizer where feasible at the employees work station.

10. Mobile crews shall be provided with hand sanitizer where feasible for the duration of work at a work site or client or customer location and shall have transportation immediately available to nearby toilet facilities and handwashing facilities that meet the requirements of VOSH laws, standards, and regulations dealing with sanitation. Hand sanitizers required for use to protect against SARS-CoV-2 are flammable, and use and storage in hot environments can result in a hazard.

11. It is recognized that various hazards or job tasks at the same place of employment can be designated as very high, high, medium, or lower as presenting potential exposure risk for purposes of application of the requirements of this standard. In situations other than emergencies, employers shall ensure that protective measures are put in place to prevent cross-contamination between tasks, areas, and personnel.

M. Unless otherwise provided in this standard, when engineering, work practice, and administrative controls are not feasible or do not provide sufficient protection, employers shall provide personal protective equipment to their employees and ensure the equipment's proper use in accordance with VOSH laws, standards, and regulations applicable to personal protective equipment, including respiratory protection equipment.

16VAC25-220-50. Requirements for hazards or job tasks classified as very high or high exposure risk.

A. The requirements in this section for employers with hazards or job tasks classified as very high or high exposure risk apply in addition to requirements contained in 16VAC25-220-40, 16VAC25-220-70, and 16VAC25-220-80.

B. Engineering controls.

1. Employers shall ensure that appropriate air-handling systems under their control:

a. Are installed and maintained in accordance with the USBC and manufacturer's instructions in healthcare facilities and other places of employment treating, caring

for, or housing persons known or suspected to be infected with the SARS-CoV-2 virus; and

b. Where feasible and within the design parameters of the system, are utilized as follows:

(1) Increase total airflow supply to occupied spaces provided that a greater hazard is not created (e.g., airflow that is increased too much may make doors harder to open or may blow doors open);

(2) In ground transportation settings, use natural ventilation to increase outdoor air dilution of inside air in a manner that will aid in mitigating the spread of SARS-CoV-2 virus and COVID-19 disease transmission to employees, and when environmental conditions and transportation safety and health requirements allow;

(3) Inspect filter housing and racks to ensure appropriate filter fit and check for ways to minimize filter bypass;

(4) Increase air filtration to as high as possible in a manner that will still enable the system to provide airflow rates as the system design requires. Ensure compliance with higher filtration values is allowed by the air handler manufacturer's installation instructions and listing;

(5) Generate clean-to-less-clean air movements by re-evaluating the positioning of supply and exhaust air diffusers and/or dampers and adjusting zone supply and exhaust flow rates to establish measurable pressure differentials;

(6) Have staff work in "clean" ventilation zones that do not include higher-risk areas such as visitor reception or exercise facilities (if open);

(7) Ensure exhaust fans in restroom facilities are functional and operating continuously when the building is occupied;

(8) If the system's design can accommodate such an adjustment and is allowed by the air handler manufacturer's installation instructions and listing, improve central air filtration to MERV-13 and seal edges of the filter to limit bypass; and

(9) Check filters to ensure they are within service life and appropriately installed.

c. Comply with USBC and applicable referenced American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards.

2. For employers not covered by subdivision 1 of this subsection, ensure that air-handling systems where installed and under their control are appropriate to address the SARS-CoV-2 virus and COVID-19 disease related hazards and job tasks that occur at the workplace:

a. Are maintained in accordance with the manufacturer's instructions; and

b. Comply with subdivisions 1 b and 1 c of this subsection.

3. Hospitalized patients known or suspected to be infected with the SARS-CoV-2 virus, where feasible and available, shall be placed in airborne infection isolation room (AIIRs).

4. Employers shall use AIIRs when available for performing aerosol-generating procedures on patients with known or suspected to be infected with the SARS-CoV-2 virus.

5. For postmortem activities, employers shall use autopsy suites or other similar isolation facilities when performing aerosol-generating procedures on the bodies of persons known or suspected to be infected with the SARS-CoV-2 virus at the time of their death.

6. Employers shall use special precautions associated with Biosafety Level 3 (BSL-3), as defined by the U.S. Department of Health and Human Services Publication No. (CDC) 21-1112 Biosafety in Microbiological and Biomedical Laboratories" (Dec. 2009), which is hereby incorporated by reference, when handling specimens from patients or persons known or suspected to be infected with the SARS-CoV-2 virus. Diagnostic laboratories that conduct routine medical testing and environmental specimen testing for COVID-19 are not required to operate at BSL-3.

7. To the extent feasible, employers shall install physical barriers, (e.g., clear plastic sneeze guards, etc.), where such barriers will aid in mitigating the spread of SARS-CoV-2 virus and COVID-19 disease transmission.

C. Administrative and work practice controls.

1. Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19.

2. In health care facilities, employers shall follow existing guidelines and facility standards of practice for identifying and isolating infected persons and for protecting employees.

3. Employers shall limit non-employee access to the place of employment or restrict access to only certain workplace areas to reduce the risk of exposure. An employer's compliance with occupancy limits contained in any applicable Virginia executive order or order of public health emergency will constitute compliance with the requirements of this subdivision C 3.

4. Employers shall post signs requesting patients and family members to immediately report signs or symptoms of respiratory illness on arrival at the health care facility and use disposable face coverings.

5. Employers shall offer enhanced medical monitoring of employees during COVID-19 outbreaks.

6. To the extent feasible, an employer shall ensure that psychological and behavioral support is available to address employee stress at no cost to the employee.

7. In health care settings, employers shall provide alcohol-based hand sanitizers containing at least 60% ethanol or 70% isopropanol to employees at fixed work sites and to emergency responders and other personnel for decontamination in the field when working away from fixed work sites.

8. Employers shall provide face coverings to non-employees suspected to be infected with SARS-CoV-2 virus to contain respiratory secretions until the non-employees are able to leave the site (i.e., for medical evaluation and care or to return home).

9. Where feasible, employers shall:

a. Implement flexible work site (e.g., telework).

b. Implement flexible work hours (e.g., staggered shifts).

c. Increase physical distancing between employees at the work site to six feet.

d. Increase physical distancing between employees and other persons to six feet.

e. Implement flexible meeting and travel options (e.g., use telephone or video conferencing instead of in person meetings; postpone non-essential travel or events; etc.).

f. Deliver services remotely (e.g. phone, video, internet, etc.).

g. Deliver products through curbside pick-up.

D. Personal protective equipment (PPE). Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (16VAC25-90-1910.132), shall comply with the following requirements for a SARS-CoV-2 virus and COVID-19 disease-related hazard assessment and personal protective equipment selection:

1. Employers shall assess the workplace to determine if SARS-CoV-2 virus or COVID-19 disease hazards or job tasks are present or are likely to be present that necessitate the use of personal protective equipment (PPE). Employers shall provide for employee and employee representative involvement in the assessment process. If such hazards or job tasks are present or likely to be present, employers shall:

a. Except as otherwise required in the standard, select and have each affected employee use the types of PPE that will protect the affected employee from the SARS-CoV-2 virus or COVID-19 disease hazards identified in the hazard assessment;

b. Communicate selection decisions to each affected employee; and

c. Select PPE that properly fits each affected employee.

2. Employers shall verify that the required SARS-CoV-2 virus and COVID-19 disease workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated, the person certifying that the evaluation has been performed, the date of the hazard assessment, and the document as a certification of hazard assessment.

3. Unless specifically addressed by an industry specific standard applicable to the employer and providing for PPE protections to employees from the SARS-CoV-2 virus or COVID-19 disease (e.g., 16VAC25-175-1926, 16VAC25-190-1928, 16VAC25-100-1915, 16VAC25-120-1917, or 16VAC25-130-1918), the requirements of 16VAC25-90-1910.132 (General requirements) and 16VAC25-90-1910.134 (Respiratory protection) shall apply to all employers for that purpose.

4. Unless contraindicated by a hazard assessment and equipment selection requirements in subdivision 1 of this subsection, employees classified as very high or high exposure risk shall be provided with and wear gloves, a gown, a face shield or goggles, and a respirator when in contact with or inside six feet of patients or other persons known to be or suspected of being infected with SARS-CoV-2. Gowns shall be the correct size to assure protection.

16VAC25-220-60. Requirements for hazards or job tasks classified at medium exposure risk.

A. The requirements in this section for employers with hazards or job tasks classified as medium exposure risk apply in addition to requirements contained in 16VAC25-220-40, 16VAC25-70, and 16VAC25-80.

B. Engineering controls.

1. Employers shall ensure that air-handling systems under their control:

a. Are maintained in accordance with the manufacturer's instructions; and

b. Where feasible and within the design parameters of the system, are utilized as follows:

(1) Increase total airflow supply to occupied spaces provided that a greater hazard is not created (e.g., airflow that is increased too much may make doors harder to open or may blow doors open);

(2) In ground transportation settings, use natural ventilation to increase outdoor air dilution of inside air in a manner that will aid in mitigating the spread of SARS-CoV-2 virus and COVID-19 disease transmission to employees and when environmental conditions and transportation safety and health requirements allow;

(3) Inspect filter housing and racks to ensure appropriate filter fit and check for ways to minimize filter bypass;

(4) Increase air filtration to as high as possible in a manner that will still enable the system to provide airflow rates as the system design requires. Ensure compliance with higher filtration values is allowed by the air handler manufacturer's installation instructions and listing;

(5) Generate clean-to-less-clean air movements by re-evaluating the positioning of supply and exhaust air

diffusers and/or dampers and adjusting zone supply and exhaust flow rates to establish measurable pressure differentials;

(6) Have staff work in "clean" ventilation zones that do not include higher-risk areas such as visitor reception or exercise facilities (if open);

(7) Ensure exhaust fans in restroom facilities are functional and operating continuously when the building is occupied;

(8) If the system's design can accommodate such an adjustment and is allowed by the air handler manufacturer's installation instructions and listing, improve central air filtration to MERV-13 and seal edges of the filter to limit bypass; and

(9) Check filters to ensure they are within service life and appropriately installed.

c. Comply with USBC and applicable referenced American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards.

2. Where feasible, employers shall Install physical barriers (e.g., such as clear plastic sneeze guards, etc.), where such barriers will aid in mitigating the spread of SARS-CoV-2 virus transmission.

C. Administrative and work practice controls. To the extent feasible, employers shall implement the following administrative and work practice controls:

1. Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19.

2. Provide face coverings to non-employees suspected to be infected with SARS-CoV-2 to contain respiratory secretions until the non-employees are able to leave the site (i.e., for medical evaluation and care or to return home).

3. Implement flexible work site (e.g., telework).

4. Implement flexible work hours (e.g., staggered shifts).

5. Increase physical distancing between employees at the work site to six feet.

6. Increase physical distancing between employees and other persons, including customers, to six feet (e.g., drive-through physical barriers) where such barriers will aid in mitigating the spread of SARS-CoV-2 virus transmission, etc.

7. Implement flexible meeting and travel options (e.g., using telephone or video conferencing instead of in person meetings; postponing non-essential travel or events; etc.).

8. Deliver services remotely (e.g. phone, video, internet, etc.).

9. Deliver products through curbside pick-up or delivery.

10. Employers shall provide and require employees to wear face coverings who, because of job tasks, cannot feasibly practice physical distancing from another employee or other person if the hazard assessment has determined that personal protective equipment, such as respirators or surgical/medical procedure masks, was not required for the job task.

11. Employers shall provide and require employees in customer or other person facing jobs to wear face coverings.

D. Personal protective equipment. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (16VAC25-90-1910.132) shall comply with the requirements of this subsection for a SARS-CoV-2 virus and COVID-19 disease related hazard assessment and personal protective equipment selection.

1. Employers shall assess the workplace to determine if SARS-CoV-2 virus or COVID-19 disease hazards or job tasks are present or are likely to be present that necessitate the use of personal protective equipment (PPE). Employers shall provide for employee and employee representative involvement in the assessment process. If such hazards or job tasks are present or likely to be present, employers shall:

a. Except as otherwise required in the standard, select and have each affected employee use the types of PPE that will protect the affected employee from the SARS-CoV-2 virus or COVID-19 disease hazards identified in the hazard assessment;

b. Communicate selection decisions to each affected employee; and

c. Select PPE that properly fits each affected employee.

2. Employers shall verify that the required SARS-CoV-2 virus and COVID-19 disease workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date of the hazard assessment; and the document as a certification of hazard assessment.

3. Unless specifically addressed by an industry specific standard applicable to the employer and providing for PPE protections to employees from the SARS-CoV-2 virus or COVID-19 disease (e.g., 16VAC25-175-1926, 16VAC25-190-1928, 16VAC25-100-1915, 16VAC25-120-1917, or 16VAC25-130-1918), the requirements of 16VAC25-90-1910.132 (General requirements) and 16VAC25-90-1910.134 (Respiratory protection) shall apply to all employers for that purpose.

4. PPE ensembles for employees in the medium exposure risk category will vary by work task, the results of the employer's hazard assessment, and the types of exposures employees have on the job.

16VAC25-220-70. Infectious disease preparedness and response plan.

A. Employers with hazards or job tasks classified as:

1. Very high and high shall develop and implement a written Infectious Disease Preparedness and Response Plan;

2. Medium with 11 or more employees shall develop and implement a written Infectious Disease Preparedness and Response Plan.

B. The plan and training requirements tied to the plan shall only apply to those employees classified as very high, high, and medium covered by this section.

C. Employers shall designate a person to be responsible for implementing their plan. The plan shall:

1. Identify the name or title of the person responsible for administering the plan. This person shall be knowledgeable in infection control principles and practices as the principles and practices apply to the facility, service, or operation.

2. Provide for employee involvement in development and implementation of the plan.

3. Consider and address the level of SARS-CoV-2 virus and COVID-19 disease risk associated with various places of employment, the hazards employees are exposed to at those sites, and job tasks employees perform at those sites. Such considerations shall include:

a. Where, how, and to what sources of the SARS-CoV-2 virus or COVID-19 disease might employees be exposed at work, including:

(1) The general public, customers, other employees, patients, and other persons;

(2) Persons known or suspected to be infected with the SARS-CoV-2 virus or those at particularly high risk of COVID-19 infection (e.g., local, state, national, and international travelers who have visited locations with ongoing COVID-19 community transmission and health care employees who have had unprotected exposures to persons known or suspected to be infected with SARS-CoV-2 virus);

(3) Situations where employees work more than one job with different employers and encounter hazards or engage in job tasks that present a very high, high, or medium level of exposure risk; and

(4) Situations where employees work during higher risk activities involving potentially large numbers of people or enclosed work areas such as at large social gatherings, weddings, funerals, parties, restaurants, bars, hotels, sporting events, concerts, parades, movie theaters, rest stops, airports, bus stations, train stations, cruise ships, river boats, airplanes, etc.

b. To the extent permitted by law, including HIPAA, employees' individual risk factors for severe disease. For example, people of any age with one or more of the following conditions are at increased risk of severe illness from COVID-19: chronic kidney disease; COPD (chronic obstructive pulmonary disease); immunocompromised state (weakened immune system) from solid organ transplant; obesity (body mass index or BMI of 30 or higher); serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies; sickle cell disease; or type 2 diabetes mellitus. Also, for example, people with one or more of the following conditions might be at an increased risk for severe illness from COVID-19: asthma (moderate-to-severe); cerebrovascular disease (affects blood vessels and blood supply to the brain); cystic fibrosis; hypertension or high blood pressure; immunocompromised state (weakened immune system) from blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines; neurologic conditions, such as dementia; liver disease; pregnancy; pulmonary fibrosis (having damaged or scarred lung tissues); smoking; thalassemia (a type of blood disorder); type 1 diabetes mellitus; etc. The risk for severe illness from COVID-19 also increases with age.

c. Engineering, administrative, work practice, and personal protective equipment controls necessary to address those risks.

4. Consider and address contingency plans for situations that may arise as a result of outbreaks that impact employee safety and health, such as:

a. Increased rates of employee absenteeism (an understaffed business can be at greater risk for accidents);

b. The need for physical distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing workplace control measures such as elimination and substitution, engineering controls, administrative and work practice controls, and personal protective equipment (e.g., respirators, surgical/medical procedure masks, etc.);

c. Options for conducting essential operations in a safe and healthy manner with a reduced workforce; and

d. Interrupted supply chains or delayed deliveries of safety and health related products and services essential to business operations.

5. Identify infection prevention measures to be implemented:

a. Promote frequent and thorough hand washing, including by providing employees, customers, visitors, the general public, and other persons to the place of employment with a place to wash their hands. If soap and running water are not immediately available, provide hand sanitizers.

b. Maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment.

c. Establish policies and procedures for managing and educating visitors about the procedures at the place of employment.

6. Provide for the prompt identification and isolation of employees known or suspected to be infected with the SARS-CoV-2 virus away from work, including procedures for employees to report when they are experiencing signs or symptoms of COVID-19.

7. Address infectious disease preparedness and response with outside businesses, including, but not limited to, subcontractors who enter the place of employment, businesses that provide contract or temporary employees to the employer, and other persons accessing the place of employment to comply with the requirements of this standard and the employer's plan.

8. Identify the mandatory and non-mandatory recommendations in any CDC guidelines or Commonwealth of Virginia guidance documents the employer is complying with, if any, in lieu of a provision of this standard, as provided for in 16VAC25-220-10 E, F, and G.

16VAC25-220-80. Training.

A. Employers with hazards or job tasks classified as very high, high, or medium exposure risk at a place of employment shall provide training on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease to all employees working at the place of employment regardless of employee risk classification. The training program shall enable each employee to recognize the hazards of the SARS-CoV-2 virus and signs and symptoms of COVID-19 disease and shall train each employee in the procedures to be followed in order to minimize these hazards.

B. The training required under subsection A of this section shall include:

1. The requirements of this standard;

2. The mandatory and non-mandatory provisions in any applicable CDC guidelines or Commonwealth of Virginia guidance documents the employer is complying with, if any, in lieu of a provision of this standard as provided for in 16VAC25-220-10 E, F, and G;

3. The characteristics and methods of transmission of the SARS-CoV-2 virus;

4. The signs and symptoms of COVID-19 disease;

5. Risk factors for severe COVID-19 illness including underlying health conditions and advancing age;

6. Awareness of the ability of persons pre-symptomatically and asymptomatically infected with SARS-CoV-2 to transmit the SARS-CoV-2 virus;

7. Safe and healthy work practices, including, but not limited to, physical distancing, the wearing of face coverings, disinfection procedures, disinfecting frequency, ventilation, noncontact methods of greeting, etc.;

8. Personal protective equipment (PPE):

a. When PPE is required;

b. What PPE is required;

c. How to properly don, doff, adjust, and wear PPE;

d. The limitations of PPE;

e. The proper care, maintenance, useful life, and disposal of PPE;

f. Strategies to extend PPE usage during periods when supplies are not available and no other options are available for protection, as long as the extended use of the PPE does not pose any increased risk of exposure. The training to extend PPE usage shall include the conditions of extended PPE use, inspection criteria of the PPE to determine whether it can or cannot be used for an extended period, and safe storage requirements for PPE used for an extended period; and

g. Heat-related illness prevention including the signs and symptoms of heat-related illness associated with the use of COVID-19 PPE and face coverings;

9. The anti-discrimination provisions in 16VAC25-220-90; and

10. The employer's Infectious Disease Preparedness and Response Plan, where applicable.

C. Employers covered by 16VAC25-220-50 shall verify compliance with 16VAC25-220-80 A by preparing a written certification record for those employees exposed to hazards or job tasks classified as very high, high, or medium exposure risk levels.

1. The written certification record shall contain:

a. The name or other unique identifier of the employee trained;

b. The trained employee's physical or electronic signature;

c. The date of the training; and

d. The name of the person who conducted the training, or for computer-based training, the name of the person or entity that prepared the training materials.

2. A physical or electronic signature is not necessary if other documentation of training completion can be provided (e.g., electronic certification through a training system, security precautions that enable the employer to demonstrate that training was accessed by passwords and usernames unique to each employee, etc.).

3. If an employer relies on training conducted by another employer, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training.

4. The latest training or retraining certification shall be maintained.

D. When an employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by 16VAC25-220-80 A, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:

1. Changes in the workplace, SARS-CoV-2 virus or COVID-19 disease hazards exposed to, or job tasks performed render previous training obsolete;

2. Changes are made to the employer's Infectious Disease Preparedness and Response Plan; or

3. Inadequacies in an affected employee's knowledge or use of workplace control measures indicate that the employee has not retained the requisite understanding or skill.

E. Employers with hazards or job tasks classified at lower risk shall provide written or oral information to employees exposed to such hazards or engaged in such job tasks on the hazards and characteristics of SARS-CoV-2 and the symptoms of COVID-19 and measures to minimize exposure. The Department of Labor and Industry shall develop an information sheet containing information on the items listed in subsection F of this section, which an employer may utilize to comply with this subsection.

F. The information required under subsection E of this section shall include at a minimum:

1. The requirements of this standard;

2. The characteristics and methods of transmission of the SARS-CoV-2 virus;

3. The signs and symptoms of COVID-19 disease;

4. The ability of persons pre-symptomatically and asymptomatically infected with SARS-CoV-2 to transmit the SARS-CoV-2 virus;

5. Safe and healthy work practices and control measures, including, but not limited to, physical distancing, the benefits of wearing face coverings, sanitation and disinfection practices; and

6. The anti-discrimination provisions of this standard in 16VAC25-220-90.

16VAC25-220-90. Discrimination against an employee for exercising rights under this standard is prohibited.

A. No person shall discharge or in any way discriminate against an employee because the employee has exercised rights under the safety and health provisions of this standard, Title 40.1 of the Code of Virginia, and implementing regulations under 16VAC25-60-110 for themselves or others.

B. No person shall discharge or in any way discriminate against an employee who voluntarily provides and wears the employee's own personal protective equipment, including, but not limited to, a respirator, face shield, gown, or gloves, provided that the PPE does not create a greater hazard to the employee or create a serious hazard for other employees. In situations where face coverings are not provided by the employer, no person shall discharge or in any way discriminate against an employee who voluntarily provides and wears the employee's own face covering that meets the requirements of this standard, provided that the face covering does not create a greater hazard to the employee or create a serious hazard for other employees. Nothing in this subsection shall be construed to prohibit an employer from establishing and enforcing legally permissible dress code or similar requirements addressing the exterior appearance of personal protective equipment or face coverings.

C. No person shall discharge or in any way discriminate against an employee who raises a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, the employer's agent, other employees, a government agency, or to the public such as through print, online, social, or any other media.

D. Nothing in this standard shall limit an employee from refusing to do work or enter a location because of a reasonable fear of illness or death. The requirements of 16VAC25-60-110 contain the applicable requirements concerning discharge or discipline of an employee who has refused to complete an assigned task because of a reasonable fear of illness or death.

DOCUMENTS INCORPORATED BY REFERENCE (16VAC25-220)

List N Products with Emerging Viral Pathogens and Human Coronavirus claims for use against SARS-CoV-2, U.S. Environmental Protection Agency, Date Accessed July 20, 2020, www.epa.gov

Biosafety in Microbiological and Biomedical Laboratories, 5th Edition, HHS Publication No. (CDC) 21-112, revised December 2009, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institutes of Health

VA.R. Doc. No. R20-6457; Filed January 25, 2021, 1:00 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Final Regulation

Title of Regulation: **18VAC60-21. Regulations Governing the Practice of Dentistry (amending 18VAC60-21-10, 18VAC60-21-260 through 18VAC60-21-301).**

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

Effective Date: March 17, 2021.

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

Summary:

The amendments include (i) clarification of supervision of certified registered nurse anesthetists; (ii) clarification that the regulations address administration to patients of any age, but that the specific guidelines for pediatric patients should be consulted when practicing pediatric dentistry; (iii) a requirement for a focused physician examination to be included in the patient evaluation for administration of controlled substances; (iv) allowances for special needs patients in the evaluation for, administration of, and monitoring of sedation and anesthesia with documentation in the patient record of the extenuating circumstances that necessitate exceptions to regulatory requirements; (v) clarification of the requirements for minimal sedation and inclusion of oxygen saturation with pulse oximeter as required equipment; (vi) requirements that the dentist must follow requirements for the level of sedation that has been induced and that administration of one drug in excess of recommended dosage, or of two or more drugs, exceeds minimal sedation; (vii) clarification that no sedating medication can be administered to a child 12 years or younger prior to arrival at the dental office; (viii) clarification of use of the terms "continuously" and "continually"; (ix) consideration of extenuating patient circumstances in the monitoring and discharge requirements; (x) addition of oxygen saturation levels to the monitoring requirements; (xi) clarification that requirements for moderate sedation or deep/general anesthesia must be followed by the dentist if the dentist administers controlled substances or if the dentist provides it in dentist office with someone else doing the administration; and (xiii) requirement of a longer period of monitoring if a pharmacological reversal agent has been administered.

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

18VAC60-21-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2700 of the Code of Virginia:

"Board"

"Dental hygiene"

"Dental hygienist"

"Dentist"

"Dentistry"

"License"

"Maxillofacial"

"Oral and maxillofacial surgeon"

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

"AAOMS" means the American Association of Oral and Maxillofacial Surgeons.

"ADA" means the American Dental Association.

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale, or use of dental methods, services, treatments, operations, procedures, or products, or to promote continued or increased use of such dental methods, treatments, operations, procedures, or products.

"CODA" means the Commission on Dental Accreditation of the American Dental Association.

"Code" means the Code of Virginia.

"Dental assistant I" means any unlicensed person under the direction of a dentist or a dental hygienist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely an administrative, secretarial, or clerical capacity.

"Dental assistant II" means a person under the direction and direct supervision of a dentist who is registered by the board to perform reversible, intraoral procedures as specified in 18VAC60-21-150 and 18VAC60-21-160.

"Mobile dental facility" means a self-contained unit in which dentistry is practiced that is not confined to a single building and can be transported from one location to another.

"Nonsurgical laser" means a laser that is not capable of cutting or removing hard tissue, soft tissue, or tooth structure.

"Portable dental operation" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and utilized on a temporary basis at an out-of-office location, including patients' homes, schools, nursing homes, or other institutions.

"Radiographs" means intraoral and extraoral radiographic images of hard and soft tissues used for purposes of diagnosis.

C. The following words and terms relating to supervision as used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Direct supervision" means that the dentist examines the patient and records diagnostic findings prior to delegating restorative or prosthetic treatment and related services to a dental assistant II for completion the same day or at a later date. The dentist prepares the tooth or teeth to be restored and remains immediately available in the office to the dental assistant II for guidance or assistance during the delivery of treatment and related services. The dentist examines the patient to evaluate the treatment and services before the patient is dismissed.

"Direction" means the level of supervision (i.e., immediate, direct, indirect, or general) that a dentist is required to exercise with a dental hygienist, a dental assistant I, ~~or~~ a dental assistant II, or a certified registered nurse anesthetist or the level of supervision that a dental hygienist is required to exercise with a dental assistant to direct and oversee the delivery of treatment and related services.

"General supervision" means that a dentist completes a periodic comprehensive examination of the patient and issues a written order for hygiene treatment that states the specific services to be provided by a dental hygienist during one or more subsequent appointments when the dentist may or may not be present. Issuance of the order authorizes the dental hygienist to supervise a dental assistant performing duties delegable to dental assistants I.

"Immediate supervision" means the dentist is in the operatory to supervise the administration of sedation or provision of treatment.

"Indirect supervision" means the dentist examines the patient at some point during the appointment and is continuously present in the office to advise and assist a dental hygienist ~~or,~~ a dental assistant, or a certified registered nurse anesthetist who is (i) delivering hygiene treatment, (ii) preparing the patient for examination or treatment by the dentist, ~~or~~ (iii) preparing the patient for dismissal following treatment, or (iv) administering topical local anesthetic, sedation, or anesthesia as authorized by law or regulation.

"Remote supervision" means that a supervising dentist is accessible and available for communication and consultation with a dental hygienist during the delivery of dental hygiene services but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided. For the purpose of practice by a public health dental hygienist, "remote supervision" means that a public health dentist has regular, periodic communications with a public health dental hygienist regarding patient treatment, but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided.

D. The following words and terms relating to sedation or anesthesia as used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Analgesia" means the diminution or elimination of pain.

"Continual" or "continually" means repeated regularly and frequently in a steady succession.

"Continuous" or "continuously" means prolonged without any interruption at any time.

"Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. Reflex withdrawal from a painful stimulus is not considered a purposeful response. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

"General anesthesia" means a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilator function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"Inhalation" means a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Inhalation analgesia" means the inhalation of nitrous oxide and oxygen to produce a state of reduced sensation of pain with minimal alteration of consciousness.

"Local anesthesia" means the elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug.

"Minimal sedation" means a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and physical coordination may be impaired, airway reflexes, and ventilator and cardiovascular functions are unaffected. Minimal sedation includes ~~"anxiolysis" (the~~ the diminution or elimination of anxiety through the use of pharmacological agents in a dosage that does not cause depression of ~~consciousness)~~ consciousness and includes "inhalation analgesia" when used in combination with any ~~anxiolytic~~ such sedating agent administered prior to or during a procedure.

"Moderate sedation" means a drug-induced depression of consciousness, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Reflex withdrawal from a painful stimulus is not considered a purposeful response. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

"Monitoring" means to observe, interpret, assess, and record appropriate physiologic functions of the body during sedative procedures and general anesthesia appropriate to the level of sedation as provided in Part VI (18VAC60-21-260 et seq.) of this chapter.

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraocular).

"Provide" means, in the context of regulations for moderate sedation or deep sedation/general anesthesia, to supply, give, or issue sedating medications. A dentist who does not hold the applicable permit cannot be the provider of moderate sedation or deep sedation/general anesthesia.

"Titration" means the incremental increase in drug dosage to a level that provides the optimal therapeutic effect of sedation.

"Topical oral anesthetic" means any drug, available in creams, ointments, aerosols, sprays, lotions, or jellies, that can be used orally for the purpose of rendering the oral cavity insensitive to pain without affecting consciousness.

Part VI
Controlled Substances, Sedation, and Anesthesia

18VAC60-21-260. General provisions.

A. ~~Application of~~ Part VI~~.~~ of this chapter:

~~This part applies~~ 1. Applies to prescribing, dispensing, and administering controlled substances in dental offices, mobile dental facilities, and portable dental operations and shall not apply to administration by a dentist practicing in (i) a licensed hospital as defined in § 32.1-123 of the Code, (ii) a state-operated hospital, or (iii) a facility directly maintained or operated by the federal government.

2. Addresses the minimum requirements for administration to patients of any age. Guidelines for Monitoring and Management of Pediatric Patients During and After Sedation for Diagnostic and Therapeutic Procedures, issued by the American Academy of Pediatrics and American Academy of Pediatric Dentistry, should be consulted when practicing pediatric dentistry.

B. Registration required. Any dentist who prescribes, administers, or dispenses Schedules II through V controlled ~~drugs~~ substances must hold a current registration with the federal Drug Enforcement Administration.

C. Patient evaluation required.

1. An appropriate medical history and patient evaluation, including medication use and a focused physical exam, shall be performed before the decision to administer controlled substances for dental treatment is made. The decision to administer controlled ~~drugs~~ substances for dental treatment must be based on a documented evaluation of the health history and current medical condition of the patient in accordance with the Class I through V risk category classifications of the American Society of Anesthesiologists (ASA) in effect at the time of treatment. The findings of the evaluation, the ASA risk assessment class assigned, and any special considerations must be recorded in the patient's record.

2. Any level of sedation and general anesthesia may be provided for a patient who is ASA Class I and Class II.

3. A patient in ASA Class III shall only be provided minimal sedation, moderate sedation, deep sedation, or general anesthesia by:

a. A dentist after he has documented a consultation with the patient's primary care physician or other medical specialist regarding potential risks and special monitoring requirements that may be necessary;

b. An oral and maxillofacial surgeon who has performed a physical evaluation and documented the findings and the ASA risk assessment category of the patient and any special monitoring requirements that may be necessary; or

c. A person licensed under Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code who has a specialty in anesthesia.

4. Minimal sedation may only be provided for a patient who is in ASA Class IV by:

a. A dentist after he has documented a consultation with the patient's primary care physician or other medical specialist regarding potential risks and special monitoring requirements that may be necessary; or

b. An oral and maxillofacial surgeon who has performed a physical evaluation and documented the findings and the ASA risk assessment category of the patient and any special monitoring requirements that may be necessary.

5. Moderate sedation, deep sedation, or general anesthesia shall not be provided in a dental office for patients in ASA Class IV and Class V.

D. Additional requirements for patient information and records. In addition to the record requirements in 18VAC60-21-90, when moderate sedation, deep sedation, or general anesthesia is administered, the patient record shall also include:

1. Notation of the patient's American Society of Anesthesiologists classification;

2. Review of medical history and current conditions, including the patient's weight and height or, if appropriate, the body mass index;

3. Written informed consent for administration of sedation and anesthesia and for the dental procedure to be performed;

4. Preoperative vital signs;

5. A record of the name, dose, and strength of drugs and route of administration including the administration of local anesthetics with notations of the time sedation and anesthesia were administered;

6. Monitoring records of all required vital signs and physiological measures recorded ~~every five minutes~~ continually; and

7. A list of staff participating in the administration, treatment, and monitoring including name, position, and assigned duties.

E. Pediatric patients. No sedating medication shall be prescribed for ~~or administered~~ administration to a patient 12 years of age or younger prior to his arrival at the dentist office or treatment facility.

F. Informed written consent. Prior to administration of any level of sedation or general anesthesia, the dentist shall discuss the nature and objectives of the planned level of sedation or general anesthesia along with the risks, benefits, and alternatives and shall obtain informed, written consent from the patient or other responsible party for the administration and for the treatment to be provided. The written consent must be maintained in the patient record.

G. Level of sedation. The determinant for the application of the rules for any level of sedation or for general anesthesia shall be the degree of sedation or consciousness level of a patient that should reasonably be expected to result from the type, strength, and dosage of medication, the method of administration, and the individual characteristics of the patient as documented in the patient's record. The drugs and techniques used must carry a margin of safety wide enough to render the unintended reduction of or loss of consciousness unlikely, factoring in titration and the patient's age, weight, and ability to metabolize drugs.

H. Emergency management.

1. If a patient enters a deeper level of sedation than the dentist is qualified and prepared to provide, the dentist shall stop the dental procedure until the patient returns to and is stable at the intended level of sedation.

2. A dentist in whose office sedation or anesthesia is administered shall have written basic emergency procedures established and staff trained to carry out such procedures.

I. Ancillary personnel. Dentists who employ unlicensed, ancillary personnel to assist in the administration and monitoring of any form of minimal sedation, moderate sedation, deep sedation, or general anesthesia shall maintain documentation that such personnel have:

1. Training and hold current certification in basic resuscitation techniques with hands-on airway training for health care providers, such as Basic Cardiac Life Support for Health Professionals or a clinically oriented course devoted primarily to responding to clinical emergencies offered by an approved provider of continuing education as set forth in 18VAC60-21-250 C; or

2. Current certification as a certified anesthesia assistant (CAA) by the American Association of Oral and Maxillofacial Surgeons or the American Dental Society of Anesthesiology (ADSA).

J. Assisting in administration. A dentist, consistent with the planned level of administration (i.e., local anesthesia, minimal sedation, moderate sedation, deep sedation, or general anesthesia) and appropriate to his education, training, and experience, may utilize the services of a dentist, anesthesiologist, certified registered nurse anesthetist, dental hygienist, dental assistant, or nurse to perform functions appropriate to such practitioner's education, training, and experience and consistent with that practitioner's respective scope of practice.

K. Patient monitoring.

1. A dentist may delegate monitoring of a patient to a dental hygienist, dental assistant, or nurse who is under his direction or to another dentist, anesthesiologist, or certified registered nurse anesthetist. The person assigned to monitor the patient shall be continuously in the presence of the patient in the office, operatory, and recovery area (i) before administration is initiated or immediately upon arrival if the patient self-administered a sedative agent, (ii) throughout the administration of drugs, (iii) throughout the treatment of the patient, and (iv) throughout recovery until the patient is discharged by the dentist.

2. The person monitoring the patient shall:

a. Have the patient's entire body in sight;

b. Be in close proximity so as to speak with the patient;

c. Converse with the patient to assess the patient's ability to respond in order to determine the patient's level of sedation;

d. Closely observe the patient for coloring, breathing, level of physical activity, facial expressions, eye movement, and bodily gestures in order to immediately recognize and bring any changes in the patient's condition to the attention of the treating dentist; and

e. Read, report, and record the patient's vital signs and physiological measures.

L. A dentist who allows the administration of general anesthesia, deep sedation, or moderate sedation in his dental office is responsible for assuring that:

1. The equipment for administration and monitoring, as required in subsection B of 18VAC60-21-291 or subsection C of 18VAC60-21-301, is readily available and in good working order prior to performing dental treatment with anesthesia or sedation. The equipment shall either be maintained by the dentist in his office or provided by the anesthesia or sedation provider; and

2. The person administering the anesthesia or sedation is appropriately licensed and the staff monitoring the patient is qualified.

M. Special needs patients. If a patient is mentally or physically challenged, and it is not possible to have a comprehensive physical examination or appropriate laboratory tests prior to administering care, the dentist is responsible for documenting in the patient record the reasons preventing the recommended preoperative management. In selected circumstances, sedation or general anesthesia may be utilized without establishing an intravenous line. These selected circumstances include very brief procedures or periods of time, which may occur in some patients; or the establishment of intravenous access after deep sedation or general anesthesia has been induced because of poor patient cooperation.

18VAC60-21-270. Administration of local anesthesia.

A dentist may administer or use the services of the following personnel to administer local anesthesia:

1. A dentist;

2. An anesthesiologist;

3. A certified registered nurse anesthetist under ~~his medical~~ the dentist's direction and indirect supervision;

4. A dental hygienist with the training required by 18VAC60-25-100 C to parenterally administer Schedule VI local anesthesia to persons 18 years of age or older under his indirect supervision;

5. A dental hygienist to administer Schedule VI topical oral anesthetics under indirect supervision or under his order for such treatment under general supervision; or

6. A dental assistant or a registered or licensed practical nurse to administer Schedule VI topical oral anesthetics under indirect supervision.

18VAC60-21-279. Administration of ~~only~~ inhalation analgesia (nitrous ~~oxide)~~ oxide only).

A. Education and training requirements. A dentist who utilizes nitrous oxide shall have training in and knowledge of:

1. The appropriate use and physiological effects of nitrous oxide, the potential complications of administration, the indicators for complications, and the interventions to address the complications.

2. The use and maintenance of the equipment required in subsection D of this section.

B. No sedating medication shall be prescribed for ~~or administered~~ administration to a patient 12 years of age or younger prior to ~~his~~ the patient's arrival at the dental office or treatment facility.

C. Delegation of administration.

1. A qualified dentist may administer or use the services of the following personnel to administer nitrous oxide:

a. A dentist;

b. An anesthesiologist;

c. A certified registered nurse anesthetist under ~~his medical~~ the dentist's direction and indirect supervision;

d. A dental hygienist with the training required by 18VAC60-25-100 B and under indirect supervision; or

e. A registered nurse upon his direct instruction and under immediate supervision.

2. Preceding the administration of nitrous oxide, a dentist may use the services of the following personnel working under indirect supervision to administer local anesthesia to numb an injection or treatment site:

a. A dental hygienist with the training required by 18VAC60-25-100 C to parenterally administer Schedule VI local anesthesia to persons 18 years of age or older; or

b. A dental hygienist, dental assistant, registered nurse, or licensed practical nurse to administer Schedule VI topical oral anesthetics.

D. Equipment requirements. A dentist who utilizes nitrous oxide only or who directs the administration by another licensed health professional as permitted in subsection C of this section shall maintain the following equipment in working order and immediately available to the areas where patients will be sedated and treated and will recover:

1. Blood pressure monitoring equipment;

2. Source of delivery of oxygen under controlled positive pressure;

3. Mechanical (hand) respiratory bag; ~~and~~

4. Suction apparatus; and

5. Oxygen saturation with pulse oximeter, unless extenuating circumstances exist and are documented in the patient's record.

E. Required staffing. When only nitrous oxide/oxygen is administered, a second person in the operatory is not required. Either the dentist or qualified dental hygienist under the indirect supervision of a dentist may administer the nitrous oxide/oxygen and treat and monitor the patient.

F. Monitoring requirements.

1. Baseline vital signs, to include blood pressure and heart rate, shall be taken and recorded prior to administration of nitrous oxide analgesia, intraoperatively as necessary, and prior to discharge, unless extenuating circumstances exist and are documented in the patient's record.

2. Continual clinical observation of the patient's responsiveness, color, respiratory rate, and depth of ventilation shall be performed.

3. Once the administration of nitrous oxide has begun, the dentist shall ensure that a licensed health care professional or a person qualified in accordance with 18VAC60-21-260 I monitors the patient at all times until discharged as required in subsection G of this section.

4. Monitoring shall include making the proper adjustments of nitrous oxide/oxygen machines at the request of or by the dentist or by another qualified licensed health professional identified in subsection C of this section. Only the dentist or another qualified licensed health professional identified in subsection C of this section may turn the nitrous oxide/oxygen machines on or off.

5. Upon completion of nitrous oxide administration, the patient shall be administered 100% oxygen for a minimum of five minutes to minimize the risk of diffusion hypoxia.

G. Discharge requirements.

1. The dentist shall not discharge a patient until he exhibits baseline responses in a post-operative evaluation of the level of consciousness. Vital signs, to include blood pressure and heart rate, shall be taken and recorded prior to discharge, unless extenuating circumstances exist and are documented in the patient's record.

2. Post-operative instructions shall be given verbally and in writing. The written instructions shall include a 24-hour emergency telephone number.

3. Pediatric patients shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

18VAC60-21-280. Administration of minimal sedation.

A. Education and training requirements. A dentist who utilizes minimal sedation shall have training in and knowledge of:

1. The medications used, the appropriate dosages, the potential complications of administration, the indicators for complications, and the interventions to address the complications.

2. The physiological effects of minimal sedation, the potential complications of administration, the indicators for complications, and the interventions to address the complications.

3. The use and maintenance of the equipment required in subsection D of this section.

B. No sedating medication shall be prescribed for ~~or administered~~ administration to a patient 12 years of age or younger prior to ~~his~~ the patient's arrival at the dental office or treatment facility.

C. Delegation of administration.

1. A qualified dentist may administer or use the services of the following personnel to administer minimal sedation:

a. A dentist;

b. An anesthesiologist;

c. A certified registered nurse anesthetist under ~~his medical~~ the dentist's direction and indirect supervision;

d. A dental hygienist with the training required by 18VAC60-25-100 ~~C~~ B only for administration of nitrous oxide/oxygen ~~with the dentist present in the operatory~~ under indirect supervision; or

e. A registered nurse upon his direct instruction and under immediate supervision.

2. Preceding the administration of minimal sedation, a dentist may use the services of the following personnel working under indirect supervision to administer local anesthesia to numb an injection or treatment site:

a. A dental hygienist with the training required by 18VAC60-25-100 C to parenterally administer Schedule VI local anesthesia to persons 18 years of age or older; or

b. A dental hygienist, dental assistant, registered nurse, or licensed practical nurse to administer Schedule VI topical oral anesthetics.

~~3. If minimal sedation is self-administered by or to a patient 13 years of age or older before arrival at the dental office or treatment facility, the dentist may only use the personnel listed in subdivision 1 of this subsection to administer local anesthesia.~~

D. Equipment requirements. A dentist who utilizes minimal sedation or who directs the administration by another licensed

health professional as permitted in subsection C of this section shall maintain the following equipment in working order and immediately available to the areas where patients will be sedated and treated and will recover:

1. Blood pressure monitoring equipment;

2. Source of delivery of oxygen under controlled positive pressure;

3. Mechanical (hand) respiratory bag;

4. Suction apparatus; and

5. Pulse oximeter.

E. Required staffing. The treatment team for minimal sedation shall consist of the dentist and a second person in the operatory with the patient to assist the dentist and monitor the patient. The second person shall be a licensed health care professional or a person qualified in accordance with 18VAC60-21-260 I.

F. Monitoring requirements.

1. Baseline vital signs to include blood pressure, respiratory rate, ~~and~~ heart rate, and oxygen saturation shall be taken and recorded prior to administration of sedation and prior to discharge.

2. Blood pressure, oxygen saturation, respiratory rate, and pulse shall be monitored ~~continuously~~ continually during the procedure unless extenuating circumstances exist and are documented in the patient's record.

3. Once the administration of minimal sedation has begun by any route of administration, the dentist shall ensure that a licensed health care professional or a person qualified in accordance with 18VAC60-21-260 I monitors the patient at all times until discharged as required in subsection G of this section.

4. ~~If nitrous~~ Nitrous oxide/oxygen ~~is~~ may be used ~~in addition to any~~ with one other pharmacological agent~~, monitoring shall include making the proper adjustments of nitrous oxide/oxygen machines at the request of or by the dentist or by another qualified licensed health professional identified in subsection C of this section. Only the dentist or another qualified licensed health professional identified in subsection C of this section may turn the nitrous oxide/oxygen machines on or off~~ in the recommended dosage for minimal sedation. If deeper levels of sedation are produced, the regulations for the induced level shall be followed. The administration of one drug in excess of the maximum recommended dose or of two or more drugs, with or without nitrous oxide, exceeds minimal sedation and requires compliance with the regulations for the level of sedation induced.

5. Monitoring shall include making the proper adjustments of nitrous oxide/oxygen machines at the request of or by the dentist or by another qualified licensed health professional identified in subsection C of this section. Only the dentist or another qualified licensed health professional identified in subsection C of this section may turn the nitrous oxide/oxygen machines on or off.

6. If any other pharmacological agent is used in addition to nitrous oxide/oxygen and a local anesthetic, requirements for the induced level of sedation must be met.

G. Discharge requirements.

1. The dentist shall not discharge a patient until he exhibits baseline responses in a post-operative evaluation of the level of consciousness. Vital signs, to include blood pressure, respiratory rate, ~~and~~ heart rate, and oxygen saturation shall be taken and recorded prior to discharge unless extenuating circumstances exist and are documented in the patient's record.

2. Post-operative instructions shall be given verbally and in writing. The written instructions shall include a 24-hour emergency telephone number.

3. Pediatric patients shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

18VAC60-21-290. Requirements for a moderate sedation permit.

A. No dentist may ~~employ or use~~ provide or administer moderate sedation in a dental office unless he has been issued a permit by the board. The requirement for a permit shall not apply to an oral and maxillofacial surgeon who maintains membership in the American Association of Oral and Maxillofacial Surgeons (AAOMS) and who provides the board with reports that result from the periodic office examinations required by AAOMS. Such an oral and maxillofacial surgeon shall be required to post a certificate issued by AAOMS.

B. Automatic qualification. Dentists who hold a current permit to administer deep sedation and general anesthesia may administer moderate sedation.

C. To determine eligibility for a moderate sedation permit, a dentist shall submit the following:

1. A completed application form;

2. The application fee as specified in 18VAC60-21-40;

3. A copy of a transcript, certification, or other documentation of training content that meets the educational and training qualifications as specified in subsection D of this section; and

4. A copy of current certification in advanced cardiac life support (ACLS) or pediatric advanced life support (PALS) as required in subsection E of this section.

D. Education requirements for a permit to administer moderate sedation. A dentist may be issued a moderate sedation permit to administer by any method by meeting one of the following criteria:

1. Completion of training for this treatment modality according to the ADA's Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students in effect at the time the training occurred, while enrolled in an accredited dental program or while enrolled in a post-doctoral university or teaching hospital program; or

2. Completion of a continuing education course that meets the requirements of 18VAC60-21-250 and consists of (i) 60 hours of didactic instruction plus the management of at least 20 patients per participant, (ii) demonstration of competency and clinical experience in moderate sedation, and (iii) management of a compromised airway. The course content shall be consistent with the ADA's Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students in effect at the time the training occurred.

E. Additional training required. Dentists who administer moderate sedation shall:

1. Hold current certification in advanced resuscitation techniques with hands-on simulated airway and megacode training for health care providers, such as ACLS or PALS as evidenced by a certificate of completion posted with the dental license; and

2. Have current training in the use and maintenance of the equipment required in 18VAC60-21-291.

18VAC60-21-291. Requirements for administration of moderate sedation.

A. Delegation of administration.

1. A dentist who does not hold a permit to provide or administer moderate sedation shall only ~~use~~ utilize the services of a qualified dentist [~~or,~~] an anesthesiologist [, or a certified registered nurse anesthetist] to administer such sedation in a dental office. [~~In a licensed outpatient surgery center, a dentist who does not hold a permit to provide or administer moderate sedation shall~~] ~~use~~ [~~utilize a qualified dentist, an anesthesiologist, or a certified registered nurse anesthetist to administer such sedation.~~]

2. A dentist who holds a permit may administer or use the services of the following personnel to administer moderate sedation:

a. A dentist with the training required by 18VAC60-21-290 D to administer by any method and who holds a moderate sedation permit;

b. An anesthesiologist;

c. A certified registered nurse anesthetist under the ~~medical~~ direction and indirect supervision of a dentist who meets the training requirements of 18VAC60-21-290 D and holds a moderate sedation permit or under the supervision of a doctor of medicine or osteopathic medicine; or

d. A registered nurse upon ~~his~~ the dentist's direct instruction and under the immediate supervision of a dentist who meets the training requirements of 18VAC60-21-290 D and holds a moderate sedation permit.

3. ~~If minimal sedation is self-administered by or to a patient 13 years of age or older before arrival at the dental office, the dentist may only use the personnel listed in subdivision 2 of this subsection to administer local anesthesia.~~ No sedating medication shall be prescribed for ~~or administered~~ administration to a patient 12 years of age or younger prior to ~~his~~ the patient's arrival at the dentist office or treatment facility.

4. Preceding the administration of moderate sedation, a permitted dentist may use the services of the following personnel under indirect supervision to administer local anesthesia to anesthetize the injection or treatment site:

a. A dental hygienist with the training required by 18VAC60-25-100 C to parenterally administer Schedule VI local anesthesia to persons 18 years of age or older; or

b. A dental hygienist, dental assistant, registered nurse, or licensed practical nurse to administer Schedule VI topical oral anesthetics.

5. A dentist who delegates administration of moderate sedation shall ensure that:

a. All equipment required in subsection B of this section is present, in good working order, and immediately available to the areas where patients will be sedated and treated and will recover; and

b. Qualified staff is on site to monitor patients in accordance with requirements of subsection D of this section.

B. Equipment requirements. A dentist who provides or administers or who utilizes a qualified anesthesia provider to administer moderate sedation shall have available the following equipment in sizes for adults or children as appropriate for the patient being treated and shall maintain it in working order and immediately available to the areas where patients will be sedated and treated and will recover:

1. Full face mask or masks;

2. Oral and nasopharyngeal airway management adjuncts;

3. Endotracheal tubes with appropriate connectors or other appropriate airway management adjunct such as a laryngeal mask airway;

4. A laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades;

5. Pulse oximetry;

6. Blood pressure monitoring equipment;

7. Pharmacologic antagonist agents;

8. Source of delivery of oxygen under controlled positive pressure;

9. Mechanical (hand) respiratory bag;

10. Appropriate emergency drugs for patient resuscitation;

11. Electrocardiographic monitor if a patient is receiving parenteral administration of sedation or if the dentist is using titration;

12. Defibrillator;

13. Suction apparatus;

14. Temperature measuring device;

15. ~~Throat pack~~ Airway protective device;

16. Precordial or pretracheal stethoscope; ~~and~~

17. An end-tidal carbon dioxide monitor (capnograph)**:** [and]

18. Equipment necessary to establish intravenous or intraosseous access.

C. Required staffing. At a minimum, there shall be a [two-person ~~three person~~] treatment team for moderate sedation. The team shall include the operating dentist [and a second~~, one~~] person to monitor the patient as provided in 18VAC60-21-260 K**,** and [~~one person to~~] assist the operating dentist as provided in 18VAC60-21-260 J, [both ~~all~~] of whom shall be in the operatory with the patient throughout the dental procedure. If [the second person is] a dentist, an anesthesiologist, or a certified registered nurse anesthetist [who] administers the drugs as permitted in subsection A of this section, such person may monitor the patient.

D. Monitoring requirements.

1. Baseline vital signs to include blood pressure, oxygen saturation, respiratory rate, and heart rate shall be taken and recorded prior to administration of any controlled drug at the facility and prior to discharge.

2. Blood pressure, oxygen saturation, respiratory rate, and end-tidal carbon dioxide~~, and pulse~~ shall be monitored continually during the administration and recorded ~~every five minutes~~ unless precluded or invalidated by the nature of the patient, procedure, or equipment.

3. Monitoring of the patient under moderate sedation is to begin prior to administration of sedation or, if pre-medication is self-administered by the patient, immediately upon the patient's arrival at the dental facility and shall take place continuously during the dental procedure and recovery from sedation. The person who administers the sedation or another licensed practitioner qualified to administer the same level of sedation must remain on the premises of the dental facility until the patient is evaluated and is discharged.

E. Discharge requirements.

1. The patient shall not be discharged until the responsible licensed practitioner determines that the patient's level of consciousness, oxygenation, ventilation, and ~~circulation~~ blood pressure and heart rate are satisfactory for discharge and vital signs have been taken and recorded.

2. Post-operative instructions shall be given verbally and in writing. The written instructions shall include a 24-hour emergency telephone number.

3. The patient shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

4. If a separate recovery area is utilized, oxygen and suction equipment shall be immediately available in that area.

5. Since re-sedation may occur once the effects of the reversal agent have waned, the patient shall be monitored for a longer period than usual when a pharmacological reversal agent has been administered before discharge criteria have been met.

F. Emergency management. The dentist shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.

18VAC60-21-300. Requirements for a deep sedation/general anesthesia permit.

A. ~~After March 31, 2013, no~~ No dentist may ~~employ or use~~ provide or administer deep sedation or general anesthesia in a dental office unless he has been issued a permit by the board. The requirement for a permit shall not apply to an oral and maxillofacial surgeon who maintains membership in AAOMS and who provides the board with reports that result from the periodic office examinations required by AAOMS. Such an oral and maxillofacial surgeon shall be required to post a certificate issued by AAOMS.

B. To determine eligibility for a deep sedation/general anesthesia permit, a dentist shall submit the following:

1. A completed application form;

2. The application fee as specified in 18VAC60-21-40;

3. A copy of the certificate of completion of a CODA accredited program or other documentation of training content which meets the educational and training qualifications specified in subsection C of this section; and

4. A copy of current certification in Advanced Cardiac Life Support for Health Professionals (ACLS) or Pediatric Advanced Life Support for Health Professionals (PALS) as required in subsection C of this section.

C. Educational and training qualifications for a deep sedation/general anesthesia permit.

1. Completion of a minimum of one calendar year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program in conformity with the ADA's Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry in effect at the time the training occurred; or

2. Completion of an CODA accredited residency in any dental specialty that incorporates into its curriculum a minimum of one calendar year of full-time training in clinical anesthesia and related clinical medical subjects (i.e., medical evaluation and management of patients) comparable to those set forth in the ADA's Guidelines for Graduate and Postgraduate Training in Anesthesia in effect at the time the training occurred; and

3. Current certification in advanced resuscitative techniques with hands-on simulated airway and megacode training for health care providers, including basic electrocardiographic interpretations, such as courses in ACLS or PALS; and

4. Current training in the use and maintenance of the equipment required in 18VAC60-21-301.

18VAC60-21-301. Requirements for administration of deep sedation or general anesthesia.

A. Preoperative requirements. Prior to the appointment for treatment under deep sedation or general anesthesia the patient shall:

1. Be informed about the personnel and procedures used to deliver the sedative or anesthetic drugs to assure informed consent as required by 18VAC60-21-260 F.

2. Have a physical evaluation as required by 18VAC60-21-260 C.

3. Be given preoperative verbal and written instructions including any dietary or medication restrictions.

B. Delegation of administration.

1. A dentist who does not meet the requirements of 18VAC60-21-300 shall only ~~use~~ utilize the services of a dentist who does meet those requirements or an anesthesiologist to administer deep sedation or general anesthesia in a dental office. In a licensed outpatient surgery center, a dentist shall ~~use~~ utilize either a dentist who meets the requirements of 18VAC60-21-300, an anesthesiologist, or a certified registered nurse anesthetist to administer deep sedation or general anesthesia.

2. A dentist who meets the requirements of 18VAC60-21-300 may administer or ~~use~~ utilize the services of the following personnel to administer deep sedation or general anesthesia:

a. A dentist with the training required by 18VAC60-21-300 C;

b. An anesthesiologist; or

c. A certified registered nurse anesthetist under the ~~medical~~ direction and indirect supervision of a dentist who meets the training requirements of 18VAC60-21-300 C or under the supervision of a doctor of medicine or osteopathic medicine.

3. Preceding the administration of deep sedation or general anesthesia, a dentist who meets the requirements of 18VAC60-21-300 may ~~use~~ utilize the services of the following personnel under indirect supervision to administer local anesthesia to anesthetize the injection or treatment site:

a. A dental hygienist with the training required by 18VAC60-25-100 C to parenterally administer Schedule VI local anesthesia to persons 18 years of age or older; or

b. A dental hygienist, dental assistant, registered nurse, or licensed practical nurse to administer Schedule VI topical oral anesthetics.

C. Equipment requirements. A dentist who administers or utilizes the services of a qualified anesthesia provider to administer deep sedation or general anesthesia shall have available the following equipment in sizes appropriate for the patient being treated and shall maintain it in working order and immediately available to the areas where patients will be sedated and treated and will recover:

1. Full face mask or masks;

2. Oral and nasopharyngeal airway management adjuncts;

3. Endotracheal tubes with appropriate connectors or other appropriate airway management adjunct such as a laryngeal mask airway;

4. A laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades;

5. Source of delivery of oxygen under controlled positive pressure;

6. Mechanical (hand) respiratory bag;

7. Pulse oximetry ~~and blood pressure monitoring equipment available and used in the treatment room~~;

8. Blood pressure monitoring equipment;

9. Appropriate emergency drugs for patient resuscitation;

~~9.~~ 10. EKG monitoring equipment;

~~10.~~ 11. Temperature measuring devices;

~~11.~~ 12. Pharmacologic antagonist agents;

~~12.~~ 13. External defibrillator (manual or automatic);

~~13.~~ 14. An end-tidal carbon dioxide monitor (capnograph);

~~14.~~ 15. Suction apparatus;

~~15. Throat pack~~ 16. Airway protective device; ~~and~~

~~16.~~ 17. Precordial or pretracheal stethoscope; and

18. Equipment necessary to establish intravenous or intraosseous access.

D. Required staffing. At a minimum, there shall be a three-person treatment team for deep sedation or general anesthesia. The team shall include the operating dentist, a second person to monitor the patient as provided in 18VAC60-21-260 K, and a third person to assist the operating dentist as provided in 18VAC60-21-260 J, all of whom shall be in the operatory with the patient during the dental procedure. If a second dentist, an anesthesiologist, or a certified registered nurse anesthetist administers the drugs as permitted in subsection B of this section, such person may serve as the second person to monitor the patient.

E. Monitoring requirements.

1. Baseline vital signs shall be taken and recorded prior to administration of any controlled drug at the facility to include~~:~~ temperature, blood pressure, pulse, oxygen saturation, EKG, and respiration.

2. The patient's vital signs, end-tidal carbon dioxide (unless precluded or invalidated by the nature of the patient, procedure, or equipment), ~~and~~ EKG readings, blood pressure, pulse, oxygen saturation, temperature, and respiratory rate shall be monitored~~,~~ continually; recorded [~~every five minutes,~~ every five minutes] ; and reported to the treating dentist throughout the administration of controlled drugs and recovery. When a depolarizing ~~medications are~~ medication or inhalation agent other than nitrous oxide is administered, temperature shall be monitored ~~constantly~~ continuously.

3. Monitoring of the patient undergoing deep sedation or general anesthesia is to begin prior to the administration of any drugs and shall take place ~~continuously~~ continually during administration, the dental procedure, and recovery from anesthesia. The person who administers the anesthesia or another licensed practitioner qualified to administer the same level of anesthesia must remain on the premises of the dental facility until the patient has regained consciousness and is discharged.

F. Emergency management.

1. A secured intravenous line must be established and maintained throughout the procedure.

2. The dentist shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.

G. Discharge requirements.

1. If a separate recovery area is utilized, oxygen and suction equipment shall be immediately available in that area.

2. The patient shall not be discharged until the responsible licensed practitioner determines that the patient's level of consciousness, oxygenation, ventilation, ~~and circulation~~ blood pressure, and heart rate are satisfactory ~~for discharge~~ and vital signs have been ~~taken~~ assessed and recorded, unless extenuating circumstances exist and are documented in the patient's record.

~~2.~~ 3. Since re-sedation may occur once the effects of the reversal agent have waned, the patient shall be monitored for a longer period than usual before discharge if a pharmacological reversal agent has been administered before discharge criteria have been met.

4. Post-operative instructions shall be given verbally and in writing. The written instructions shall include a 24-hour emergency telephone number for the dental practice.

~~3.~~ 5. The patient shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

VA.R. Doc. No. R18-5513; Filed January 15, 2021, 3:20 p.m.

DEPARTMENT OF HEALTH PROFESSIONS

Forms

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

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

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC76-20)

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

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

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

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

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

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

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

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

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

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

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

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

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

VA.R. Doc. No. R21-6672; Filed January 24, 2021, 4:34 p.m.

Forms

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

Title of Regulation: **18VAC76-40. Regulations Governing Emergency Contact Information.**

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC76-40)

~~Emergency Contact Information Letter and Application (rev. 7/08).~~

To provide emergency contact information in accordance with instructions from the Department of Health Professions or to update information, login to the online licensing site at https://www.license.dhp.virginia.gov/license/.

VA.R. Doc. No. R21-6676; Filed January 24, 2021, 4:34 p.m.

BOARD OF MEDICINE

Proposed Regulation

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-10, 18VAC85-20-29).**

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

Public Hearing Information:

February 18, 2021 - 12 p.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, VA 23233-1463

Public Comment Deadline: April 16, 2021.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system. Section 54.1-2409.5 of the Code of Virginia establishes a prohibition on conversion therapy.

Purpose: The purpose of this regulatory action is to specify in regulations the interpretation of the board that conversion therapy has the potential for significant harm if practiced with persons younger than 18 years of age. The regulation defines the term, consistent with accepted usage within the profession and consistent with policy statements by state and national professional organizations.

Substance: The amendments to 18VAC85-20-29 to specify that the standard of practice would prohibit a physician from engaging in conversion therapy with a person younger than 18 years of age. Regulations define conversion therapy as it is defined in § 54.1-2409.5 of the Code of Virginia.

Issues: The primary advantage to the public is protection for minors who might otherwise be subjected to reparative or conversion therapy; the board does not believe there are disadvantages because practitioners can provide assistance to a person undergoing gender transition or psychological services that offer acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development. There are no advantages or disadvantages to the agency or the Commonwealth.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medicine (Board) proposes to amend 18 VAC 85-20 Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (regulation) in order to add a definition of conversion therapy and a stipulation that licensees shall not engage in conversion therapy with individuals under 18 years of age.

Background. Chapters 41 and 721 of the 2020 Acts of Assembly ban the use of conversion therapy on minors by any provider licensed by a health regulatory board with the Department of Health Professions (DHP).[1] Specifically, the Act creates § 54.1-2409.5 of the Code of Virginia, which defines conversion therapy as follows: Conversion therapy means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. Conversion therapy does not include counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity. DHP reports that providers are more likely to be familiar with the regulations put forth by their licensing board than statutes. Thus, the Board seeks to amend the regulation to (i) define conversion therapy by referring the reader to § 54.1-2409.5, and (ii) explicitly state that practitioners shall not engage in conversion therapy with a person under 18 years of age.

Estimated Benefits and Costs. DHP estimates that few, if any, providers would be affected because conversion therapy has been considered harmful[2] to minors and contrary to the professions code of ethics.[3] To the extent that the Board's licensees are currently engaging in conversion therapy with individuals under 18 years of age, they would be in violation of state law. Any current license-holders choosing to forfeit their licensure in favor of continuing to practice conversion therapy may only continue to do so if employed as a rabbi, priest, minister, or clergyman, as long as they belong to an established and legally cognizable church, denomination or sect and remain accountable to its established authority.[4] Clients under age 18, who seek to receive, or continue receiving, conversion therapy would need to find providers who are not licensed by any board within DHP, which may result in some costs for the client depending on the availability of such providers. Conversely, the proposed amendments would benefit children and their parents to the extent that it prevents the use of a practice that has been found to be harmful to children and has been banned for such use under state law.

Businesses and Other Entities Affected. As mentioned, some licensed practitioners who may also have been working in a religious setting may have to alter their practice or else face disciplinary action, but DHP estimates that these are most likely a very small fraction of the overall number of license-holders.[5] Although DHP does not have an estimate of the number of affected providers, the agency reports that the vast majority of current license-holders likely do not engage in conversion therapy at all (in either religious or secular settings) since it is not taught by any accredited program and has been considered contrary to the professional code of ethics in an informal capacity for more than a decade.

Small Businesses[6] Affected. Although some licensed providers may be employed in a small business setting, DHP estimates that only a very small fraction of the overall number of license-holders would be affected by the regulation at all, and there is no reason to suggest that those affected are more likely to be working in a small business. Even so, the cost to providers of complying with the regulation is unlikely to be significant, and there are no alternatives to the regulation that would provide greater flexibility while also conforming to the Code of Virginia.

Localities[7] Affected.[8] The proposed amendments do not introduce new costs for local governments and are unlikely to affect any locality in particular.

Projected Impact on Employment. The proposed amendments are unlikely to affect the overall number of employed Doctors of Medicine or Doctors of Osteopathic Medicine.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to affect the use and value of private property. Real estate development costs are not affected.

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[1]See http://leg1.state.va.us/cgi-bin/legp504.exe?201 ful CHAP0041.

[2]In a 2013 Position Statement, the American Psychiatric Association stated that it does not believe that same-sex orientation should or needs to be changed, and efforts to do so represent a significant risk of harm by subjecting individuals to forms of treatment which have not been scientifically validated and by undermining self-esteem when sexual orientation fails to change. No credible evidence exists that any mental health intervention can reliably and safely change sexual orientation; nor, from a mental health perspective does sexual orientation need to be changed. Downloaded from https://www.psychiatry.org/home/policy-finder

[3]In 2019, the Board also adopted a guidance document addressing conversion therapy: https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=6791

[4]As per COV § 54.1-3501 Exemption from requirements of licensure: The activities, including marriage and family therapy, counseling, or substance abuse treatment, of rabbis, priests, ministers or clergymen of any religious denomination or sect when such activities are within the scope of the performance of their regular or specialized ministerial duties, and no separate charge is made or when such activities are performed, whether with or without charge, for or under auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination or sect, and the person rendering service remains accountable to its established authority.

[5]According to the ABD, the overall numbers of licensees are as follows: 39,645 doctors of medicine and 4001 doctors of osteopathic medicine. DHP states that

conversion therapy falls outside the scope of practice for podiatrists and chiropractors.

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

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

[8]§ 2.2-4007.04 defines particularly affected" as bearing disproportionate material impact.

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

Summary:

Pursuant to Chapters 41 and 721 of the 2020 Acts of Assembly, the proposed amendments (i) define conversion therapy as it is defined in § 54.1-2409.5 of the Code of Virginia and (ii) specify that the standard of practice for nurse practitioners prohibits a nurse practitioner from engaging in conversion therapy with a person younger than 18 years of age.

18VAC85-20-10. Definitions.

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

Board

Healing arts

Practice of chiropractic

Practice of medicine or osteopathic medicine

Practice of podiatry

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

"Approved institution" means any accredited school or college of medicine, osteopathic medicine, podiatry, or chiropractic located in the United States, its territories, or Canada.

"Conversion therapy" means any practice or treatment as defined in § 54.1-2409.5 A of the Code of Virginia.

"Principal site" means the location in a foreign country where teaching and clinical facilities are located.

18VAC85-20-29. Practitioner responsibility.

A. A practitioner shall not:

1. Knowingly allow subordinates to jeopardize patient safety or provide patient care outside of the subordinate's scope of practice or area of responsibility. Practitioners shall delegate patient care only to subordinates who are properly trained and supervised;

2. Engage in an egregious pattern of disruptive behavior or an interaction in a health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient; ~~or~~

3. Exploit the practitioner and patient relationship for personal gain; or

4. Engage in conversion therapy with a person younger than 18 years of age.

B. Advocating for patient safety or improvement in patient care within a health care entity shall not constitute disruptive behavior provided the practitioner does not engage in behavior prohibited in subdivision A 2 of this section.

VA.R. Doc. No. R21-6216; Filed January 15, 2021, 3:50 p.m.

Forms

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

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

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

FORMS (18VAC85-20)

~~Instructions and Application for a License to Practice Medicine and Surgery in Virginia for Graduates of American Medical Schools (US/Canada) (rev. 3/10).~~

~~Instructions and Application for a License to Practice Medicine and Surgery for Graduates of Non American Medical Schools (outside of the US/Canada) (rev. 3/10).~~

~~Information and Chiropractic Endorsement Application (rev. 12/08).~~

~~Information and Podiatry Endorsement Application (rev. 12/08).~~

~~Instructions and Application for a License to Practice Osteopathic Medicine (rev. 1/09).~~

~~Form A, Claims History Sheet (rev. 8/07).~~

~~Form B, Activity Questionnaire (rev. 10/09).~~

~~Form C, Clearance from Other State Boards (rev. 11/09).~~

~~Form E, Disciplinary Inquiry (rev. 5/11).~~

~~Form H, Federation of Podiatric Medical Boards Report (rev. 12/08).~~

~~Instructions and Application for a Temporary License for Intern/Resident Training Program (rev. 8/07).~~

~~Form A, Intern/Resident, Memorandum from Associate Dean of Graduate Medical Education (rev. 8/07).~~

Application to Practice Medicine, Osteopathic Medicine, Chiropractic, and Podiatry, online application available at https://www.license.dhp.virginia.gov/apply/

Application to Practice Medicine, by endorsement, online application at https://www.license.dhp.virginia.gov/apply/

Instructions for Completing an Application to Practice Medicine in Virginia for Graduates of Allopathic Medical Schools and Osteopathic Medical Schools (rev. 12/2017)

Instructions for Completing an Application to Practice Chiropractic in Virginia (rev. 12/2017)

Instructions for Completing an Application for Licensure by Endorsement (rev. 8/2020)

Instructions for Completing Podiatric Medicine Application (rev. 12/2017)

Form B, Activity Questionnaire (rev. 7/2017)

Form A, Intern/Resident, Memorandum from Associate Dean of Graduate Medical Education or Program Director (rev. 8/2007)

Form B, Intern/Resident Certificate of Professional Education (rev. 8/2007)

Form G, Intern Resident, Request for Status Report of ECFMG Certification (eff. 8/2007)

~~Form H, Report of Clinical Rotations (rev. 12/02).~~

~~Transfer Request, Intern/Resident (eff. 8/07).~~

Intern/Resident, Transfer Request (rev. 6/2016)

Instructions for Completing an Application for a Limited License to Foreign Medical Graduates Pursuant to § 54.1-2936 (rev. 8/2007)

Application for a Limited License to Foreign Medical Graduates Pursuant to § 54.1-2936 (rev. 8/2007)

~~Form L, Certificate of Professional Education (rev. 12/08).~~

~~Instructions for Reinstatement of Medicine and Surgery Licensure Application (rev. 4/08).~~

~~Application for Reinstatement of License to Practice Medicine (rev. 3/09).~~

Form A, MD Reinstatement, Claims History Sheet (rev. 9/2009)

~~Form B, MD Reinstatement, Activity Questionnaire Form (rev. 8/07).~~

~~Form C, MD Reinstatement, State Questionnaire Form (rev. 8/07).~~

~~MD Reinstatement, Disciplinary Inquiries to Federation of State Medical Boards (rev. 8/07).~~

~~Instructions for Reinstatement of Osteopathic Medicine Licensure Application (rev. 4/08).~~

~~Application for Reinstatement of License to Practice Osteopathic Medicine (rev. 8/07).~~

~~Form A, Osteopathy Reinstatement, Claims History (rev. 8/07).~~

~~Instructions for Reinstatement of a Chiropractic Licensure Application (rev. 4/08).~~

~~Application for Reinstatement of License to Practice as a Chiropractor (rev. 8/07).~~

~~Instructions for Reinstatement of Podiatry Licensure Application (rev. 4/08).~~

~~Application for Reinstatement of License to Practice Podiatry (rev. 8/07).~~

~~Reinstatement Application Instructions for Medicine & Surgery or Osteopathy Licensure after Reinstatement Denied or License Revoked (rev. 8/07).~~

~~Reinstatement Application Instructions for Medicine & Surgery or Osteopathy Licensure after Mandatory Suspension, Suspension or Surrender (rev. 8/07).~~

~~Reinstatement Application Instructions for Podiatry Licensure after Mandatory Suspension, Suspension or Surrender (rev. 8/07).~~

~~Application for Reinstatement of License to Practice Medicine/Osteopathy After Petition for Reinstatement Denied or License Revoked (rev. 8/07).~~

~~Application for Registration for Volunteer Practice (rev. 8/07).~~

~~Sponsor Certification for Volunteer Registration (rev. 8/08).~~

~~Guidelines for Completing the Practitioner Profile Questionnaire (rev. 7/11).~~

~~Practitioner's Help Section (rev. 11/10).~~

~~Practitioner Questionnaire (rev. 7/11).~~

MD/DO Reinstatement Instructions and Application for MD and DO licenses in EXPIRED status for more than two years ONLY (rev. 8/2020)

Instructions for Reinstatement of a Chiropractic Licensure Application (rev. 4/2018)

Reinstatement of a Podiatry License – Please contact Pam Smith for licensure package at (804) 367-4570 or pam.smith@dhp.virginia.gov

Application for Registration for Volunteer Practice (rev. 8/2015)

Sponsor Certification for Volunteer Registration (rev. 3/2018)

Application for Restricted Volunteer License (rev. 12/2007)

VA.R. Doc. No. R21-6639; Filed January 24, 2021, 4:28 p.m.

Forms

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

Title of Regulation: **18VAC85-40. Regulations Governing the Practice of Respiratory Therapists.**

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

FORMS (18VAC85-40)

~~Sponsor Certification for Volunteer Registration (rev. 8/2008)~~

~~Instructions and Application for a License to Practice as a Respiratory Therapist (rev. 8/2015)~~

~~Application for Registration for Volunteer Practice (undated)~~

~~Form B, Activity Questionnaire (rev. 8/2015)~~

~~Application to reactivate an Inactive License for a Respiratory Therapist (eff. 8/2015)~~

Instructions for Completing an Application to Practice as a Respiratory Therapist in Virginia (rev. 12/2017)

Form B Supplemental Form (rev. 9/2018)

Application for Registration for Volunteer Practice (8/2015)

Sponsor Certification for Volunteer Registration (rev. 3/2018)

Application for Restricted Volunteer License (rev. 8/2015)

Continued Competency Activity and Assessment Form (rev. 4/2000)

Application to Reactivate an Inactive License for a Respiratory Therapist (rev. 5/2019)

Instructions and Application for Reinstatement of a Respiratory Therapist License (4/2018)

VA.R. Doc. No. R21-6644; Filed January 24, 2021, 4:27 p.m.

Final Regulation

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

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

Effective Date: March 16, 2021.

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

Summary:

Pursuant to Chapters 92 and 137 of the 2019 Acts of Assembly, the amendments replace practice by a physician assistant under the supervision of a physician or a podiatrist with practice in collaboration and consultation with a patient care team physician or patient care team podiatrist.

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

18VAC85-50-10. Definitions.

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

"Board."

"Collaboration."

"Consultation."

"Patient care team physician."

"Patient care team podiatrist."

"Physician assistant."

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

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

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

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

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

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

18VAC85-50-35. Fees.

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

1. The initial application fee for a license, payable at the time application is filed, shall be $130.

2. The biennial fee for renewal of an active license shall be $135 and for renewal of an inactive license shall be $70, payable in each odd-numbered year in the birth month of the licensee. For 2021, the fee for renewal of an active license shall be $108, and the fee for renewal of an inactive license shall be $54.

3. The additional fee for late renewal of licensure within one renewal cycle shall be $50.

4. A restricted volunteer license shall expire 12 months from the date of issuance and may be renewed without charge by receipt of a renewal application that verifies that the physician assistant continues to comply with provisions of § 54.1-2951.3 of the Code of Virginia.

~~5. The fee for review and approval of a new protocol submitted following initial licensure shall be $15.~~

~~6.~~ 5. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

~~7.~~ 6. The fee for a duplicate license shall be $5.00, and the fee for a duplicate wall certificate shall be $15.

~~8.~~ 7. The handling fee for a returned check or a dishonored credit card or debit card shall be $50.

~~9.~~ 8. The fee for a letter of good standing or verification to another jurisdiction shall be $10.

~~10.~~ 9. The fee for an application or for the biennial renewal of a restricted volunteer license shall be $35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be $15 for each renewal cycle.

18VAC85-50-40. General requirements.

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

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

18VAC85-50-57. Discontinuation of employment.

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

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

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

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

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

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

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

B. The board may require information regarding the ~~level~~ degree of ~~supervision with which the supervising~~ collaboration and consultation by the patient care team physician ~~plans to supervise the physician assistant for selected tasks~~ or

podiatrist. The board may also require the ~~supervising~~ patient care team physician or podiatrist to document the physician assistant's competence in performing such tasks.

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

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

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

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

The ~~supervising~~ patient care team physician or podiatrist shall:

1. Review the clinical course and treatment plan for any patient who presents for the same acute complaint twice in a single episode of care and has failed to improve as expected. The ~~supervising~~ physician or podiatrist shall be involved with any patient with a continuing illness as noted in the written or electronic practice agreement for the evaluation process.

2. Be responsible for all invasive procedures.

a. Under supervision, a physician assistant may insert a nasogastric tube, bladder catheter, needle, or peripheral intravenous catheter, but not a flow-directed catheter, and may perform minor suturing, venipuncture, and subcutaneous intramuscular or intravenous injection.

b. All other invasive procedures not listed in subdivision 2 a of this section must be performed under supervision with the physician in the room unless, after directly observing the performance of a specific invasive procedure three times or more, the ~~supervising~~ patient care team physician or podiatrist attests on the practice agreement to the competence of the physician assistant to perform the specific procedure without direct observation and supervision.

3. Be responsible for all prescriptions issued by the physician assistant and attest to the competence of the assistant to prescribe drugs and devices.

4. Be available at all times to collaborate and consult with the physician assistant.

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

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

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

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

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

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

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

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

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

1. No physician assistant may render care to a patient unless the physician or podiatrist responsible for that patient has signed the practice agreement to act as ~~supervising~~ patient care team physician or podiatrist for that physician assistant.

2. Any such practice agreement as described in subdivision 1 of this subsection shall delineate the duties which said patient care team physician or podiatrist authorizes the physician assistant to perform.

~~3. The physician assistant shall, as soon as circumstances may dictate, report an acute or significant finding or change in clinical status to the supervising physician concerning the examination of the patient. The physician assistant shall also record his findings in appropriate institutional records.~~

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

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

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

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

2. Successful passage of the American Registry of Radiologic Technologists (ARRT) Fluoroscopy Examination.

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

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

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

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

18VAC85-50-160. Disclosure.

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

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

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

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

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

1. An appropriate history and physical examination are performed and recorded at the time of initiation of pharmacotherapy for obesity by the prescribing physician, and the physician reviews the results of laboratory work, as indicated, including testing for thyroid function;

2. If the drug to be prescribed could adversely affect cardiac function, the physician shall review the results of an electrocardiogram performed and interpreted within 90 days of initial prescribing for treatment of obesity;

3. A diet and exercise program for weight loss is prescribed and recorded;

4. The patient is seen within the first 30 days following initiation of pharmacotherapy for weight loss, by the prescribing physician or a licensed practitioner with prescriptive authority working under the supervision of the prescribing physician, at which time a recording shall be made of blood pressure, pulse, and any other tests as may be necessary for monitoring potential adverse effects of drug therapy; and

5. The treating physician shall direct the follow-up care, including the intervals for patient visits and the continuation of or any subsequent changes in pharmacotherapy. Continuation of prescribing for treatment of obesity shall occur only if the patient has continued progress toward achieving or maintaining a target weight and has no significant adverse effects from the prescribed program.

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

VA.R. Doc. No. R20-6083; Filed January 15, 2021, 3:11 p.m.

Forms

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Title of Regulation: **18VAC85-50. Regulations Governing the Practice of Physician Assistants.**

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

FORMS (18VAC85-50)

~~Instructions for Completing an Application (rev. 11/2017)~~

~~Form #B, Activity Questionnaire (rev. 7/2017)~~

~~Application for a pharmacist license by endorsement or examination, online form available at: https://www.dhp.virginia.gov/medicine/medicine_forms.htm#PA~~

~~Practice Agreement (eff. 10/2019)~~

~~Physician Assistant Volunteer License Application (rev. 8/2015)~~

Application for a License to Practice as a Physician Assistant, by endorsement or examination, online form available at: https://www.license.dhp.virginia.gov/apply/

Instructions for Completing an Application to Practice as a Physician Assistant in Virginia (rev. 11/2017)

Form B, Employment History (rev. 7/2017)

Form B, Supplemental Form (rev. 9/2018)

ARRT Fluoroscopy Examination Application for a Physician Assistant (rev. 2/2014)

Physician Assistant Authorization to Use Fluoroscopy (rev. 1/2014)

Practice Agreement as a Physician Assistant (PA) (rev. 10/2019)

Application for Registration for Volunteer Practice (rev. 8/2015)

Sponsor Certification for Volunteer Registration (rev. 3/2018)

Application for Restricted Volunteer License (rev. 8/2015)

VA.R. Doc. No. R21-6641; Filed January 24, 2021, 4:27 p.m.

Forms

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

Title of Regulation: **18VAC85-80. Regulations Governing the Practice of Occupational Therapy.**

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

FORMS (18VAC85-80)

~~Instructions and Application for Occupational Therapist Licensure (rev. 1/09).~~

~~Instructions and Application for Occupational Therapy Assistant Licensure (rev. 1/09).~~

~~Form A, Claims History Sheet (rev. 8/07).~~

~~Form A, Occupational Therapy Assistant, Claims History Sheet (eff. 11/08).~~

~~Form B, Activity Questionnaire (rev. 8/07).~~

~~Form B, Occupational Therapy Assistant, Activity Questionnaire (eff. 11/08).~~

~~Form C, Clearance from Other State Boards (rev. 10/07).~~

~~Form C, Occupational Therapy Assistant, Clearance from Other State Boards (eff. 11/08).~~

~~Form L, Occupational Therapy, Certificate of Professional Education (rev. 1/09).~~

~~Form L, Occupational Therapy Assistant, Certificate of Professional Education (rev. 1/09).~~

~~Board Approved Practice, Occupational Therapist Traineeship (rev. 8/07).~~

~~Instructions and Application for Reinstatement of Occupational Therapy Licensure (rev. 11/10).~~

~~Reinstatement Application Instructions for Occupational Therapy Practitioner Licensure after Mandatory Suspension, Suspension or Surrender (rev. 10/07).~~

~~Application for Reinstatement of Licensure to Practice Occupational Therapy (rev. 8/07).~~

~~Instructions for Supervised Practice, Occupational Therapy Reinstatement (rev. 8/07).~~

~~Supervised Practice Application, Occupational Therapy Reinstatement (rev. 8/07).~~

Applications for a License to Practice Occupational Therapy or as an Occupational Therapy Assistant, available online at https://www.license.dhp.virginia.gov/apply/

Instructions for Completing an Application to Practice as an Occupational Therapist/Occupational Therapy Assistant in Virginia (rev. 12/2017)

Supplemental Form to Form B (rev. 9/2018)

Instructions and Application for Reinstatement of a License to Practice as an Occupational Therapist/Occupational Therapy Assistant (rev. 4/2018)

Application to Reactivate an Inactive License for an Occupational Therapist Assistant Pursuant to Virginia Regulations 18VAC85-80-72 (rev. 5/2019)

Application to Reactivate an Inactive License for an Occupational Therapist Pursuant to Virginia Regulations 18VAC85-80-72 (rev. 1/2018)

Supervised Occupational Therapy Services (lapse between two to six years) (rev. 5/2017)

Supervised Occupational Therapy Services (lapse six years or more) (rev. 5/2017)

Continued Competency Activity and Assessment Form (rev. 4/2000)

~~Application for Registration for Volunteer Practice (rev. 8/07).~~

~~Sponsor Certification for Volunteer Registration (rev. 8/08).~~

Application for Restricted Volunteer License (rev. 8/2015)

Application for Registration for Volunteer Practice (rev. 8/2015)

Sponsor Certification for Volunteer Registration (rev. 3/2018)

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Forms

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Title of Regulation: **18VAC85-101. Regulations Governing the Practice of Radiologic Technology.**

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

FORMS (18VAC85-101)

~~Instructions for Completing an Application for Licensure as a Radiologic Technologist By Examination/Endorsement (rev. 11/10).~~

~~Instructions for Completing an Application for Licensure as a Radiologist Assistant (rev. 11/10).~~

~~Application for a License as a Radiologic Technologist (rev. 11/10).~~

~~Application for a License to Practice as a Radiologist Assistant (rev. 11/10).~~

~~Form A, Radiologic Technologist, Claims History Sheet (rev. 11/10).~~

~~Form A, Radiologist Assistant, Claims History (rev. 11/10).~~

~~Form B, Radiologic Technologist, Activity Questionnaire (rev. 11/10).~~

~~Form B, Radiologist Assistant, Activity Questionnaire (rev. 11/10).~~

~~Form C, Radiologic Technologist, Clearance from Other States (rev. 11/10).~~

~~Form C, Radiologist Assistant, Clearance from Other States (rev. 11/10).~~

~~Form E, Radiologist Assistant, Certification Request from ARRT (rev. 11/10).~~

~~Form E, Radiologic Technologist, Certification Request from ARRT (rev. 11/10).~~

~~Form F, Traineeship Application (rev. 11/10).~~

~~Form L, Radiologic Technologist, Certificate of Professional Education (rev. 11/10).~~

~~Form L, Radiologist Assistant, Certificate of Professional Education (rev. 11/10).~~

~~Instructions for Completing an Application for Licensure as a Radiologic Technologist-Limited (rev. 11/10).~~

~~Application for a License to Practice Radiologic Technology-Limited (rev. 11/10).~~

~~Form T/A (1) and T/A (2), Radiologic Technologist-Limited Training Application for Abdomen/Pelvis pursuant to Virginia Regulations 18VAC85-101-60 B (3) (rev. 11/10).~~

~~Form T/C (1) and T/C (2), Radiologic Technologist-Limited Clinical Training Application (rev. 11/10).~~

~~Form T/E, Radiologic Technologist Limited Traineeship Application (rev. 11/10).~~

~~Form A, Radiologic Technologist Limited, Claims History Sheet (rev. 11/10).~~

~~Form B, Radiologic Technologist-Limited, Activity Questionnaire (rev. 11/10).~~

~~Form C, Radiologic Technologist Limited, Clearance From Other States (rev. 11/10).~~

~~Instructions for Completing Reinstatement of Radiologic Technology Licensure (rev. 8/07).~~

~~Application for Reinstatement of License to Practice Radiologic Technologist (rev. 10/07).~~

~~Instructions for Completing Reinstatement of Radiologic Technologist Limited Licensure (rev. 8/07).~~

~~Application for Reinstatement of License to Practice Radiologic Technologist Limited (eff. 10/07).~~

~~Application for Registration for Volunteer Practice (rev. 8/07).~~

~~Sponsor Certification for Volunteer Registration (rev. 8/08).~~

Application to Practice as a Radiologic Technologist, Limited Radiologic Technologist, or Radiologist Assistant, online application available at https://www.license.dhp.virginia.gov/apply/

Instructions for Completing an Application to Practice as a Radiologic Technologist in Virginia (rev. 12/2017)

Instructions for Completing an Application to Practice as a Limited Radiologic Technologist in Virginia (rev. 12/2017)

Instructions for Completing an Application to Practice as a Radiologist Assistant in Virginia (rev. 12/2017)

Form B, Activity Questionnaire (rev. 7/2017)

Supplemental Form to Form B (rev. 9/2018)

Form C, Radiologic Technologist/Radiologist Assistant, Clearance from Other States (rev. 11/2010)

Form B, Certificate of Professional Education (rev. 8/2007)

Instructions and Application for Reinstatement of a License to Practice as a Radiologic Technologist/Limited Radiologic Technologist (rev. 12/2019)

Application for Registration for Volunteer Practice (rev. 8/2015)

Sponsor Certification for Volunteer Registration (rev. 7/2018).

Continued Competency Activity and Assessment Form (eff. 7/2008).

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Forms

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Title of Regulation: **18VAC85-110. Regulations Governing the Practice of Licensed Acupuncturists.**

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

FORMS (18VAC85-110)

~~Instructions and Application for a License to Practice as an Acupuncturist — Graduates of Approved Institutions or Programs in the United States (rev. 11/10).~~

~~Instructions and Application for a License to Practice as an Acupuncturist — Graduates of Nonapproved Educational Programs (rev. 11/10).~~

Instructions for Completing an Application as an Acupuncturist in Virginia (rev. 3/2017)

Form A, Claims History (rev. 11/2010)

~~Form B, Activity Questionnaire (rev. 11/10).~~

Form B, Employment History (rev. 7/2017)

Form C, Clearance from Other State Boards (rev. 11/2010)

~~Form L, Certification of Professional Education (rev. 11/10).~~

Form L, Certification of Professional Education (rev. 8/2007)

Verification of NCCAOM Certification (rev. 3/2008)

Recommendation for Examination by a Physician (rev. 11/2006)

~~Application for Registration for Volunteer Practice (rev. 8/07).~~

~~Sponsor Certification for Volunteer Registration (rev. 8/08).~~

~~Instructions and Application for Reinstatement as a Licensed Acupuncturist (rev. 2/09).~~

~~Instructions for Completing a Reinstatement Application for Licensed Acupuncturist after Suspension, Surrender, or Mandatory Suspension (rev. 3/10).~~

~~Application for Reinstatement of a License to Practice as a Licensed Acupuncturist after Suspension, Surrender, or Mandatory Suspension (rev. 3/10).~~

Application for Registration for Volunteer Practice (rev. 8/2015)

Sponsor Certification for Volunteer Registration (rev. 3/2018)

Instructions and Application for Reinstatement of an Acupuncture Licensure (rev. 4/2018)

Application to Reactivate an Inactive License for a Licensed Acupuncturist (rev. 1/2018)

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Forms

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Title of Regulation: **18VAC85-120. Regulations Governing the Licensure of Athletic Trainers.**

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC85-120)

~~Instructions for Completing and Athletic Trainer Licensure Application (10/09).~~

~~Form A, Claims History (rev. 8/07).~~

~~Form B, Activity Questionnaire (rev. 8/07).~~

~~Form C, Clearance from Other State Boards (rev. 8/07).~~

~~Form L, Certificate of Professional Education (rev. 8/07).~~

~~Provisional License to Practice as an Athletic Trainer Pursuant to 18VAC85-120-80 (rev. 10/10).~~

~~Application for Registration for Volunteer Practice (rev. 8/07).~~

~~Sponsor Certification for Volunteer Registration (rev. 8/08).~~

~~Instructions for Completing and a Reinstatement Application for Athletic Training (rev. 11/10).~~

Application for a License to Practice as an Athletic Trainer, online form available at https://www.dhp.virginia.gov/medicine/medicine_forms.htm

Instructions for Completing an Athletic Trainer Licensure Application (12/2017)

Form B Supplemental Form (rev. 9/2018)

Application for Registration for Volunteer Practice (rev. 8/2015)

Sponsor Certification for Volunteer Registration (rev. 3/2018)

Instructions and Application for Reinstatement of an Athletic Trainer Licensure (rev. 4/2018)

Certificate of Professional Education (rev. 8/2007)

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Forms

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Title of Regulation: **18VAC85-130. Regulations Governing the Practice of Licensed Midwives.**

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

FORMS (18VAC85-130)

~~Instructions for and Application to Practice as a Licensed Midwife (rev. 11/10).~~

Instructions for Completing a Licensed Midwife Application (rev. 3/2017)

Form A, Claims History (rev. 11/2010)

~~Form B, Activity Questionnaire (rev. 11/10).~~

Form B, Activity Questionnaire (rev. 7/2017)

Form B Supplemental Form (rev. 9/2018)

Form C, Jurisdiction Clearance (rev. 11/2010)

Instructions and Application for Reinstatement of a License to Practice as a Certified Professional Midwife (CPM) (rev. 4/2018)

Application to Reactivate an Inactive License for a Licensed Midwife (rev. 5/2019)

VA.R. Doc. No. R21-6638; Filed January 24, 2021, 4:28 p.m.

Forms

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Title of Regulation: **18VAC85-140. Regulations Governing the Practice of Polysomnographic Technologists.**

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

FORMS (18VAC85-140)

~~Instructions for Completing an Application to Practice Polysomnographic Technology in Virginia (undated)~~

~~Form A, Claims History (rev. 8/13)~~

~~Form B, Employment Activity (rev. 8/13)~~

Application to Practice as a Polysomnographic Technologist in Virginia, online application at https://www.license.dhp.virginia.gov/apply/

Instructions for Completing an Application to Practice as a Polysomnographic Technologist in Virginia (rev. 12/2017)

Form B, Employment Activity (rev. 7/2017)

Form B Supplemental Form (rev. 09/2018)

Form C, Verification Form (rev. 8/2013)

Application to Reactivate an Inactive License for a Polysomnographic Technologist (rev. 10/2018)

VA.R. Doc. No. R21-6642; Filed January 24, 2021, 4:27 p.m.

Forms

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

Title of Regulation: **18VAC85-150. Regulations Governing the Practice of Behavior Analysis.**

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC85-150)

~~Application to Practice as a Behavior Analyst or Assistant Behavior Analyst (apply online)~~

~~Behavior Analyst - Form A, Claims History (09/2013)~~

~~Assistant Behavior Analyst - Form A, Claims History (09/2013)~~

~~Behavior Analyst and Assistant Behavior Analyst - Form B (09/2013)~~

~~Behavior Analyst - Form C (09/2013)~~

~~Assistant Behavior Analyst - Form C (09/2013)~~

~~Instructions for Completing an Assistant Behavior Analyst Licensure Reinstatement Application (09/2013)~~

Application to Practice as a Behavior Analyst or Assistant Behavior Analyst, online form available at https://www.dhp.virginia.gov/medicine/medicine_forms.htm

Instructions for Completing an Application to Practice as a Board Certified Behavior Analyst/Assistant Behavior Analyst in Virginia (rev. 12/2017)

Form B Supplemental Form (rev. 9/2018)

Instructions and Application for Reinstatement of a Behavior Analyst or Assistant Behavior Analyst Licensure (rev. 4/2018)

Application to Reactivate an Inactive License for a Behavior Analyst or Assistant Behavior Analyst (rev. 1/2018)

VA.R. Doc. No. R21-6635; Filed January 24, 2021, 4:28 p.m.

Forms

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

Title of Regulation: **18VAC85-160. Regulations Governing the Licensure of Surgical Assistants and Registration of Surgical Technologists.**

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

FORMS (18VAC85-160)

~~Application to Register as a Surgical Assistant or Surgical Technologist (rev. 12/14)~~

Instructions for Completing an Application to Practice as a Licensed Surgical Assistant (rev. 10/2020)

Instructions for Completing an Application to Register as a Surgical Technologist (rev. 10/2020)

VA.R. Doc. No. R21-6645; Filed January 24, 2021, 4:26 p.m.

Forms

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

Title of Regulation: **18VAC85-170. Regulations Governing the Practice of Genetic Counselors.**

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC85-170)

~~Genetic Counselor Application (https://www.license.dhp.virginia.gov/apply/)~~

~~Instructions for Completing an Application to Practice Genetic Counseling in Virginia (eff. 4/2017)~~

~~Instructions for Completing an Application for a Temporary License to Practice Genetic Counseling in Virginia (eff. 4/2017)~~

~~Form B, Employment History (rev. 3/2017)~~

Instructions for Completing an Application to Practice as a Genetic Counselor, available online at https://www.dhp.virginia.gov/medicine/medicine_forms.htm#Genetic

Instructions for Completing an Application to Practice Genetic Counseling in Virginia (rev. 12/2017)

Instructions for Completing an Application for a Temporary License to Practice in "Active Candidate Status" to Practice Genetic Counseling in Virginia (rev. 6/2017)

Form B, Employment History (rev. 7/2017)

Form B Supplemental Form (rev. 9/2018)

Continued Competency Activity and Assessment Form (eff. 6/2017)

VA.R. Doc. No. R21-6636; Filed January 24, 2021, 4:28 p.m.

BOARD OF NURSING

Proposed Regulation

Title of Regulation: **18VAC90-19. Regulations Governing the Practice of Nursing (amending 18VAC90-19-10, 18VAC90-19-230).**

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

Public Hearing Information: No public hearings are currently scheduled.

Public Comment Deadline: April 16, 2021.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Nursing the authority to promulgate regulations to administer the regulatory system. Section 54.1-2409.5 of the Code of Virginia establishes a prohibition on conversion therapy.

Purpose: The purpose of this regulatory action is to specify in regulations the interpretation of the board that conversion therapy has the potential for significant harm if practiced with persons younger than 18 years of age. The amendments define the term, consistent with accepted usage within the profession and consistent with policy statements by state and national professional organizations.

Substance: The Board of Nursing has amended 18VAC90-19-230 to specify that the standard of practice prohibits a nurse from engaging in conversion therapy with a person younger than 18 years of age. Regulations define conversion therapy as it is defined in § 54.1-2409.5 of the Code of Virginia.

Issues: The primary advantage to the public is protection for minors who might otherwise be subjected to reparative or conversion therapy; the board does not believe there are disadvantages because practitioners can provide assistance to a person undergoing gender transition or psychological services that offer acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development. There are no advantages or disadvantages to the agency or the Commonwealth.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Nursing (Board) proposes to amend 18VAC90-19 Regulations Governing the Practice of Nursing (regulation) in order to add a definition of conversion therapy and a stipulation that licensees shall not engage in conversion therapy with individuals under 18 years of age.

Background. Chapters 41 and 721 of the 2020 Acts of Assembly bans the use of conversion therapy on minors by any provider licensed by a health regulatory board with the Department of Health Professions (DHP).[1] Specifically, the Act creates § 54.1-2409.5 of the Code of Virginia, which defines conversion therapy as follows: Conversion therapy means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. Conversion therapy does not include counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity. DHP reports that registered nurses (RNs) and clinical nurse specialists are more likely to be familiar with the regulations put forth by their licensing board than statutes. Thus, the Board seeks to amend the regulation to (i) define conversion therapy by referring the reader to § 54.1-2409.5, and (ii) explicitly prohibit licensees and holders of multistate licensure privilege from engaging in conversion therapy with a person under 18 years of age.

Estimated Benefits and Costs. DHP estimates that few, if any, RNs or clinical nurse specialists would be affected because conversion therapy has been considered harmful[2] to minors and contrary to the professions code of ethics.[3] To the extent that licensed RNs or clinical nurse specialists are currently engaging in conversion therapy with individuals under 18 years of age, they would be in violation of state law. Any licensed RNs or clinical nurse specialists choosing to forfeit their licensure in favor of continuing to practice conversion therapy may only continue to do so if employed as a rabbi, priest, minister or clergyman, as long as they belong to an established and legally cognizable church, denomination or sect and remain accountable to its established authority.[4] Clients under age 18, who seek to receive, or continue receiving, conversion therapy would need to find providers who are not licensed by any board within DHP, which may result in some costs for the client depending on the availability of such providers. Conversely, the proposed amendments would benefit children and their parents to the extent that it prevents the use of a practice that has been found to be harmful to children and has been banned for such use under state law.

Businesses and Other Entities Affected. As mentioned, some licensed RNs and clinical nurse specialists who may also have been working in a religious setting may have to alter their practice or else face disciplinary action, but DHP estimates that these are most likely a very small fraction of the overall number of license-holders.[5] Although DHP does not have an estimate of the number of affected RNs or clinical nurse specialists, the agency reports that the vast majority of current license-holders likely do not engage in conversion therapy at all (in either religious or secular settings) since it is not taught by any accredited nursing program and has been considered contrary to the professional code of ethics in an informal capacity for more than a decade.

Small Businesses[6] Affected. Although some licensed RNs or clinical nurse specialists may be employed in a small business setting, DHP estimates that only a very small fraction of the overall number of license-holders would be affected by the regulation at all, and there is no reason to suggest that those affected are more likely to be working in a small business. Even so, the cost to providers of complying with the regulation is unlikely to be significant, and there are no alternatives to the regulation that would provide greater flexibility while also conforming to the Code of Virginia.

Localities[7] Affected.[8] The proposed amendments do not introduce new costs for local governments and are unlikely to affect any locality in particular.

Projected Impact on Employment. The proposed amendments are unlikely to affect the overall number of employed RNs or clinical nurse specialists.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to affect the use and value of private property. Real estate development costs are not affected.

[1]See http://leg1.state.va.us/cgi-bin/legp504.exe?201 ful CHAP0041.

[2]In a 2013 Position Statement, the American Psychiatric Association stated that it does not believe that same-sex orientation should or needs to be changed, and efforts to do so represent a significant risk of harm by subjecting individuals to forms of treatment which have not been scientifically validated and by undermining self-esteem when sexual orientation fails to change. No credible evidence exists that any mental health intervention can reliably and safely change sexual orientation; nor, from a mental health perspective does sexual orientation need to be changed. Downloaded from https://www.psychiatry.org/home/policy-finder.

[3]In 2019, the Board also adopted a guidance document addressing conversion therapy: https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=6784.

[4]As per COV § 54.1-3501 Exemption from requirements of licensure: The activities, including marriage and family therapy, counseling, or substance abuse treatment, of rabbis, priests, ministers or clergymen of any religious denomination or sect when such activities are within the scope of the performance of their regular or specialized ministerial duties, and no separate charge is made or when such activities are performed, whether with or without charge, for or under auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination or sect, and the person rendering service remains accountable to its established authority.

[5]According to the ABD, there are 111,710 RNs and 406 clinical nurse specialists currently licensed by the Board.

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

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

[8]§ 2.2-4007.04 defines particularly affected" as bearing disproportionate material impact.

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

Summary:

Pursuant to Chapters 41 and 721 of the 2020 Acts of Assembly, the proposed amendments (i) define conversion therapy as it is defined in § 54.1-2409.5 of the Code of Virginia, and (ii) specify that the standard of practice for nurse practitioners prohibits a nurse practitioner from engaging in conversion therapy with a person younger than 18 years of age.

18VAC90-19-10. Definitions.

In addition to words and terms defined in §§ 54.1-3000 and 54.1-3030 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Active practice" means activities performed, whether or not for compensation, for which an active license to practice nursing is required.

"Board" means the Board of Nursing.

"CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

"Contact hour" means 50 minutes of continuing education coursework or activity.

"Conversion therapy" means any practice or treatment as defined in § 54.1-2409.5 A of the Code of Virginia.

"National certifying organization" means an organization that has as one of its purposes the certification of a specialty in nursing based on an examination attesting to the knowledge of the nurse for practice in the specialty area.

"NCLEX" means the National Council Licensure Examination.

"NCSBN" means the National Council of State Boards of Nursing.

"Primary state of residence" means the state of a person's declared fixed, permanent, and principal home or domicile for legal purposes.

18VAC90-19-230. Disciplinary provisions.

A. The board has the authority to deny, revoke, or suspend a license or multistate licensure privilege issued, or to otherwise discipline a licensee or holder of a multistate licensure privilege upon proof that the licensee or holder of a multistate licensure privilege has violated any of the provisions of § 54.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:

1. Fraud or deceit in procuring or maintaining a license means, but shall not be limited to:

a. Filing false credentials;

b. Falsely representing facts on an application for initial license, reinstatement, or renewal of a license; or

c. Giving or receiving assistance in the taking of the licensing examination.

2. Unprofessional conduct means, but shall not be limited to:

a. Performing acts beyond the limits of the practice of professional or practical nursing as defined in Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia, or as provided by §§ 54.1-2901 and 54.1-2957 of the Code of Virginia;

b. Assuming duties and responsibilities within the practice of nursing without adequate training or when competency has not been maintained;

c. Obtaining supplies, equipment, or drugs for personal or other unauthorized use;

d. Employing or assigning unqualified persons to perform functions that require a licensed practitioner of nursing;

e. Falsifying or otherwise altering patient, employer, student, or educational program records, including falsely representing facts on a job application or other employment-related documents;

f. Abusing, neglecting, or abandoning patients or clients;

g. Practice of a clinical nurse specialist beyond that defined in 18VAC90-19-220 and § 54.1-3000 of the Code of Virginia;

h. Representing oneself as or performing acts constituting the practice of a clinical nurse specialist unless so registered by the board;

i. Delegating nursing tasks to an unlicensed person in violation of the provisions of Part VI (18VAC90-19-240 et seq.) of this chapter;

j. Giving to or accepting from a patient or client property or money for any reason other than fee for service or a nominal token of appreciation;

k. Obtaining money or property of a patient or client by fraud, misrepresentation, or duress;

l. Entering into a relationship with a patient or client that constitutes a professional boundary violation in which the nurse uses his professional position to take advantage of the vulnerability of a patient, a client, or his family, to include actions that result in personal gain at the expense of the patient or client, or a nontherapeutic personal involvement or sexual conduct with a patient or client;

m. Violating state laws relating to the privacy of patient information, including § 32.1-127.1:03 the Code of Virginia;

n. Providing false information to staff or board members in the course of an investigation or proceeding;

o. Failing to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia or elder abuse or neglect as required in § 63.2-1606 of the Code of Virginia; ~~or~~

p. Engaging in conversion therapy with a person younger than 18 years of age; or

q. Violating any provision of this chapter.

B. Any sanction imposed on the registered nurse license of a clinical nurse specialist shall have the same effect on the clinical nurse specialist registration.

VA.R. Doc. No. R21-6475; Filed January 15, 2021, 6:43 p.m.

Forms

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

Title of Regulation: **18VAC90-19. Regulations Governing the Practice of Nursing.**

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland

Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC90-19)

~~Licensure by examination:~~

~~Instructions and Application for Licensure by Examination for Registered Nurses (rev. 8/2011)~~

~~Instructions and Application for Licensure by Examination -- Licensed Practical Nurse (rev. 8/2011)~~

~~Instructions and Application for Licensure by Repeat Examination for Registered Nurse (rev.12/2014)~~

~~Instructions and Application for Licensure by Repeat Examination for Licensed Practical Nurse (rev.12/2014)~~

~~License by endorsement:~~

~~Application for Licensure by Endorsement -- Registered Nurse (rev. 5/2011)~~

~~Instructions for Licensure by Endorsement -- Registered Nurse (rev. 5/2011)~~

~~Instructions for Licensure by Endorsement -- Licensed Practical Nurse (rev. 5/2011)~~

~~Application for Licensure by Endorsement -- Licensed Practical Nurse (rev. 6/2011)~~

~~Verification of Clinical Practice -- Licensure by Endorsement (rev. 1/2010)~~

~~Reinstatement:~~

~~Instructions and Application for Reinstatement -- Registered Nurse or Licensed Practical Nurse (rev. 10/2016)~~

~~Instructions and Application for Reinstatement of License as a Registered Nurse Following Suspension or Revocation (rev. 6/2011)~~

~~Instructions and Application for Reinstatement of License as a Licensed Practical Nurse Following Suspension or Revocation (rev. 6/2011)~~

~~Clinical nurse specialist:~~

~~Procedure (rev. 3/10) and Application for Registration as a Clinical Nurse Specialist (rev. 6/2011)~~

~~Instructions and Application for Reinstatement of Registration as a Clinical Nurse Specialist (rev. 3/2014)~~

~~Other:~~

~~Declaration of Primary State of Residency for Purposes of the Nurse Licensure Compact (rev. 7/2015)~~

~~License Verification Form (rev. 7/2016)~~

~~Application for Registration for Volunteer Practice (undated, filed 12/2016)~~

~~Sponsor Certification for Volunteer Registration (rev. 8/2008)~~

~~Verification of Supervised Clinical Practice -- Registered Nurse Provisional License (eff. 8/013)~~

~~Notification of Intent to Supervise Clinical Practice -- Registered Nurse Provisional License (rev. 4/2015)~~

~~Instructions and Application for Restricted Volunteer Nursing License (rev. 5/2016)~~

~~Request to Change License Status: Inactive to Active for RN and LPN (rev. 8/2016)~~

Registered Nurse - Licensure by examination:

Application for initial licensure as a registered nurse by examination available online at https://www.dhp.virginia.gov/Boards/Nursing/PractitionerResources/Forms/

Checklist Instructions Examination Application (rev. 6/2020)

Checklist Instructions Repeat Examination Application (rev. 11/2019)

Registered Nurse - License by endorsement:

Application for initial licensure as a registered nurse by endorsement available online at https://www.dhp.virginia.gov/Boards/Nursing/PractitionerResources/Forms/

Checklist Instructions Endorsement Application (rev. 3/2020)

Registered Nurse - Reinstatement:

Application for reinstatement of licensure as a registered nurse available online at https://www.dhp.virginia.gov/Boards/Nursing/PractitionerResources/Forms/

Checklist Instructions Reinstatement Application (rev. 8/2018)

Checklist Instructions for Reinstatement Application Following Suspension or Revocation (rev. 5/2018)

Request to Change License Status: Inactive to Active for RN & LPN (rev. 7/2019)

Clinical nurse specialist:

Application for registration or reinstatement as a clinical nurse specialist, available online at https://www.dhp.virginia.gov/Boards/Nursing/PractitionerResources/Forms/

Checklist Instructions for Reinstatement Application: Clinical Nurse Specialist Registration (rev. 5/2018)

Other:

Declaration of Primary State of Residence Form Under the Nurse Licensure Compact (rev. 4/2020)

Instructions for Registration for Volunteer Nursing Practice (rev. 8/2018)

Checklist Instructions Application for Restricted Volunteer License (rev. 8/2018)

VA.R. Doc. No. R21-6660; Filed January 24, 2021, 4:29 p.m.

Forms

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

Title of Regulation: **18VAC90-25. Regulations Governing Certified Nurse Aides.**

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

FORMS (18VAC90-25)

~~Instructions for Application for Nurse Aide Certification by Endorsement (rev. 1/11)~~

~~Application for Nurse Aide Certification by Endorsement (rev. 8/08)~~

~~Nurse Aide Certification Verification Form (rev. 11/07)~~

~~Instructions and Application for Certification as Advanced Certified Nurse Aide (rev. 8/07)~~

~~Instructions and Application for Reinstatement of Nurse Aide Certification (rev. 8/08)~~

~~Instructions and Application for Reinstatement of Advanced Nurse Aide Certification (rev. 8/07)~~

Application for Certification as a Nurse Aide by Examination, available online at https://www.dhp.virginia.gov/Boards/Nursing/PractitionerResources/Forms/

Application for Certification as a Nurse Aide by Endorsement, available online at https://www.dhp.virginia.gov/Boards/Nursing/PractitionerResources/Forms/

Application for Certification as an Advanced Certified Nurse Aide, available online at https://www.dhp.virginia.gov/Boards/Nursing/PractitionerResources/Forms/

Checklist Instructions Reinstatement of Nurse Aide Certification (rev. 4/2020)

Checklist Instructions Reinstatement of Advanced Nurse Aide Certification (rev. 4/2020)

VA.R. Doc. No. R21-6649; Filed January 24, 2021, 4:29 p.m.

Proposed Regulation

Title of Regulation: **18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-10, 18VAC90-30-220).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 16, 2021.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Boards of Nursing and Medicine the authority to promulgate regulations to administer the regulatory system. Section 54.1-2409.5 of the Code of Virginia establishes a prohibition on conversion therapy.

Purpose: The purpose of this regulatory action is to specify in regulations the interpretation of the boards that conversion therapy has the potential for significant harm if practiced with persons younger than 18 years of age. The amendments define the term, consistent with accepted usage within the profession and consistent with policy statements by state and national professional organizations.

Substance: The Board of Nursing and Medicine have amended 18VAC90-30-220 to specify that the standard of practice would prohibit a nurse practitioner from engaging in conversion therapy with a person younger than 18 years of age. Regulations define conversion therapy as it is defined in § 54.1-2409.5 of the Code of Virginia as amended by Chapters 41 and 721 of the 2020 Acts of Assembly.

Issues: The primary advantage to the public is protection for minors who might otherwise be subjected to conversion therapy; the boards do not believe there are disadvantages because practitioners can provide assistance to a person undergoing gender transition or psychological services that offer acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development. There are no advantages or disadvantages to the agency or the Commonwealth.

The Department of Planning and Budget's Economic Impact Analysis:

The Board of Nursing (Board) proposes to amend 18VAC90-30 Regulations Governing the Licensure of Nurse Practitioners (regulation) in order to add a definition of "conversion therapy"

and a stipulation that licensees shall not engage in conversion therapy with individuals under 18 years of age.

Background. Chapters 41 and 721 of the 2020 Acts of Assembly bans the use of conversion therapy on minors by any provider licensed by a health regulatory board with the Department of Health Professions (DHP).[1] Specifically, the Act creates § 54.1-2409.5 of the Code of Virginia, which defines conversion therapy as follows:

"Conversion therapy" means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. "Conversion therapy" does not include counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity.

DHP reports that nurse practitioners (NPs) are more likely to be familiar with the regulations put forth by their licensing board than statutes. Thus, the Board seeks to amend the regulation to (i) define conversion therapy by referring the reader to § 54.1-2409.5, and (ii) explicitly state that the Board may "deny licensure or relicensure, revoke or suspend the license, or take other disciplinary action upon proof that the nurse practitioner has engaged in conversion therapy with a person under 18 years of age."

Estimated Benefits and Costs. DHP estimates that few, if any, NPs would be affected because conversion therapy has been considered harmful[2] to minors and contrary to the profession's code of ethics.[3] To the extent that licensed NPs are currently engaging in conversion therapy with individuals under 18 years of age, they would be in violation of state law. Any licensed NPs choosing to forfeit their licensure in favor of continuing to practice conversion therapy may only continue to do so if employed as a rabbi, priest, minister or clergyman, as long as they belong to "an established and legally cognizable church, denomination or sect" and remain "accountable to its established authority."[4]

Clients under age 18, who seek to receive, or continue receiving, conversion therapy would need to find providers who are not licensed by any board within DHP, which may result in some costs for the client depending on the availability of such providers. Conversely, the proposed amendments would benefit children and their parents to the extent that it prevents the use of a practice that has been found to be harmful to children and has been banned for such use under state law.

Businesses and Other Entities Affected. As mentioned, some licensed NPs who may also have been working in a religious setting may have to alter their practice or else face disciplinary action, but DHP estimates that these are most likely a very small fraction of the overall number of license-holders.[5] Although DHP does not have an estimate of the number of affected NPs, the agency reports that the vast majority of current license-holders likely do not engage in conversion therapy at all (in either religious or secular settings) since it is not taught by any accredited nursing program and has been considered contrary to the "professional code of ethics" in an informal capacity for more than a decade.

Small Businesses[6] Affected. Although some licensed NPs may be employed in a small business setting, DHP estimates that only a very small fraction of the overall number of license-holders would be affected by the regulation at all, and there is no reason to suggest that those affected are more likely to be working in a small business. Even so, the cost to providers of complying with the regulation is unlikely to be significant, and there are no alternatives to the regulation that would provide greater flexibility while also conforming to the Code of Virginia.

Localities[7] Affected.[8] The proposed amendments do not introduce new costs for local governments and are unlikely to affect any locality in particular.

Projected Impact on Employment. The proposed amendments are unlikely to affect the overall number of employed NPs.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to affect the use and value of private property. Real estate development costs are not affected.

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[1]See http://leg1.state.va.us/cgi-bin/legp504.exe?201 ful CHAP0041.

[2]In a 2013 Position Statement, the American Psychiatric Association stated that it "does not believe that same-sex orientation should or needs to be changed, and efforts to do so represent a significant risk of harm by subjecting individuals to forms of treatment which have not been scientifically validated and by undermining self-esteem when sexual orientation fails to change. No credible evidence exists that any mental health intervention can reliably and safely change sexual orientation; nor, from a mental health perspective does sexual orientation need to be changed." Downloaded from https://www.psychiatry.org/home/policy-finder.

[3]In 2019, the Board also adopted a guidance document addressing conversion therapy: https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=6784.

[4]As per COV § 54.1-3501 Exemption from requirements of licensure: The activities, including marriage and family therapy, counseling, or substance abuse treatment, of rabbis, priests, ministers or clergymen of any religious denomination or sect when such activities are within the scope of the performance of their regular or specialized ministerial duties, and no separate charge is made or when such activities are performed, whether with or without charge, for or under auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination or sect, and the person rendering service remains accountable to its established authority.

[5]According to the ABD, 12,863 nurse practitioners are currently licensed by the Board.

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

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

[8]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

Pursuant to Chapters 41 and 721 of the 2020 Acts of Assembly, the proposed amendments (i) define conversion therapy as it is defined in § 54.1-2409.5 of the Code of Virginia and (ii) specify that the standard of practice for nurse practitioners prohibits a nurse practitioner from engaging in conversion therapy with a person younger than 18 years of age.

18VAC90-30-10. Definitions.

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

"Approved program" means a nurse practitioner education program that is accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools, American College of Nurse Midwives, Commission on Collegiate Nursing Education, or the National League for Nursing Accrediting Commission or is offered by a school of nursing or jointly offered by a school of medicine and a school of nursing that grant a graduate degree in nursing and that hold a national accreditation acceptable to the boards.

"Autonomous practice" means practice in a category in which a nurse practitioner is certified and licensed without a written or electronic practice agreement with a patient care team physician in accordance with 18VAC90-30-86.

"Boards" means the Virginia Board of Nursing and the Virginia Board of Medicine.

"Certified nurse midwife" means an advanced practice registered nurse who is certified in the specialty of nurse midwifery and who is jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner pursuant to § 54.1-2957 of the Code of Virginia.

"Certified registered nurse anesthetist" means an advanced practice registered nurse who is certified in the specialty of nurse anesthesia, who is jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner pursuant to § 54.1-2957 of the Code of Virginia, and who practices under the supervision of a doctor of medicine, osteopathy, podiatry, or dentistry but is not subject to the practice agreement requirement described in § 54.1-2957.

"Collaboration" means the communication and decision-making process among members of a patient care team related to the treatment and care of a patient and includes (i) communication of data and information about the treatment and care of a patient, including exchange of clinical observations and assessments, and (ii) development of an appropriate plan of care, including decisions regarding the health care provided, accessing and assessment of appropriate additional resources or expertise, and arrangement of appropriate referrals, testing, or studies.

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"Consultation" means the communicating of data and information, exchanging of clinical observations and assessments, accessing and assessing of additional resources and expertise, problem solving, and arranging for referrals, testing, or studies.

"Conversion therapy" means any practice or treatment as defined in § 54.1-2409.5 A of the Code of Virginia.

"Licensed nurse practitioner" means an advanced practice registered nurse who has met the requirements for licensure as stated in Part II (18VAC90-30-60 et seq.) of this chapter.

"National certifying body" means a national organization that is accredited by an accrediting agency recognized by the U.S. Department of Education or deemed acceptable by the National Council of State Boards of Nursing and has as one of its purposes the certification of nurse anesthetists, nurse midwives, or nurse practitioners, referred to in this chapter as professional certification, and whose certification of such persons by examination is accepted by the committee.

"Patient care team physician" means a person who holds an active, unrestricted license issued by the Virginia Board of Medicine to practice medicine or osteopathic medicine.

"Practice agreement" means a written or electronic statement, jointly developed by the collaborating patient care team physician and the licensed nurse practitioner that describes the procedures to be followed and the acts appropriate to the specialty practice area to be performed by the licensed nurse practitioner in the care and management of patients. The practice agreement also describes the prescriptive authority of the nurse practitioner, if applicable. For a nurse practitioner licensed in the category of certified nurse midwife, the practice agreement is a statement jointly developed with the consulting physician.

18VAC90-30-220. Grounds for disciplinary action against the license of a licensed nurse practitioner.

The boards may deny licensure or relicensure, revoke or suspend the license, or take other disciplinary action upon proof that the nurse practitioner:

1. Has had a license or multistate privilege to practice nursing in this Commonwealth or in another jurisdiction revoked or suspended or otherwise disciplined;

2. Has directly or indirectly represented to the public that the nurse practitioner is a physician, or is able to, or will practice independently of a physician;

3. Has exceeded the authority as a licensed nurse practitioner;

4. Has violated or cooperated in the violation of the laws or regulations governing the practice of medicine, nursing or nurse practitioners;

5. Has become unable to practice with reasonable skill and safety to patients as the result of a physical or mental illness or the excessive use of alcohol, drugs, narcotics, chemicals or any other type of material;

6. Has violated or cooperated with others in violating or attempting to violate any law or regulation, state or federal, relating to the possession, use, dispensing, administration or distribution of drugs;

7. Has failed to comply with continuing competency requirements as set forth in 18VAC90-30-105;

8. Has willfully or negligently breached the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful; ~~or~~

9. Has engaged in unauthorized use or disclosure of confidential information received from the Prescription Monitoring Program, the electronic system within the Department of Health Professions that monitors the dispensing of certain controlled substances; or

10. Has engaged in conversion therapy with a person younger than 18 years of age.

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Forms

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

Title of Regulation: **18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners.**

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

FORMS (18VAC90-30)

~~Instructions for Licensure – Nurse Practitioner (rev. 2/2009)~~

~~Application for Licensure as a Nurse Practitioner (rev. 6/2011)~~

~~Application for Reinstatement of License as a Nurse Practitioner (rev. 6/2011)~~

~~License Verification Form (rev. 7/2007)~~

~~Application for Restricted Volunteer License (eff. 7/2015)~~

Application for Licensure as a Nurse Practitioner, available online at https://www.dhp.virginia.gov/Boards/Nursing/PractitionerResources/Forms/

Checklist Instructions: Application for Licensure - Nurse Practitioner (LNP) (rev. 7/2020)

Instructions: Application – Attestation/Authorization for Autonomous Practice – Licensed Nurse Practitioner (LNP) (rev. 1/2019)

Checklist Instructions Reinstatement Application (rev. 8/2018)

Checklist Instructions for Reinstatement Application Following Suspension or Revocation (rev. 8/2018)

Checklist Instructions Application for Restricted Volunteer License (rev. 8/2018)

VA.R. Doc. No. R21-6652; Filed January 24, 2021, 4:30 p.m.

Forms

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

Title of Regulation: **18VAC90-50. Regulations Governing the Licensure of Massage Therapists.**

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

FORMS (18VAC90-50)

Application for Licensure as a Massage Therapist - online application only at ~~http://www.dhp.virginia.gov/nursing/nursing_forms.htm#MassageTherapist~~ https://www.dhp.virginia.gov/Boards/Nursing/PractitionerResources/Forms/

~~Massage Therapist Certification/Licensure Verification Form (rev. 4/2014)~~

~~Application for Reinstatement of Licensure as a Massage Therapist (rev. 7/2016)~~

~~Instructions and Application for Reinstatement of Licensure as a Licensed Massage Therapist following Suspension or Revocation (7/2016)~~

Checklist Instructions for Initial Licensure as a Massage Therapist (rev. 5/2019)

Checklist Instructions For Licensure by Endorsement as a Massage Therapist (rev. 5/2019)

Massage Therapist Applicant Verification Form (rev. 5/2019)

Checklist Instructions for Reinstatement as a Massage Therapist (rev. 5/2019)

Checklist Instructions for Reinstatement as a Massage Therapist Following Suspension or Revocation (rev. 5/2019)

VA.R. Doc. No. R21-6650; Filed January 24, 2021, 4:30 p.m.

Forms

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

Title of Regulation: **18VAC90-60. Regulations Governing the Registration of Medication Aides.**

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC90-60)

~~Application to Establish a Medication Aide Training Program (eff. 7/07).~~

~~Instructions for Filing Application for Registration by Examination for Medication Aides (eff. 7/07).~~

~~Checklist for Submission and Application for Registration by Examination for Medication Aide (rev 8/09).~~

~~Instructions for Filing Application for Registration by Endorsement for Medication Aides (rev. 7/07).~~

~~Checklist for Submission and Application for Registration by Endorsement for Medication Aide (rev. 1/09).~~

~~Instructions for Filing Application for Reinstatement as a Medication Aide (rev. 7/11).~~

~~Application for Reinstatement of Medication Aide Registration (eff. 7/07).~~

Application for registration as a medication aide, by examination or endorsement, available online at https://www.dhp.virginia.gov/Boards/Nursing/PractitionerResources/Forms/

Application, Checklist, and Instructions for Medication Aide Reinstatement (rev. 4/2018)

VA.R. Doc. No. R21-6659; Filed January 24, 2021, 4:30 p.m.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Fast-Track Regulation

Title of Regulation: **18VAC95-15. Regulations Governing Delegation to an Agency Subordinate (adding 18VAC95-15-10, 18VAC95-15-20, 18VAC95-15-30).**

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

Public Hearing Information: No public hearings are currently scheduled.

Public Comment Deadline: March 17, 2021.

Effective Date: April 16, 2021.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Long-Term Care Administrators, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4595, FAX (804) 527-4413, or email corie.wolf@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Long-Term Care Administrators the authority to promulgate regulations to administer the regulatory system.

Purpose: Delegation of nonstandard care cases to an agency subordinate may improve the completion rate for adjudication of cases that come before the board. Delegation of cases that do not involve patient harm may facilitate the adjudication of more serious cases and enable the board to take action that protects the health, safety, and welfare of patients and residents in long-term care facilities.

Rationale for Using Fast-Track Rulemaking Process: The impetus for the regulatory change was the periodic review of 18VAC95-20 begun in 2017. It was recommended that 18VAC95-20-471 on delegation to an agency subordinate be repealed and the provisions of that section placed in a new chapter so that they would apply to all disciplinary cases under the authority of the board and not just to persons regulated under that chapter.

Substance: New 18VAC95-15 will set out provisions for (i) making the decision of whether to delegate an informal fact-finding proceeding to an agency subordinate, (ii) determining the types of cases that may be delegated, and (iii) the criteria for an agency subordinate.

Issues: There are no primary advantages or disadvantages to the public. The cases to be heard by an agency subordinate would likely be those that do not involve violations of standard of care. The primary advantage to the board is the possibility of facilitating the adjudication of disciplinary cases; there are

no disadvantages. Delegation to an agency subordinate is authorized but not required.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Long-Term Care Administrators (Board) proposes to promulgate a new regulation, 18 VAC 95-15 Regulations Governing Delegation to an Agency Subordinate, to set out the rules for delegation of informal fact-finding to an agency subordinate.

Background. Code of Virginia § 54.1-2400(10) states that the Board may delegate to an appropriately qualified agency subordinate[1] the authority to conduct informal fact-finding proceedings in accordance with § 2.2-4019, upon receipt of information that a practitioner may be subject to a disciplinary action. Further, the Code section specifies that, "Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board."

Specifics of Proposed Regulation. The proposed new regulation has three sections: 18VAC95-15-10 Decision to delegate, 18VAC95-15-20 Criteria for delegation, and 18VAC95-15-30 Criteria for an agency subordinate. Section 10 merely states that "In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action." This essentially does not provide criteria beyond that which is already in the Code.

Section 20 in full states that "Cases that may not be delegated to an agency subordinate include violations of standards of practice, except as may otherwise be determined by the executive director in consultation with the board chair." This provides guidance beyond the Code as to which cases may by default be delegated, but does not conclusively limit any cases from being delegated.

Section 30.A states that "An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals." This is consistent with the Code and is slightly more specific, in that the Code definition of subordinate includes "any other person or persons designated by the agency to act in its behalf," versus "other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals" in the proposed regulation.

Section 30.B specifies that "The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated." This is not in the Code.

Section 30.C specifies that "The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard." This is also only in the proposed regulation.

Estimated Benefits and Costs. According to the Department of Health Professions (DHP), the Board is not currently delegating any cases to an agency subordinate, but will likely start using agency subordinates once the regulation becomes effective. It is generally easier for smaller groups (including just one individual) to schedule the time necessary to conduct fact-finding proceedings than for larger groups, i.e., a quorum of the board. Thus, to the extent that the adoption of the proposed regulation makes it more likely that the board delegates to an agency subordinate the task to conduct informal fact-finding proceedings, closure may be brought to some disciplinary cases in a timelier manner. Since the Board must still ratify recommendations of the subordinate, the subject of the potential disciplinary action would still be under the judgment of the Board.

Businesses and Other Entities Affected. The proposed regulation affects members of the Board and other individuals who may be chosen as agency subordinates, such as past members of the Board, staff of DHP, and other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals. The proposed regulation may also affect the 936 nursing home administrators and 656 assisted living administrators regulated by the Board. The proposal does not produce cost.

Small Businesses[2] Affected.

Types and Estimated Number of Small Businesses Affected: The Board only regulates individual practitioners; thus, data on number of small businesses is not available.

Costs and Other Effects: Delegating to an agency subordinate may reduce the time it takes to resolve cases before the Board. This may moderately reduce time costs for small businesses that employ nursing home administrators or assisted living administrators who go before the Board.

Alternative Method that Minimizes Adverse Impact. The proposed regulation does not produce adverse impact.

Localities[3] Affected.[4] The proposed regulation does not disproportionately affect any particularly locality nor appear to introduce additional costs for local governments.

Projected Impact on Employment. The proposed regulation does not appear to substantively affect total employment.

Effects on the Use and Value of Private Property. The proposed regulation appears to neither substantively affect the use and value of private property, nor affect real estate development costs.

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[1]"Subordinate" is defined as "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff

members or employees, or (iii) any other person or persons designated by the agency to act in its behalf."

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

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

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

Agency's Response to Economic Impact Analysis: The Board of Long-Term Care Administrators concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

The regulatory action establishes a new regulation with provisions for (i) making the decision of whether to delegate an informal fact-finding proceeding to an agency subordinate, (ii) determining the types of cases that may *be delegated, and (iii) establishing the criteria for an agency subordinate.*

Chapter 15
Regulations Governing Delegation to an Agency Subordinate

18VAC95-15-10. Decision to delegate.

In accordance with subdivision 10 of § 54.1-2400 of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.

18VAC95-15-20. Criteria for delegation.

Cases that may not be delegated to an agency subordinate include violations of standards of practice, except as may otherwise be determined by the executive director in consultation with the board chair.

18VAC95-15-30. Criteria for an agency subordinate.

A. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

B. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

C. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

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BOARD OF OPTOMETRY

Forms

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

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry.**

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

FORMS (18VAC105-20)

Application for a License to Practice as a TPA-Certified Optometrist, online form available at https://www.dhp.virginia.gov/Optometry/optometry_forms.htm.

~~Application Instructions for Licensure/TPA Certification (rev. 5/2019)~~

~~Professional Designation Instructions and Application (rev. 5/2019)~~

~~Application for Reinstatement (rev. 5/2019)~~

~~Application for Registration for Volunteer Practice (rev. 5/2019)~~

~~Sponsor Certification for Volunteer Registration (rev. 5/2019)~~

~~Certificate of Training (rev. 5/2019)~~

~~Applicant License Verification Form (rev. 5/2019)~~

~~Employment Verification Form (rev. 5/2019)~~

~~Continuing Education Form (rev. 5/2019)~~

~~Continuing Education Credit Form for Volunteer Practice (rev. 5/2019)~~

~~Name/Address Change Form (rev. 5/2019)~~

~~Professional Designation Change Form (rev. 5/2019)~~

~~Written Evidence for Injections (rev. 5/2019)~~

Application Instructions for Licensure/TPA Certification (rev. 6/2020)

Instructions/Checklist for Reactivation of an Inactive License (rev. 6/2020)

Instructions/Checklist for Reinstatement of an Expired License (rev. 06/2020)

Application for Registration for Volunteer Practice (rev. 6/2020)

Sponsor Certification for Volunteer Registration (rev. 6/2020)

Licensure Verification Form (rev. 06/2020)

Employment Verification Form (rev. 6/2020)

Instructions for Completing the Continuing Education (CE) Reporting Form (rev. 06/2020)

Continuing Education Credit Form for Volunteer Practice (rev. 6/2020)

Name/Address Change Form (rev. 6/2020)

Written Evidence for Injections (rev. 6/2020)

Request for Verification of a Virginia License (rev. 6/2020)

VA.R. Doc. No. R21-6655; Filed January 24, 2021, 4:31 p.m.

BOARD OF PHARMACY

Forms

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Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy.**

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC110-20)

~~Application for a Pharmacy Permit (rev. 5/2018)~~

~~Application for a Nonresident Pharmacy Registration (rev. 7/2018)~~

~~Application for a Nonresident Outsourcing Facility Registration (rev. 7/2018)~~

~~Application for an Outsourcing Facility Permit (rev 6/2018)~~

~~Application for a Permit as a Medical Equipment Supplier (rev. 7/2018)~~

~~Application for a Permit as a Nonresident Medical Equipment Supplier (rev. 7/2018)~~

~~Application for a Controlled Substances Registration Certificate (rev. 5/2020)~~

Application for a Pharmacy Permit (rev. 10/2020)

Application for a Non-resident Pharmacy Registration (rev. 10/2020)

Application for a Non-Resident Wholesale Distributor Registration (rev. 10/2020)

Application for Registration as Nonresident Manufacturer (rev. 10/2020)

Application for a Non-Resident Third Party Logistics Provider Registration (rev. 10/2020)

Application for Registration as a Nonresident Warehouser (rev. 10/2020)

Application for a Non-resident Outsourcing Facility Registration (rev. 10/2020)

Application for an Outsourcing Facility Permit (rev. 10/2020)

Application for a Medical Equipment Supplier Permit (rev. 10/2020)

Application for a Permit as a Restricted Manufacturer (rev. 10/2020)

Application for a Permit as a Non-Restricted Manufacturer (rev. 10/2020)

Application for a License as a Wholesale Distributor (rev. 10/2020)

Application for a Permit as Warehouser (rev. 10/2020)

Application for a Permit as a Third-Party Logistics Provider (rev. 10/2020)

Application for Registration as a Non-resident Medical Equipment Supplier (rev. 10/2020)

Application for a Controlled Substances Registration Certificate (rev. 10/2020)

Closing of a Pharmacy (rev. 5/2018)

~~Application for Approval of an Innovative (Pilot) Program (rev. 5/2018)~~

Application for Approval of an Innovative (Pilot) Program (rev. 10/2020)

Registration for a Pharmacy to be a Collection Site for Donated Drugs (rev. 5/2018)

~~Application for Approval of Repackaging Training Program (rev. 5/2018)~~

Application for Approval of a Repackaging Training Program (rev. 10/2020)

Registration for a Facility to be an Authorized Collector for Drug Disposal (rev. 5.2018)

~~Application for Re-Inspection of a Facility (rev. 8/2019)~~

Application for a Re-Inspection of a Facility (rev. 10/2020)

Notification of Distribution Cessation due to Suspicious Orders (rev. 5/2018)

VA.R. Doc. No. R21-6665; Filed January 24, 2021, 4:32 p.m.

Forms

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Title of Regulation: **18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians.**

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

FORMS (18VAC110-21)

Application for a Pharmacist license by endorsement or examination, online form available at ~~https://www.dhp.virginia.gov/Pharmacy/pharmacy_forms.htm#Pharmactists~~ https://www.dhp.virginia.gov/Pharmacy/pharmacy_forms

~~Application and Instructions for Reinstatement of a Pharmacist License (rev. 4/2018)~~

Instructions for Reinstating or Reactivating a Pharmacist License (rev. 10/2020)

Application for registration as a Pharmacy Technician, online form available at https://www.dhp.virginia.gov/Pharmacy/pharmacy_forms

~~Application and Instructions for Reinstatement of a Pharmacy Technician Registration (rev. 4/2018)~~

~~Application for Registration as a Limited use Pharmacy Technician (rev. 4/2018)~~

~~Affidavit for Free Clinic Director for Limited use Pharmacy Technician (rev. 4/2018)~~

~~Application for Approval of a Pharmacy Technician Training Program (rev. 3/2019)~~

Instructions for Reinstating a Pharmacy Technician Registration (rev. 10/2020)

Application for Registration as a Limited-use Pharmacy Technician (rev. 07/2020)

Affidavit for Limited-use Pharmacy Technician (rev. 05/2018)

Application for Approval of Pharmacy Technician Training Program (rev. 10/2020)

Application for registration as a Pharmacy Intern, online form available at https://www.dhp.virginia.gov/Pharmacy/pharmacy_forms

Affidavit of Practical Experience as a Pharmacy Intern (rev. 3/2019)

Name Change Form for Individuals (rev. 3/2018)

~~Application for Board Approval of a Continuing Education Program for CE credit (rev. 5/2018)~~

~~Application for Approval of ACPE Pharmacy School Course for Continuing Education Credit (rev. 5/2018)~~

~~Volunteer Practice Sponsor Form (rev. 4/2018)~~

~~Application for Registration for Volunteer Practice (rev. 4/2018)~~

Application for Approval of a Continuing Education Program (rev. 5/2018)

Application for Approval of an Innovative (PILOT) Program (rev. 10/2020)

Application for Approval of a Repackaging Training Program (rev. 10/2020)

Continuing Education (CE) Credit Form for Preceptors (rev. 07/2020)

Application for Approval of ACPE Accredited Pharmacy School Course(s) for Continuing Education Credit (rev. 06/2020)

Sponsor Certification for Volunteer Registration (rev. 4/2018)

Application for Volunteer Practice By a Pharmacist (rev. 4/2018)

Continuing Education (CE) Credit Form for Volunteer Practice (rev. 4/2018)

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Forms

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Title of Regulation: **18VAC110-30. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances.**

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC110-30)

~~Application for a License to Sell Controlled Substances by a Practitioner of the Healing Arts (rev. 12/2015)~~

~~Application for a Facility Permit for Practitioner(s) of the Healing Arts to Sell Controlled Substances (rev. 12/2015)~~

Application for a Controlled Substances Registration Certificate (rev. 10/2020)

Controlled Substances Registration Inspection Report (rev. 1/2020)

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Forms

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Title of Regulation: **18VAC110-50. Regulations Governing Wholesale Distributors, Manufacturers, Third-Party Logistics Providers, and Warehousers.**

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC110-50)

~~Application for a License as a Wholesale Distributor - Limited Use for Distribution of Medical Gases Only (rev. 3/2010)~~

~~Application for a Permit as a Restricted Manufacture (rev. 6/2018)~~

~~Application for a Permit as a Nonrestricted Manufacturer (rev. 6/2018)~~

~~Application for a Permit as a Nonresident Manufacturer (rev. 6/2018)~~

~~Application for a Permit as a Warehouser (rev. 6/2018)~~

~~Application for a Permit as a Nonresident Warehouser (rev. 6/2018)~~

~~Application for a License as a Wholesale Distributor (rev. 6/2018)~~

~~Application for a License as a Nonresident Wholesale Distributor Registration (rev. 6/2018)~~

~~Application for a Permit as a Third-Party Logistics Provider (rev. 6/2018)~~

~~Application for a Permit as a Nonresident Third-Party Logistics Provider (rev. 2/2019)~~

~~Application for Reinspection of a Facility (rev. 8/2019)~~

Application for License as a Wholesale Distributor (rev. 10/2020)

Application for a Permit as a Restricted Manufacturer (rev. 10/2020)

Application for a Permit as a Non-Restricted Manufacturer (rev. 10/2020)

Application for Registration as a Nonresident Manufacturer (rev. 10/2020)

Application for a Permit as a Warehouser (rev. 10/2020)

Application for Registration as a Nonresident Warehouser (rev. 10/2020)

Application for License as a Wholesale Distributor (rev. 10/2020)

Application for a Non-Resident Wholesale Distributor Registration (rev. 10/2020)

Application for a Non-Resident Third-Party Logistics Provider Registration (rev. 10/2020)

Application for a Permit as a Third-Party Logistics Provider (rev. 10/2020)

Application for a Re-Inspection of Facility (rev. 10/2020)

VA.R. Doc. No. R21-6667; Filed January 24, 2021, 4:31 p.m.

Forms

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Title of Regulation: **18VAC110-60. Regulations Governing Pharmaceutical Processors.**

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC110-60)

Application for registration of a patient, online form available at https://www.license.dhp.virginia.gov/apply

Application for registration of a parent or legal guardian, online form available at https://www.license.dhp.virginia.gov/apply

Application for registration of a practitioner to issue certifications, online form available at https://www.license.dhp.virginia.gov/apply

~~Application for Pharmaceutical Processor Permit (eff. 6/2019)~~

~~Patient Parent or Legal Guardian Reporting Requirements (eff. 6/2019)~~

How to Register with the Board as a Patient, Parent or Legal Guardian (rev. 7/2020)

Application for a Pharmaceutical Processor Permit (rev. 1/2021)

Practitioner Reporting Requirements (eff. 6/2019)

Registration of CBD or THC-A Oil Products (eff. 6/2019)

Pharmaceutical Processor Inspection Form (eff. 10/2019)

Application for Registration as a Registered Agent (eff. 12/2019)

Request for Visitor Approval (eff. 5/2020)

VA.R. Doc. No. R21-6657; Filed January 24, 2021, 4:32 p.m.

BOARD OF PHYSICAL THERAPY

Forms

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Title of Regulation: **18VAC112-20. Regulations Governing the Practice of Physical Therapy.**

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC112-20)

Application for Licensure by Examination to Practice Physical Therapy as a Physical Therapist or Physical Therapist Assistant - form available online only at https://www.dhp.virginia.gov/PhysicalTherapy/physther_forms.htm

Application for Licensure by Endorsement to Practice Physical Therapy as a Physical Therapist or Physical Therapist Assistant - form available online only at https://www.dhp.virginia.gov/PhysicalTherapy/physther_forms.htm

~~Application for Reinstatement to Practice as a Physical Therapist or Physical Therapist Assistant (rev. 4/2017)~~

~~Application for Reinstatement after Disciplinary Action (rev. 4/2017)~~

~~Checklist and Instructions for Application for Licensure by Endorsement to Practice Physical Therapy (rev. 3/2018)~~

~~Checklist and Instructions for Application for Licensure by Endorsement to Practice Physical Therapy (Graduate of a Non-approved Program) (rev. 3/2018)~~

~~Checklist and Instructions for Application for Licensure by Examination to Practice Physical Therapy (rev. 3/2018)~~

~~Checklist and Instructions for Application for Licensure by Examination to Practice Physical Therapy (Graduate of a Non-Approved Program) (rev. 3/2018)~~

~~Instructions - Reinstatement of Licensure to Practice as a Physical Therapist or Physical Therapist Assistant (rev. 7/2017)~~

~~Trainee Application Statement of Authorization (graduates awaiting examination results) (rev. 4/2018)~~

~~Trainee Application Statement of Authorization (1,000 hour traineeship) (rev. 6/2018)~~

~~Trainee Application, Statement of Authorization (320 hour traineeship) (rev. 6/2018)~~

~~320 Hour Trainee Completion Form (rev. 6/2018)~~

~~Trainee Application Statement of Authorization (160 hour traineeship) (rev. 6/2018)~~

~~160 Hour Traineeship Completion Form (rev. 6/2018)~~

~~Education Authorization Form (rev. 2/2019)~~

~~Continuing Competency Activity and Assessment Form (rev. 1/2015)~~

~~Continuing Education (CE) Credit Form for Volunteer Practice (eff. 2/2018)~~

Application for Reinstatement to Practice Physical Therapy (rev. 7/2020)

Application for Reinstatement After Disciplinary Action (rev. 7/2020)

Checklist and Instructions for Application for Licensure by Endorsement to Practice Physical Therapy (rev. 7/2020)

Checklist and Instructions for Application for Licensure by Endorsement to Practice Physical Therapy (Graduate of a Non-Approved Program) (rev. 7/2020)

Checklist and Instructions for Application for Licensure by Examination to Practice Physical Therapy (rev. 7/2020)

Checklist and Instructions for Application for Licensure by Examination to Practice Physical Therapy (Graduate of a Non-Approved Program) (rev. 7/2020)

Instructions: Reinstatement of Licensure to Practice as a Physical Therapist or Physical Therapist Assistant (rev. 7/2020)

Trainee Application - Statement of Authorization (rev. 7/2020)

Trainee Application - Statement of Authorization (Graduates of a Non-Approved PT or PTA Program Who Need to Complete a Full Time 1,000 Hours of Traineeship) (rev. 7/2020)

Trainee Application - Statement of Authorization (320-hour Traineeship) (rev. 7/2020)

320 Hour Traineeship Completion Form (rev. 7/2020)

Educational Authorization Form (rev. 7/2020)

Continued Competency Activity and Assessment Form (rev. 1/2015)

Continuing Education (CE) Credit Form for Volunteer Practice (rev. 7/2020)

Application for Direct Access Certification - form available online only at https://www.dhp.virginia.gov/PhysicalTherapy/physther_forms.htm

Instructions - Direct Access Certification by Experience (rev. 8/2016)

Instructions - Direct Access Certification by Transitional Doctorate (rev. 6/2015)

Direct Access Patient Attestation and Medical Release Form (eff. 5/2018)

~~Name/Address Change Form (rev. 6/2018)~~

~~Request for Verification of Virginia Physical Therapist License (rev. 6/2018)~~

Name/Address Change Form (rev. 7/2020)

Request for Verification of a Virginia Physical Therapy License (rev. 7/2020)

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BOARD OF PSYCHOLOGY

Forms

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

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC125-20)

~~Virginia Board of Psychology Application Instructions - Licensure by Examination (rev. 5/12).~~

~~Instructions - Virginia Board of Psychology Application of Licensure by Endorsement (rev. 2/10).~~

~~Psychologist Application for Licensure by Examination, Form 1 (rev. 8/07).~~

~~Application for Licensure as a School Psychologist Limited (rev. 8/07).~~

~~Employment Verification Form (rev. 8/07).~~

~~Registration of Residency - Post Graduate Degree Supervised Experience, Form 2 (rev. 8/07).~~

~~Virginia Board of Psychology Application for Licensure by Endorsement (rev. 5/12).~~

~~Psychologist Application for Reinstatement of a Lapsed License, PSYREIN (rev. 8/07).~~

~~School Psychologist Limited Application for Reinstatement of a Lapsed License, PSYREIN (rev. 8/07).~~

~~Psychologist Application for Reinstatement Following Disciplinary Action, PSYREDISC (rev. 8/07).~~

~~Verification of Post Degree Supervision, Form 3 (rev. 8/07).~~

~~Internship Verification, Form 4 (rev. 8/07).~~

~~Licensure/Certification Verification, Form 5 (rev. 8/07).~~

~~Areas of Graduate Study, Form 6 (rev. 2/10).~~

Application Instructions For Clinical Psychology (LCP), School Psychology, or Applied Psychology Licensure by Examination (rev. 4/2018)

Endorsement Application Instructions for Licensure as a Clinical, School, or Applied Psychologist (rev. 12/2018)

Application Instructions for Licensure as a School Psychologist-Limited (rev. 5/2018)

Employment Verification (rev. 5/2018)

Registration of Residency in Clinical or School Psychology (Post-Graduate Degree Supervised Experience) (rev. 5/2018)

Psychologist Application for Reinstatement of a Lapsed License (rev. 5/2018)

School Psychologist-Limited Application for Reinstatement of a Lapsed License (rev. 5/2018)

Psychologist/CSOTP Application for Reinstatement Following Disciplinary Action (rev. 5/2018)

Verification of Post-Degree Supervision (rev. 5/2018)

Internship Verification (rev. 5/2018)

Licensure/Certification Verification (rev. 5/2018)

Areas of Graduate Study (rev. 5/2018)

Continuing Education Summary Form (rev. 12/11)

~~Verification of Pre-Doctoral Supervised Practicum Hours (eff. 5/12).~~

Verification of Pre-Doctoral Supervised Practicum Hours (eff. 5/2018)

Verification of Post-Licensure Active Practice (rev. 8/2018)

Licensure Verification of Out-of-State Supervisor (rev. 5/2018)

Form for Reporting Psychology Grand Rounds Attendance (rev. 10/2011)

Continuing Education/Course Approval Request (rev. 4/2018)

Request for Board Approval of Evaluator (rev. 10/2017)

Request for Board Approval of Practice Supervisor (rev. 10/2017)

Request for Board Approval of Therapist (rev. 10/2017)

Psychology Name/Address Change Form (rev. 3/2016)

Request for Verification of Virginia Psychology License (rev. 7/2017)

Request for Change in Status of Virginia Clinical, School or Applied Psychologist License and School Psychologist Limited License (Current Active to Current Inactive) (rev. 5/2020)

Request for Change in Status of Virginia Psychology License (Current Inactive to Current Active) (rev. 5/2020)

Request for Change in Status of Virginia Psychology License (Current Inactive to Current Active at Annual Renewal Time) (rev. 5/2020)

VA.R. Doc. No. R21-6668; Filed January 24, 2021, 4:33 p.m.

Forms

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

Title of Regulation: **18VAC125-30. Regulations Governing the Certification of Sex Offender Treatment Providers.**

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC125-30)

~~General Information for Certification as a Sex Offender Treatment Provider (rev. 4/09).~~

~~Application for Certification as a Sex Offender Treatment Provider, Form 1 (rev. 8/07).~~

~~Licensure or Certification Verification of Applicant, SOTP Form 2 (rev. 8/07).~~

~~Sex Offender Treatment Provider, Verification of Supervision, SOTP Form 3 (rev. 4/09).~~

~~Licensure Verification of Out-of-State Supervisor, SOTP Form 4 (rev. 8/07).~~

~~Registration of Supervision Instructions (rev. 4/09).~~

~~Registration of Supervision, Post Graduate Degree Supervised Experience, Form 5 (rev. 8/07).~~

~~Application for Reinstatement of Certification as a Sex Offender Treatment Provider (rev. 8/07).~~

Application Instructions for Certification as a Sex Offender Treatment Provider (rev. 12/2020)

Applicant Out-of-State Licensure Verification (rev. 12/2020)

Verification of Post-Degree Supervision (rev. 12/2020)

Verification of Training (rev. 12/2020)

Applicant Out-of-State Supervisor Licensure Verification (rev. 12/2020)

Application Instructions for Initial Registration of Supervision for Sex Offender Treatment Providers (rev. 12/2020)

Application Instructions for Add/Change Registration of Supervision for Sex Offender Treatment Providers (rev. 12/2020)

Reinstatement Instructions for Certification of Sex Offender Treatment Providers (rev. 12/2020)

VA.R. Doc. No. R21-6669; Filed January 24, 2021, 4:33 p.m.

BOARD OF SOCIAL WORK

Final Regulation

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-10, 18VAC140-20-150).**

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

Effective Date: March 16, 2021.

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

Summary:

The amendments define conversion therapy and establish that the standard of practice for licensed baccalaureate social workers, license master's social workers, and clinical social workers preclude the provision of conversion therapy to persons younger than 18 years of age.

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

18VAC140-20-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-3700 of the Code of Virginia:

Baccalaureate social worker

Board

Casework

Casework management and supportive services

Clinical social worker

Master's social worker

Practice of social work

Social worker

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

"Accredited school of social work" means a school of social work accredited by the Council on Social Work Education.

"Active practice" means post-licensure practice at the level of licensure for which an applicant is seeking licensure in Virginia and shall include at least 360 hours of practice in a 12-month period.

"Ancillary services" means activities such as case management, recordkeeping, referral, and coordination of services.

"Clinical course of study" means graduate course work that includes specialized advanced courses in human behavior and the social environment, social justice and policy, psychopathology, and diversity issues; research; clinical practice with individuals, families, and groups; and a clinical practicum that focuses on diagnostic, prevention, and treatment services.

"Clinical social work services" include the application of social work principles and methods in performing assessments and diagnoses based on a recognized manual of mental and emotional disorders or recognized system of problem definition, preventive and early intervention services, and treatment services, including psychosocial interventions, psychotherapy, and counseling for mental disorders, substance abuse, marriage and family dysfunction, and problems caused by social and psychological stress or health impairment.

"Conversion therapy" means any practice or treatment [~~that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of any gender. Conversion therapy does not include: 1. Social work services that provide assistance to a person undergoing gender transition; or 2. Social work services that provide acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual orientation neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such services do not seek to change an individual's sexual orientation or gender identity in any direction~~ as defined in § 54.1-2409.5 A of the Code of Virginia].

"Exempt practice" is that which meets the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Face-to-face supervision" means the physical presence of the individuals involved in the supervisory relationship during either individual or group supervision or the use of technology that provides real-time, visual contact among the individuals involved.

"LBSW" means a licensed baccalaureate social worker.

"LMSW" means a licensed master's social worker.

"Nonexempt practice" ~~is~~ means that which does not meet the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Supervisee" means an individual who has submitted a supervisory contract and has received board approval to provide clinical services in social work under supervision.

"Supervision" means a professional relationship between a supervisor and supervisee in which the supervisor directs, monitors, and evaluates the supervisee's social work practice

while promoting development of the supervisee's knowledge, skills, and abilities to provide social work services in an ethical and competent manner.

18VAC140-20-150. Professional conduct.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by telephone, or electronically, these standards shall apply to the practice of social work.

B. Persons licensed as LBSWs, LMSWs, and clinical social workers shall:

1. Be able to justify all services rendered to or on behalf of clients as necessary for diagnostic or therapeutic purposes.

2. Provide for continuation of care when services must be interrupted or terminated.

3. Practice only within the competency areas for which they are qualified by education and experience.

4. Report to the board known or suspected violations of the laws and regulations governing the practice of social work.

5. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services.

6. Ensure that clients are aware of fees and billing arrangements before rendering services.

7. Inform clients of potential risks and benefits of services and the limitations on confidentiality and ensure that clients have provided informed written consent to treatment.

8. Keep confidential their therapeutic relationships with clients and disclose client records to others only with written consent of the client, with the following exceptions: (i) when the client is a danger to self or others; or (ii) as required by law.

9. When advertising their services to the public, ensure that such advertising is neither fraudulent nor misleading.

10. As treatment requires and with the written consent of the client, collaborate with other health or mental health providers concurrently providing services to the client.

11. Refrain from undertaking any activity in which one's personal problems are likely to lead to inadequate or harmful services.

12. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

13. Not engage in conversion therapy with any person younger than 18 years of age.

C. In regard to client records, persons licensed by the board shall comply with provisions of § 32.1-127.1:03 of the Code of Virginia on health records privacy and shall:

1. Maintain written or electronic clinical records for each client to include identifying information and assessment that substantiates diagnosis and treatment plans. Each record shall include a diagnosis and treatment plan, progress notes for each case activity, information received from all collaborative contacts and the treatment implications of that information, and the termination process and summary.

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

3. Disclose or release records to others only with clients' expressed written consent or that of their legally authorized representative or as mandated by law.

4. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from clients or their legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third-party observation, or (iv) using identifiable client records and clinical materials in teaching, writing, or public presentations.

5. Maintain client records for a minimum of six years or as otherwise required by law from the date of termination of the therapeutic relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for six years after attaining the age of majority or 10 years following termination, whichever comes later.

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.

c. Records that have been transferred to another mental health professional or have been given to the client or his legally authorized representative.

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

1. Not engage in a dual relationship with a client or a supervisee that could impair professional judgment or increase the risk of exploitation or harm to the client or supervisee. (Examples of such a relationship include familial, social, financial, business, bartering, or a close personal relationship with a client or supervisee.) Social workers shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs.

2. Not have any type of romantic relationship or sexual intimacies with a client or those included in collateral therapeutic services, and not provide services to those

persons with whom they have had a romantic or sexual relationship. Social workers shall not engage in romantic relationship or sexual intimacies with a former client within a minimum of five years after terminating the professional relationship. Social workers who engage in such a relationship after five years following termination shall have the responsibility to examine and document thoroughly that such a relationship did not have an exploitive nature, based on factors such as duration of therapy, amount of time since therapy, termination circumstances, client's personal history and mental status, adverse impact on the client. A client's consent to, initiation of or participation in sexual behavior or involvement with a social worker does not change the nature of the conduct nor lift the regulatory prohibition.

3. Not engage in any romantic or sexual relationship or establish a therapeutic relationship with a current supervisee or student. Social workers shall avoid any nonsexual dual relationship with a supervisee or student in which there is a risk of exploitation or potential harm to the supervisee or student, or the potential for interference with the supervisor's professional judgment.

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

5. Not engage in a personal relationship with a former client in which there is a risk of exploitation or potential harm or if the former client continues to relate to the social worker in his professional capacity.

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

VA.R. Doc. No. R19-5872; Filed January 15, 2021, 3:10 p.m.

Forms

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

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work.**

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC140-20)

Verification of Clinical Supervision (rev. 8/2016)

~~Request for Termination of Supervision (rev. 11/2015)~~

Request for Termination of Supervision (rev. 2/2020)

Application for Initial and Add or Change Registration of Supervision toward LCSW licensure, online form available at https://www.dhp.virginia.gov/social/social_forms.htm

Application for Licensure by Examination and Endorsement as a Licensed Clinical Social Worker, online form available at https://www.dhp.virginia.gov/social/social_forms.htm

~~Electronic Application Instructions for Licensure by Examination as a Licensed Baccalaureate Social Worker (LBSW) (rev. 8/2019)~~

~~Electronic Application Instructions for Licensure by Endorsement as a Licensed Baccalaureate Social Worker (LBSW) (rev. 8/2019)~~

~~Electronic Application Instructions for Licensure by Examination as a Licensed Master's Social Worker (LMSW) (rev. 8/2019)~~

~~Electronic application instructions for Licensure by Endorsement as a Licensed Master's Social Worker (LMSW) (rev. 8/2019)~~

~~Electronic Application Instructions for Licensure by Examination as a Licensed Clinical Social Worker (LCSW) (rev. 8/2019)~~

~~Electronic application instructions for Licensure by Endorsement as a Licensed Clinical Social Worker (LCSW) (rev. 8/2019)~~

~~Instructions and Application for Registration of Supervision for LSW (rev. 9/2015)~~

~~Reinstatement Application for LCSW, LMSW, LBSW (rev. 12/2013)~~

~~Reinstatement Following Disciplinary Action for LCSW, LMSW, LBSW (rev. 12/2013)~~

~~Social Work Name-Address Change Form (rev. 5/2018)~~

~~Request for Inactive Status of Current Social Work License (rev. 7/2017)~~

~~Request for Change of Status - Inactive to Active (rev. 7/2017)~~

~~Request for Verification of Virginia License (rev. 7/2017)~~

~~Request for Late Renewal (rev. 6/2017)~~

Application for Licensure by Examination and Endorsement as a Licensed Baccalaureate Social Worker, online form available at https://www.dhp.virginia.gov/social/social_forms.htm

LCSW Supervision Log (rev. 3/2020)

Application for Reinstatement of Licensure: Checklist Instructions (rev. 3/2020)

Application for Reinstatement Following Disciplinary Action: Checklist Instructions (rev. 3/2020)

Social Work Name/Address Change (rev. 2/2020)

Request for Change in Status of Virginia Social Work License (Current Active to Current Inactive) (rev. 3/2020)

Request for Change in Status of Virginia Social Work License (Current Inactive to Current Active) (rev. 3/2020)

Request for Verification of Virginia Social Work License (rev. 2/2020)

Request for Late Renewal Instructions (rev. 3/2020)

VA.R. Doc. No. R21-6670; Filed January 24, 2021, 4:33 p.m.

BOARD OF VETERINARY MEDICINE

Forms

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

Title of Regulation: **18VAC150-20. Regulations Governing the Practice of Veterinary Medicine.**

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC150-20)

~~Instructions for Licensure to Practice Veterinary Medicine (rev. 5/2019)~~

~~Application for a License to Practice Veterinary Medicine online form available at https://www.dhp.virginia.gov/vet/vet_forms.htm.~~

~~Instructions for Licensure to Practice Veterinary Technology (rev. 5/2019)~~

~~Application for a License to Practice Veterinary Technology online form available at https://www.dhp.virginia.gov/vet/vet_forms.htm.~~

~~Checklist and Application for Veterinary Establishment Permit (rev. 5/2019)~~

~~Change in Veterinarian-in-Charge Form (rev. 5/2019)~~

~~Veterinary Establishment Closure Form (rev. 5/2019)~~

~~Application for Reinstatement (rev. 5/2019)~~

~~Application Licensure Verification (rev. 5/2019)~~

~~Employment Verification Form (rev. 5/2019)~~

~~Name/Address Change Form (rev. 5/2019)~~

~~Application for Registration for Volunteer Practice (rev. 5/2019)~~

~~Sponsor Certification for Volunteer Registration (rev. 5/2019)~~

~~Continuing Education Credit Form for Volunteer Practice (rev. 5/2019)~~

~~Application for Registration to Practice as an Equine Dental Technician (rev. 5/2019)~~

~~Recommendation for Registration as an Equine Dental Technician (rev. 5/2019)~~

Instructions for Completing an Application to Practice as a Veterinarian in Virginia (rev. 6/2020)

Application for a License to Practice Veterinary Medicine online form available at https://www.dhp.virginia.gov/Boards/VetMed/PractitionerResources/Forms/

Instructions for Completing an Application to Practice as a Veterinary Technician in Virginia (rev. 6/2020)

Application for a License to Practice Veterinary Technology online form available at https://www.dhp.virginia.gov/Boards/VetMed/PractitionerResources/Forms/

Application for Registration of a Veterinary Establishment and Changes/Updates to a Registered Establishment (rev. 6/2020)

Change of Veterinarian-in-Charge Form (rev. 6/2020)

Veterinary Establishment Inspection Report (rev. 10/2019)

Veterinary Establishment Closure Form (rev. 6/2020)

Employment Verification (rev. 6/2020)

Name/Address Change Form (rev. 6/2020)

Request for Verification of a Virginia License (rev. 6/2020)

Application for Registration for Volunteer Practice (rev. 6/2020)

Sponsor Certification for Volunteer Registration (rev. 6/2020)

Continuing Education (CE) Credit Form for Volunteer Practice (rev. 6/2020)

Instructions/Checklist for Completing an Application for Registration to Practice as an Equine Dental Technician in Virginia (rev. 6/2020)

Instructions for Reinstating an Expired License to Practice as a Veterinarian or Veterinary Technician in Virginia (rev. 6/2020)

Instructions for Reactivating an Inactive License to Practice as a Veterinarian or Veterinary Technician in Virginia (rev. 6/2020)

Recommendation for Registration as an Equine Dental Technician (rev. 6/2020)

VA.R. Doc. No. R21-6671; Filed January 24, 2021, 4:34 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Final Regulation

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

Title of Regulation: **20VAC5-350. Rules Governing Exemptions for Large General Services Companies (adding 20VAC5-350-10 through 20VAC5-350-50).**

Statutory Authority: §§ 12.1-13 and 56-585.1 of the Code of Virginia.

Effective Date: February 4, 2021.

Agency Contact: Allison Samuel, Principal Utilities Analyst, Public Utility Regulation Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 225-3177, FAX (804) 371-9350, or email allison.samuel@scc.virginia.gov.

Summary:

The action implements certain provisions of Chapters 1193 and 1194 of the 2020 Acts of Assembly that amend § 56-585.1 A 5 c of the Code of Virginia and require the State Corporation Commission to establish rules under which eligible large general service customers may be exempted from participation in energy efficiency programs. The new regulation, Rules Governing Exemption for Large General Service Customers (20VAC5-350), defines the applicability and scope of the exemption and provides for notice requirements, dispute resolution, waiver, and enforcement. Changes since publication of the proposed regulation include (i) simplifying the large general service customer eligibility exemption timelines and threshold requirements; (ii) clarifying notice requirements and the addition of an April 1, 2021, notice of nonparticipation submission deadline; and (iii) clarifying standard notice and annual reporting criteria.

AT RICHMOND, JANUARY 29, 2021

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2020-00172

Ex Parte: In the matter of adopting new rules of the State Corporation Commission governing exemptions for large general services customers under § 56-585-1 A 5 c of the Code of Virginia

ORDER ADOPTING REGULATIONS

The Virginia General Assembly enacted legislation during its 2020 Session[1] requiring the State Corporation Commission ("Commission") to establish rules by which large general services customers may be exempted from participation in energy efficiency programs.[2] The new rules are to be effective by June 30, 2021.

On September 30, 2020, the Commission entered an Order for Notice and Comment ("Initial Order") initiating this proceeding to promulgate rules governing the manner in which large general services customers may be exempted from participation in energy efficiency programs. The Commission appended to its Initial Order proposed rules ("Proposed Rules"), which were prepared by the Staff of the Commission ("Staff").

Notice of the proceeding and the Proposed Rules were published in the Virginia Register of Regulations on November 9, 2020. Additionally, those persons and entities identified by Staff as potentially having an interest in this matter were provided notice via electronic transmittal of the Initial Order. Furthermore, the notice in the Attachment to Initial Order was sent by Virginia Electric and Power Company ("DEV") and Appalachian Power Company ("APCo"), to each of their Large General Service ("LGS") customers, by separate first class mailing, by electronic mail, or by bill insert. An electronic version of the Proposed Rules was also posted on the Commission's website and the Commission's Division of Public Utility Regulation website. Interested persons were directed to file any comments and requests for hearing on the Proposed Rules on or before November 17, 2020.

The Virginia Committee for Fair Utility Rates & Old Dominion Committee for Fair Utility Rates ("the Committees"), DEV, APCo, the Virginia Department of Mines, Minerals, and Energy ("DMME"), and the Natural Resources Defense Council ("NRDC") filed comments. Comments were also received from the Virginia Poverty Law Center ("VPLC"), Virginia Energy Efficiency Council ("VAEEC"), as well as three LGS customers. (All of these entities collectively are referred to as the "Commenters"). No one requested a hearing on the Proposed Rules. On December 17, 2020, the Staff filed its report.

The Committees, DEV, APCo, and the NRDC proposed specific changes to the language of the Proposed Rules. The other Commenters provided more general recommendations related to the Proposed Rules.

SECTION 20 VAC 5-250-10: APPLICABILITY AND SCOPE

DEV recommended that the rules be modified to require that a customer must have a verifiable history of using at least one megawatt of demand at least three months within a consecutive twelve-month period.[3] Per DEV, requiring a minimum of three occurrences would eliminate anomalies caused by extreme weather or other external conditions.[4] DEV also recommended that the twelve-month period in which the demand exceeds one megawatt be required to be within the most recent three years of the customer's electric service.[5] Finally, DEV recommended that the word "contiguous" be added to the description of a "single site" to avoid ambiguity about certain geographical locations.[6]

APCo recommended that LGS customers have a verifiable history of one megawatt of demand in any single billing month during the three previous calendar years.[7]

NRDC argued that Staff's restatement of § 56-585.1 A 5 c was incomplete and that this provision only permits exemption if an applicant has energy efficiency "programs" in place, that provide measured and verified savings which are both "consistent with industry standards" and "other regulatory criteria stated in § 56-585.1."[8] NRDC further argued the Code "plainly requires that any applied-for exemption is dependent upon the Commission first making a 'finding' of each of the above requirements."[9] NRDC proposed changes to Section 20 VAC 5-350-10 that require the customer demonstrate it has implemented energy efficiency programs that the Commission finds are consistent with industry standards for similar such customers and which meet other regulatory criteria in § 56-585.1.[10]

VAEEC recommended that an LGS customer be defined as a facility whose peak measured demand has reached or exceeded one megawatt during at least three billing months within any prior twelve-month period during the last three years prior to the exemption.[11] VAEEC further recommended that the Commission not only set an energy savings threshold that must be met in order for an LGS customer to receive an exemption, but also to set it at such a level that these internal programs are producing effective energy savings for the customer.[12]

SECTION 20 VAC 5-350-20: ADMINISTRATIVE PROCEDURES FOR NOTICE TO UTILITY AND COMMISSION

DEV recommended that a deadline be established for utilities to provide responses by June 1 of a given year to the notices of nonparticipation submitted during January 1 through March 1 of that year, rather than utilities having to process the notices on a rolling basis.[13] Per DEV, having a more structured process with firm dates will better enable utilities to manage workflow and monitor compliance deadlines.[14] Similarly, DEV recommended that the billing changes for nonparticipating LGS customers become effective on July 1 of the applicable calendar year rather than on a rolling basis.[15] DEV further proposed that notices of nonparticipation received after the March 1 deadline not be processed for that year.[16] DEV suggested the customers that provided notices after March 1 should be required to submit a new notice of nonparticipation for the following year.[17] Lastly, DEV recommended that this section include a notification of material changes by nonparticipating customers to be provided within sixty days of the material change.[18]

APCo recommended that customers should not be qualified for exemption if they have participated in or received a rebate through a Commission-approved utility energy efficiency program in the last sixty months.[19]

The Committees requested insertion of a new paragraph E in Section 20 VAC 5-350-20 related to customers exempted from any rate adjustment clause approved by the Commission pursuant to § 56-585.1 A 5 c at the time this chapter comes into effect. Pursuant to the Committees' newly proposed paragraph E, such customers would be presumed to remain exempt; those seeking to continue an exemption would have to provide a notice of nonparticipation to their utility on or before March 1 of the year after this chapter is approved.[20] The Committees argued these changes provide clarity to customers as to when they must provide their notice of nonparticipation in order to continue exemptions uninterrupted from rate adjustment clauses for energy efficiency programs ("EE RACs").[21]

SECTION 20 VAC 5-350-30: STANDARD CRITERIA FOR NOTICE TO THE UTILITY

DEV recommended that the LGS customers include the applicable utility account numbers within the notice and stated this was relevant for those customers that may seek to aggregate multiple accounts within a single site to reach the one megawatt demand threshold.[22] Regarding annual reporting requirements, DEV recommended that each LGS customer provide an annual report that describes the energy efficiency savings achieved by the customer during each twelve-month period in which such notice of nonparticipation is in effect to both the utility and Commission Staff.[23] DEV proposed that the report also include the status of the measures and operational changes included in the notice of nonparticipation.[24]

APCo recommended that the notice of nonparticipation describe the energy efficiency savings achieved in kilowatt-hours during each of the prior five years as well as the life expectancy of each measure.[25] APCo also recommended a new requirement that energy savings achieved by the customer meet or exceed the required percentage energy reduction as required by the VCEA for their respective utility, and that the customer include analysis in its notice of nonparticipation regarding such savings.[26] APCo recommended that the utility

have no responsibility for verifying such compliance but would "verify information has been provided by the customer in its notice of nonparticipation."[27] In paragraphs E and F of this Section, APCo recommended language stating that it is the customer's sole responsibility to ensure that the energy savings claimed in the customer's notice of nonparticipation meet the definition of "measured and verified" as defined in § 56-576 of the Code, and that compliance be attested to in the customer's affidavit.[28] Lastly, APCo recommended removing paragraph G of this Section from the rules.[29]

NRDC argued that Section 20 VAC 5-350-30 also fails to include a Commission finding requirement,[30] and NRDC recommended language in paragraph E of this Section that indicates nonparticipation would not be approved by the Commission unless the Commission first finds that each annual report demonstrates energy efficiency savings of a level consistent with commonly accepted industry standards.[31] NRDC further commented that such industry standards "may be based on ISO 50001 or other similar energy management systems standards."[32]

DMME recommended that specific energy savings targets be established that compel participants to implement programs that achieve substantial savings in line with the energy efficiency standards applied to the investor-owned utilities in the VCEA.[33] DMME also encouraged the inclusion of more detailed information on qualifying Evaluation, Measurement, and Verification ("EM&V") measures, including the prescription of an International Performance Measurement and Verification Protocol and its associated options for different types of energy efficiency measures in order to establish a strong performance standard for this program.[34] DMME further recommended use of a standardized EM&V tool for administering this program, as the standardization and digitization of data may provide benefits for both users and Commission Staff.[35]

DMME also suggested adjusting the baselines to the 2016-2019 timeframe given the impacts of COVID-19 affecting energy demand, as well as establishing an energy savings account which could be administered by the Commission or the utility and would enable a participating LGS customer to earmark funds for energy efficiency measures.[36]

VAEEC recommended aligning LGS customer internal program EM&V protocols and reporting requirements with the Federal Energy Management Program Protocols as used by DMME for public Energy Savings Performance Contracting ("ESPC").[37] VAEEC recommended aligning LGS customer self-direct enforcement guidelines with the protocols set forth by DMME for public ESPC contracts with an additional option of revoking an exemption if needed.[38] Finally, VAEEC recommended developing a process to address end-of-life measure savings in relation to the customer exemption, which VAEEC argued should include a timeline or submitting EM&V plans for new measures.[39]

VPLC did not provide any specific changes to the language of the Proposed Rules but supported the comments of VAEEC and emphasized the importance of incorporating energy savings targets for the LGS customers.[40]

SECTION 20 VAC 5-350-40: DISPUTE RESOLUTION

APCo recommended incorporating language which states, "For the utility, all costs incurred shall be recoverable through rates."[41]

STAFF'S REPORT

In its Report, Staff noted some agreement with the Commenters' suggestions, objected to some of the comments as outside the scope of the authority granted by the Code, and proffered modifications to some of the suggested edits in order to both address the concerns of the Commenters as well as alleviate potential undue burdens on LGS participants. A copy of the black-lined Rules with Staff's additional edits was included as Attachment A to the Staff Report.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the revised regulations appended hereto as Attachment A should be adopted as final rules, as discussed herein. As an initial matter, the Commission expresses appreciation to those who have submitted written comments for our consideration and have otherwise participated in this proceeding. We have carefully reviewed and considered all comments, changes to the Proposed Rules, and the Staff Report filed in this case.

The Rules we now adopt strike a reasonable balance of the interests of LGS customers and utilities and support the objectives of Code § 56-585.1 A 5 c, while also protecting the electric system and Virginia consumers. These Rules provide a workable solution for the unique issues faced in this rulemaking. As experience is gained and lessons are learned, these Rules may be updated and revised. In this regard, we further note that the Rules, as adopted herein, permit requests for waiver for good cause shown.[42]

The Rules we adopt herein contain certain modifications to those that were first proposed by Staff and published in the Virginia Register of Regulations on November 9, 2020. Although we will not comment on each modification in detail, we now address: (i) NRDC's request for Commission findings on initial notices of nonparticipation and annual reports, (ii) NRDC's and DMME' s requests to include in the Rules specifically named energy efficiency protocols, and (iii) the Committees' comments on the timing of the filing of notices of nonparticipation and continued exemptions.

First, NRDC stated in its comments that the Commission must make an affirmative finding regarding each LGS customer's notice of nonparticipation.[43] NRDC further asserted that the Commission must make affirmative findings regarding each LGS customer's energy efficiency annual report for that customer to maintain nonparticipant status.[44] Staff responded

by modifying the last sentence of 20 VAC 5-350-10 to require LGS customers to "certify" implementation of energy efficiency programs, at the customer's expense, showing measured and verified results within the prior five years, consistent with industry standards and any other regulatory criteria in Code § 56-585.1 A 5 c that the Commission reasonably deems appropriate.[45] The Rules we adopt herein incorporate Staff's recommended approach requiring certification. To the extent that objections are made to an LGS customer's certified notice of nonparticipation, the Commission's informal and formal complaint processes are available to the disputants to resolve their differences.[46]

Such certification process complies with the VCEA[47] and provides administrative efficiencies. NRDC's alternative would require the expenditure of significant Commission resources related to the initial notice of nonparticipation and each year thereafter for each and every LGS customer seeking an initial or continuing exemption. Ongoing proceedings before the Commission are not required by the statute, and we decline to adopt such.

Second, NRDC requested that the Commission add language to these rules specifying that industry standards for energy savings "may be based on ISO 50001 or other similar energy management systems standards"[48] and DMME recommended the use of more detailed information on qualifying EM&V measures, including the prescription of an International Performance Measurement and Verification Protocol.[49] Similarly, Staff recommended use of the following language: "Such industry standards for energy savings may be based on ISO 50001, or the International Performance Measurement and Verification Protocol, or other similar energy management systems standards."[50]

The Commission appreciates NRDC's, DMME's and Staff's recommendations on this point and encourages the use of highly regarded EM&V protocols. We decline at this time, however, to adopt specific EM&V protocols within the text of these rules. EM&V protocols are updated periodically, so adopting specific protocols may hinder the ability to use the most up-to-date protocols available at the time of such filings.[51]

We next address the Committees' concerns related to the expiration of exemptions for those exempt from paying for EE RACs before the effective date of the VCEA and the timing by which such customers must provide notices of nonparticipation to their utilities to continue their exemptions uninterrupted.[52] As initially proposed, Rule 20 VAC 5-350-20 A provided the relevant deadline by which notices of nonparticipation must be received, specifically "on or before March 1 of the year in which an exemption is sought." In an effort to provide clarification regarding expiration of exemptions and the timing of filing of notices of nonparticipation for those LGS customers that held exemption under the pre-VCEA wording of Code § 56-585.1 A 5 c, the Committees proposed adding a new subsection E to Rule 20 VAC 5-350-20 which, among other things, specifies that "customers seeking to continue an existing exemption must provide a new notice of nonparticipation . . . on or before March 1 of the year after this chapter is approved."[53]

Absent swift resolution to this rulemaking and a reasonable opportunity for the filing of notices of nonparticipation by eligible LGS customers, there would be a chance that any LGS customers eligible for exemption under Code § 56-585.1 A 5 c, as revised by the VCEA, and who previously enjoyed exemption from the utilities' EE RACs under the pre-VCEA wording of Code § 56-585.1 A 5 c, would become subject to such RACs with the onset of new EE RAC rates starting in the summer of 2021. To remedy this situation, the Commission has established an April 1 filing deadline for receipt of notices of nonparticipation from all eligible LGS customers for the year 2021, with a standing June 1 deadline for acceptance by the utilities.[54] Any LGS customer, including those desiring to continue a prior statutory exemption, would thus have the opportunity to provide notice of nonparticipation therefor, on or before April 1, 2021.[55] This solution, for 2021 only, is a reasonable way in which to ensure the continuation of pre-VCEA exemptions. Further, all LGS customers were provided notice of this rulemaking[56] and thus, have been on notice of the exemption question and the proposed notice of nonparticipation requirement. Accordingly, all eligible LGS customers should be prepared to act affirmatively should they desire this VCEA exemption.

Accordingly, IT IS ORDERED THAT:

(1) The rules governing exemptions for large general services customers under Code § 56-585-1 A 5 c, as shown in Attachment A to this Order, are hereby adopted and are effective as of February 4, 2021.

(2) The Commission's Division of Information Resources shall forward a copy of this Order, with Attachment A, to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) An electronic copy of this Order with Attachment A including the rules governing exemptions for large general services customers under Code § 56-585-1 A 5 c shall be made available on the Division of Public Utility Regulation's section of the Commission's website: scc.virginia.gov/pages/rulemaking.

(4) Any LGS customer seeking an exemption, including those desiring to continue a prior statutory exemption from a rate adjustment clause authorized by the Commission pursuant to Code § 56-585.1 A 5 c for the rate year beginning in 2021, shall provide a notice of nonparticipation concerning the rate adjustment clause to its utility on or before April 1, 2021.

(5) Consistent with the rules adopted herein, on or before June 1, 2021, APCo and DEV shall accept or reject all notices of

nonparticipation provided by eligible LGS customers on or before April 1, 2021.

(6) DEV and APCo shall forthwith, but in no event later than February 5, 2021, transmit to each of their Large General Service Customers by electronic mail, or where electronic mail is not available by separate first class mailing, a copy of this Order and Attachment A. Proofs of Service of such notice shall be filed with the Commission by February 15, 2021.

(7) This docket is dismissed.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission. A copy hereof also shall be sent to C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 202 North 9th Street, 8th Floor, Richmond, Virginia 23219-3424, mbrowder@oag.state.va.us; the Commission's Office of General Counsel and Divisions of Public Utility Regulation and Utility Accounting and Finance.

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[1]Chapters 1193 (HB 1526) and 1194 (SB 851) of the 2020 Virginia Acts of Assembly.

[2]These duplicate Acts of Assembly, known as the Virginia Clean Economy Act ("VCEA"), became effective on July 1, 2020.

[3]Staff Report at 2; DEV Comments at 3.

[4]Staff Report at 2; DEV Comments at 3.

[5]Id.

[6]Id.

[7]Staff Report at 4; APCo Comments at 1.

[8]Staff Report at 5; NRDC Comments at 1.

[9]Id.

[10]Staff Report at 5; NRDC Comments at 2.

[11]Staff Report at 7; VAEEC Comments at 2.

[12]Staff Report at 7; VAEEC Comments at 3.

[13]Staff Report at 2; DEV Comments at 3-4.

[14]Id. at 4.

[15]Staff Report at 2-3; DEV Comments at 4.

[16]Staff Report at 3; DEV Comments at 4-5.

[17]Staff Report at 3; DEV Comments at 5.

[18]Staff Report at 3; DEV Comments at 5.

[19]Staff Report at 4; APCo Comments at 1.

[20]Staff Report at 7; Committees' Comments at 1.

[21]Staff Report at 7; Committees' Comments at 4.

[22]Staff Report at 3; DEV Comments at 5.

[23]Staff Report at 3; DEV Comments at 5.

[24]Id.

[25]Staff Report at 4; APCo Comments at 2.

[26]Id.

[27]Id.

[28]Staff Report at 4, 5; APCo Comments at 2, 3.

[29]Staff Report at 5; APCo Comments at 3.

[30]Staff Report at 5; NRDC Comments at 1.

[31]Staff Report at 5-6; NRDC Comments at 2.

[32]Staff Report at 13; NRDC Comments at 2.

[33]Staff Report at 6; DMME Comments at 1.

[34]Staff Report at 6; DMME Comments at 2.

[35]Staff Report at 6; DMME Comments at 2.

[36]Id.

[37]Staff Report at 7-8; VAEEC Comments at 4.

[38]Staff Report at 8; VAEEC Comments at 5.

[39]Id.

[40]Staff Report at 8; VPLC Comments at 2.

[41]Staff Report at 5; APCo Comments at 3.

[42]20 VAC 5-350-50 A.

[43]NRDC Comments at 2.

[44]Id.

[45]Staff Report at 10.

[46]See 5 VAC 5-20-70, Informal complaints, and 5 VAC 5-20-100, Other proceedings, of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 et seq.

[47]The Commission notes that in the same Code § 56-585-1 A 5 c paragraph cited by NRDC, the Commission is charged with drafting rules wherein LGS customers will: notify the utility of their nonparticipation intent; certify to the utility and the Commission all claimed energy efficiency measures; and "in adopting such rules or regulations, the Commission shall also specify the timing as to when a utility shall accept and act on such notice." (Emphasis added.)

[48]NRDC Comments at 2.

[49]DMME Comments at 2.

[50]Staff Report at 14.

[51]In fact, Staff's recommended language otherwise, which is being adopted in part, by this Commission, expressly states:

Each customer shall certify that each such annual report demonstrates energy efficiency savings at a level consistent with commonly accepted industry standards for energy efficiency savings obtained by similarly situated customers, and adheres to any other regulatory criteria the commission reasonably deems appropriate.

Revised 20VAC5-350-30 D (emphasis added). We further note that, if a specific protocol is identified in these final rules, users would be bound to the version of that protocol embedded in the rules, even if such protocols are updated in the future.

[52]Committees' Comments at 2-4.

[53]Id. at 1.

[54]For all subsequent years beyond 2021, the deadline for receipt of notices of nonparticipation is March 1.

[55]The Commission notes the late-filed motion and comments regarding exemptions filed by the Committees (Motion for Leave to File Additional Comments and Comments of the Virginia Committee for Fair Utility Rates and the Old Dominion Committee for Fair Utility Rates, Doc. Con. Cen. No. 210120013 (Jan. 13, 2021)). With the findings made in this Order, the Committees' late-filed submission is rendered moot.

[56]See Proofs of Service filed by APCo on October 27, 2020 and DEV on October 29, 2020.

Chapter 350
Rules Governing Exemptions for Large General [~~Service Customers~~ Services Companies]

20VAC5-350-10. Applicability and scope.

This chapter is promulgated pursuant to the provisions of § 56-585.1 A 5 c of the Virginia Electric Utility Regulation Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia. This chapter is specifically applicable to the large general service customers of Virginia's electric utilities subject to the provisions of § 56-585.1 A 5 c that have verifiable histories of using more than one megawatt of [monthly] demand from a single site [, in any single billing month, during each of the previous three calendar years]. As used in this chapter, a customer comprises all of the individual electric utility accounts owned by a single entity, located on a single site [each of the previous three calendar years], and that are engaged in the same business. This chapter is also applicable to customers with highest measured demands from a single site of more than one megawatt in any single [billing] month if such customers do not have three calendar years of history. A customer is eligible for an exemption from any rate adjustment clause approved for a utility by the State Corporation Commission pursuant to § 56-585.1 A 5 c, if any customer can [~~demonstrate~~ certify to the commission] that it has implemented [~~an~~] energy efficiency [~~program~~ programs], at the customer's expense, that [~~has~~ have] produced measured and verified results within the prior five years. [Such certification shall be consistent with industry standards for similar customers and meet other regulatory criteria in § 56-585.1 A 5 c that the commission reasonably deems appropriate.]

20VAC5-350-20. Administrative procedures for notice to utility and commission.

A. [~~Any~~ Except for the 2021 notice period, any] customer seeking to establish its exemption from a rate adjustment clause authorized by the commission pursuant to § 56-585.1 A 5 c of the Code of Virginia shall provide a notice of nonparticipation concerning the rate adjustment clause to its utility on or before March 1 of the [upcoming rate] year in which [~~an~~ the customer seeks to begin its] exemption [~~is sought~~]. [~~The notice~~ Any customer seeking to establish its exemption from a rate adjustment clause authorized by the commission pursuant to § 56-585.1 A 5 c for the rate year beginning in 2021 shall provide a notice of nonparticipation concerning the rate adjustment clause to its utility on or before April 1, 2021. All notices] of nonparticipation shall be [filed] concurrently [~~filed~~] by the customer with the commission's Division of Public Utility Regulation. [Notices provided after the April 1, 2021, or subsequent annual March 1 deadlines, will not be accepted during that calendar year and must be resubmitted for the next period being sought.]

B. Upon receipt of the notice of nonparticipation, a utility shall, [~~within 60 days thereof~~ on or before June 1], verify the customer's highest measured demand in the three prior calendar years preceding the receipt of such notice. [The exemption will commence with the effective date of the utility's next rate adjustment clause.] The utility shall accept the exemption request if the customer [~~has a highest measured usage in excess of one megawatt~~ meets the criteria for a large general service customer set forth in 20VAC5-350-10] and has submitted the information required by 20VAC5-350-30. In the event the utility fails to notify the customer of any deficiency in its notice of nonparticipation [~~within the 60-day period~~ by June 1], the exemption shall be deemed accepted by the utility. The utility's acceptance or denial of any exemption request shall concurrently be sent to the customer and [~~filed~~ provided] by the utility [~~with~~ to] the commission's Division of Public Utility Regulation.

C. Once a utility has accepted a customer's exemption request, that customer shall be exempt from any rate adjustment clause approved for the utility by the commission pursuant to § 56-585.1 A 5 c of the Code of Virginia, beginning with the [~~billing month~~ effective date of the utility's next rate adjustment clause on or after July 1,] following the date of acceptance of the exemption request and continuing throughout the life of the customer's energy efficiency improvements described in the customer's notice of nonparticipation. A customer shall notify the utility and the commission if the conditions of the customer's notice of nonparticipation change in any material respect [within 60 days of the change].

D. Each notice of nonparticipation that contains confidential information shall be treated in accordance with 5VAC5-20-170 of State Corporation Commission Rules of Practice and Procedure (5VAC5-20).

[E. Customers seeking to continue a previous statutory exemption must provide a new notice of nonparticipation, as defined in 20VAC5-350-30, concerning the rate adjustment clause to its utility on or before April 1, 2021.]

20VAC5-350-30. Standard criteria for notice to utility.

A. Each notice of nonparticipation shall identify the customer, the customer's billing address and [all applicable] utility account [~~number~~ numbers], and the location of the specific facility and [~~metering point~~ single site] for which any such exemption is being sought.

B. The notice of nonparticipation shall also contain an affidavit signed by the customer's president, corporate secretary, or other officer of the customer concerning [~~each~~

the] energy efficiency [~~program~~ programs]. Such affidavit shall attest to the validity of information submitted in support of the customer's notice of nonparticipation.

C. The notice of nonparticipation shall [~~describe~~ certify] the energy efficiency savings achieved [~~in~~ from investment in such programs, in kWhs, within] the prior five years [~~from its investment in its energy efficiency program; and~~ as well as] the specific measures undertaken to achieve those savings [and the life expectancy of each measure. The notice of nonparticipation shall certify the energy efficiency savings achieved by the customer meets or exceeds the requirements of § 56-596.2 of the Code of Virginia].

D. [~~The notice of nonparticipation shall include information concerning any anticipated change in operations that may affect achieved or expected energy efficiency savings, including the life expectancy of the energy efficiency measures undertaken. E.~~] To qualify for the exemption, each customer shall have measurable and verifiable energy efficiency savings in the prior five years consistent with § 56-585.1 A 5 c of the Code of Virginia. [It shall be the customer's sole responsibility to ensure the energy savings claimed in the customer's notice of nonparticipation meets the definition of measured and verified as set forth in § 56-576 of the Code of Virginia, and such compliance shall be attested to in the customer's affidavit.] Additionally, each customer providing a notice of nonparticipation to its utility pursuant to this chapter shall subsequently furnish yearly reports to the [utility and the] commission's Division of Public Utility Regulation describing the energy efficiency savings achieved by the customer during each 12-month period in which such notice of nonparticipation is [intended to be] in effect. [The annual reports shall include the status of energy efficiency measures and operational changes included in the customer's notice of nonparticipation. Each customer shall certify that each such annual report demonstrates energy efficiency savings at a level consistent with commonly accepted industry standards for energy efficiency savings obtained by similarly situated customers and adheres to any other regulatory criteria the commission reasonably deems appropriate.] Such reports shall be filed on or about March 1 of the year following such customer's filing of its notice of nonparticipation, with such March 1 filings continuing thereafter throughout the life of the customer's energy efficiency improvements described in the customer's notice of nonparticipation.

[~~F.~~ E.] Each notice of nonparticipation shall also include a measurement and verification plan conforming to the protocol set forth in the definition of "measured and verified" as provided in § 56-576 of the Code of Virginia. [It shall be the customer's sole responsibility to ensure its measurement and verification plan conforms to this definition.]

[~~G. Not later than December 31 of each year, each utility shall notify its customers of the percentage energy efficiency reductions expected to be achieved by the utility's energy efficiency programs for which the commission has approved rate adjustment clauses pursuant to § 56-585.1 A 5 c of the Code of Virginia.~~]

20VAC5-350-40. Dispute resolution.

A. Customers and utilities shall seek to resolve all disputes arising out of the exemption process established under this chapter pursuant to the provisions of this section.

B. In the event of any such dispute, either party shall furnish the other a written notice of dispute. The notice shall describe in detail the nature of the dispute. The parties shall make good faith efforts to resolve the dispute informally within 10 business days of the receipt of such notice.

C. If any such dispute has not been resolved within 10 business days following receipt of the notice, either party may seek resolution assistance from the commission's Division of Public Utility Regulation where such matter will be treated as an informal complaint under State Corporation Commission Rules of Practice and Procedure (5VAC5-20).

Alternatively, the parties may, upon mutual agreement, seek resolution through the assistance of a dispute resolution service for the purpose of assisting the parties in (i) resolving the dispute or (ii) selecting an appropriate dispute resolution method or mechanism (e.g., mediation, settlement judge, early neutral evaluation, or technical expert) to assist the parties in resolving their dispute. In any such dispute resolution proceeding, each party shall conduct all negotiations in good faith and shall be responsible for one half of any charges for the dispute resolution provider, but each party shall bear its own legal fees and other costs incurred as a result of the dispute resolution process.

D. If any such dispute remains unresolved following the parties' good faith exercise of the dispute resolution alternatives set forth in this section, either party may file a formal complaint with the commission pursuant to State Corporation Commission Rules of Practice and Procedure (5VAC5-20).

20VAC5-350-50. Waiver and enforcement.

A. The commission may waive any or all parts of this chapter for good cause shown.

B. The commission on its own motion may initiate steps necessary to verify a nonparticipating customer's achievement of energy efficiency if the commission has a body of evidence that the nonparticipating customer has knowingly misrepresented its energy efficiency achievement. Such proceedings shall be governed by State Corporation Commission Rules of Practice and Procedure (5VAC5-20).

VA.R. Doc. No. R21-6100; Filed January 29, 2021, 1:25 p.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

Fast-Track Regulation

Title of Regulation: **22VAC45-100. Regulations Governing Deaf-Blind Services (amending 22VAC45-100-10, 22VAC45-100-20, 22VAC45-100-30).**

Statutory Authority: § 51.5-60 of the Code of Virginia.

Public Hearing Information: No public hearings are currently scheduled.

Public Comment Deadline: March 17, 2021.

Effective Date: April 1, 2021.

Agency Contact: Susan K. Davis, MS, CRC, Regulatory Coordinator, Department for the Blind and Vision Impaired, 401 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3184, FAX (804) 371-3157, TDD (804) 371-3140, or email susan.davis@dbvi.virginia.gov.

Basis: The Department for the Blind and Vision Impaired (DBVI) has statutory authority from § 51.5-65 of the Code of Virginia, which identifies the functions, duties, and powers of the DBVI Commissioner to adopt regulations to carry out the applicable provisions of the chapter.

Purpose: The goal of the regulatory action is to change the agency name from the outdated Department for the Visually Handicapped to the current Department for the Blind and Vision Impaired; it is critical that citizens know and can identify the name of the agency in order to access deafblind services.

Rationale for Using Fast-Track Rulemaking Process: The proposed changes to 22VAC45-100 are noncontroversial. There are no additional costs incurred by DBVI, and existing deafblind services are not changed. Individuals who are blind, vision impaired, or deafblind will be unharmed therefore the fast-track process is appropriate.

Substance: The current regulation contains obsolete language and definitions. The revisions modernize definitions to incorporate people first language and remove definitions that reference repealed Code of Virginia sections or old terminology. Citations to the Code of Virginia, the Virginia Administrative Code, and federal law are updated to reflect current law and regulations ensuring that constituents are able to determine the source of regulatory authority.

Issues: The advantage to the public is clearer explanation of deafblind services delivered by the department to individuals who are deafblind. There are no disadvantages to revising this regulation.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department for the Blind and Vision Impaired (DBVI) proposes to amend 22VAC45-100, Regulations Governing Deaf-Blind Services, to update the definitions of key terms to match the Code of Virginia or United States Code, as well as to update the title of the regulation, the name of the agency, and the names of the services they provide.

Background. DBVI seeks to update definitions for terms associated with the communities they serve to be consistent with the Code of Virginia and the United States Code and to reflect the typical contemporary usage of these terms. In particular, DBVI proposes the following definitions:

• "Blind person," as defined in § 51.5-60 of the Code of Virginia, means an individual who has central visual acuity of 20/200 or less in the better eye, as measured with best correction, or a limitation in the field of vision in the better eye, such that the widest diameter of the visual field subtends an angle of 20 degrees or less.[1]

• "Persons who are deaf," as defined in § 51.5-111(1) of the Code of Virginia, means individuals whose hearing is totally impaired or whose hearing, with or without amplification, is so seriously impaired that the primary means of receiving spoken communication is through visual input such as lip-reading, sign language, finger spelling, reading, or writing.[2]

• Persons who are hard-of-hearing," as defined in § 51.5-111(2) of the Code of Virginia, means individuals whose hearing is impaired to an extent that makes hearing difficult but does not preclude the understanding of spoken communication through the ear alone, with or without a hearing aid.

• "Persons who are deafblind," pursuant to 29 USC § 1905(2)(A) and 20 USC § 1905(2)(B), means individuals: (i) who have central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual fields subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both of these conditions; (ii) who have a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; (iii) for whom the combination of impairments described in this definition cause extreme difficulty in attaining independence in daily life activities, achieving psychological adjustment or obtaining a vocation; and (iv) who, despite the inability to be measured accurately for hearing and vision loss due to cognitive or behavioral constraints, or both, can be determined through functional and performance assessments to have severe hearing and visual disabilities that cause extreme difficulty in attaining independence in daily life activities, achieving psychological adjustment or obtaining vocational objectives.[3]

Since "deaf-blind" is now written as "deafblind" the title of the regulation would also be amended to reflect this change. Definitions of "severely visually impaired" and "speech discrimination" would remain unchanged.

Estimated Benefits and Costs. The proposed amendments benefit readers of the regulation, especially deafblind

individuals, their families, caregivers and advocates, by improving the clarity of the language. It does not introduce any additional costs.

Businesses and Other Entities Affected. Readers of the regulation, especially deafblind individuals, their families, caregivers and advocates would be affected. The proposed amendments do not introduce any new costs for businesses or other entities.

Small Businesses[4] Affected. The proposed amendments do not directly affect any small businesses, nor would they face any new costs as a result of the proposed amendments.

Localities[5] Affected.[6] The proposed amendments do not disproportionately affect any specific localities, nor introduce new costs for local governments.

Projected Impact on Employment. The proposed amendments are unlikely to cause any changes to total employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to affect the use or value of private property. Real estate development costs are unlikely to be affected.

[1]See § 51.5-60 of the Code of Virginia: http://lis.virginia.gov/cgi-bin/legp604.exe?191 ful CHAP0088

[2]See § 51.5-111(1) of the Code of Virginia: https://law.lis.virginia.gov/vacode/title51.5/chapter13/section51.5-111/

[3]See https://www.law.cornell.edu/uscode/text/29/1905

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

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

[6]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Department for the Blind and Vision Impaired concurs with the economic impact analysis performed by the Department of Planning and Budget.

Summary:

The amendments update (i) the definitions of key terms to match the Code of Virginia or the United States Code and (ii) the title of the regulation, the name of the department, and the names of the services the department provides.

Chapter 100
Regulations Governing ~~Deaf-Blind~~ DeafBlind Services

~~Part I~~
~~Introduction~~

22VAC45-100-10. Definitions.

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

~~"Blindness, legal blindness" means the condition as defined in §§ 63.1-142 and 63.1-166 of the Code of Virginia.~~

~~"Client" means any person receiving a service provided by Deaf-Blind Services of the Department for the Visually Handicapped.~~

~~"Deaf" means those individuals who cannot hear and understand speech through the ear alone under normal conditions, with or without amplification; a hearing loss greater than 70 decibels in the better ear without amplification; a speech discrimination score below 40%; or both.~~

"Blind person," as defined in § 51.5-60 of the Code of Virginia, means an individual who has central visual acuity of 20/200 or less in the better eye, as measured with best correction, or a limitation in the field of vision in the better eye, such that the widest diameter of the visual field subtends an angle of 20 degrees or less.

"~~Deaf-Blind~~ DeafBlind Services" means special ~~services~~ assistance and supports a ~~client would need due to~~ person needs because of a combined loss of vision and hearing~~; i.e.,~~ including an interpreter for ~~the deaf-blind~~ a person who is deafblind; communication skills assessment and training; and assessment of special aids and devices such as tactile or visual signaling systems, telecommunication devices, and assistive listening devices.

"DBVI" means the Department for the Blind and Vision Impaired.

"Department" means the Department for the Blind and Vision Impaired.

"Persons who are deaf," as defined in subdivision 1 of § 51.5-111 of the Code of Virginia, means individuals whose hearing is totally impaired or whose hearing, with or without amplification, is so seriously impaired that the primary means of receiving spoken communication is through visual input such as lip-reading, sign language, finger spelling, reading, or writing.

"Persons who are deafblind," pursuant to 29 USC § 1905(2)(A) and 20 USC § 1905(2)(B), means individuals (i) who have central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual fields subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both of these conditions;

(ii) who have a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; (iii) for whom the combination of impairments described in this definition cause extreme difficulty in attaining independence in daily life activities, achieving psychological adjustment, or obtaining a vocation; and (iv) who, despite the inability to be measured accurately for hearing and vision loss due to cognitive or behavioral constraints, or both, can be determined through functional and performance assessments to have severe hearing and visual disabilities that cause extreme difficulty in attaining independence in daily life activities, achieving psychological adjustment or obtaining vocational objectives.

"~~Hard of hearing,~~" Persons who are hard-of-hearing," as defined in subdivision 2 of § 51.5-111 of the Code of Virginia, means ~~those~~ individuals whose hearing is impaired to an extent that makes hearing difficult but does not preclude the understanding of spoken communication through the ear alone, with or without ~~amplification. Hearing loss is in the range of 30 decibels to 70 decibels, a speech discrimination score below 75%, or both~~ a hearing aid.

"Severely visually impaired" means vision no better than 20/70 in the better eye with correction or a field of vision restricted to 70 degrees or less in the better eye.

"Speech discrimination" means the ability to hear and understand spoken communication.

~~Part II~~
~~Eligibility~~

22VAC45-100-20. Eligibility.

An individual who is blind or severely visually impaired, and also deaf or ~~hard of hearing~~ hard-of-hearing is eligible for ~~deaf-blind~~ deafblind services.

~~Part III~~
~~Services~~

22VAC45-100-30. Delivery of services.

It is the intent of ~~these regulations~~ this chapter that ~~deaf-blind clients~~ persons who are deafblind be fully integrated into the service programs provided by the department to the extent practical.

Procedures for the delivery of ~~deaf-blind~~ services ~~can~~ may be found in the DBVI manuals of the following agency programs: ~~Intake and Social Services; Independent Living Rehabilitation Services; Rehabilitation Teaching Services; Vocational Rehabilitation Services; Program for Infants, Children, Youth; Volunteer Services; and Low Vision.~~ Rehabilitation Teaching and Independent Living Services, Education Services, and Vocational Rehabilitation Services.

VA.R. Doc. No. R21-6236; Filed January 19, 2021, 3:19 p.m.

Fast-Track Regulation

Title of Regulation: **22VAC45-110. Regulations Governing Low Vision (amending 22VAC45-110-10, 22VAC45-110-30, 22VAC45-110-40, 22VAC45-110-50).**

Statutory Authority: § 51.5-60 of the Code of Virginia.

Public Hearing Information: No public hearings are currently scheduled.

Public Comment Deadline: March 17, 2021.

Effective Date: April 1, 2021.

Agency Contact: Susan K. Davis, MS, CRC, Regulatory Coordinator, Department for the Blind and Vision Impaired, 401 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3184, FAX (804) 371-3157, TDD (804) 371-3140, or email susan.davis@dbvi.virginia.gov.

Basis: The Department for the Blind and Vision Impaired (DBVI) statutory authority comes from § 51.5-65 of the Code of Virginia, which identifies the functions, duties, and powers of the commissioner to adopt regulations to carry out the applicable provisions of the chapter.

Purpose: The goal of this regulatory action is to change the agency name from the outdated Department for the Visually Handicapped to the current Department for the Blind and Vision Impaired; it is critical that citizens know and can identify the name of the agency in order to access low vision services.

Rationale for Using Fast-Track Rulemaking Process: The proposed changes to 22VAC45-110 are noncontroversial. There are no additional costs incurred by DBVI, and existing low vision services remain unchanged. Individuals who are blind, vision impaired, or deafblind will be unharmed. The fast-track process is therefore appropriate.

Substance: The current regulation contains obsolete language and definitions. The revisions modernize definitions to incorporate people first language and remove definitions that use outdated terminology. Additional edits revise wording of the regulation for clarity and readability.

Issues: The advantage to the public is clearer explanation of low vision services delivered by the department to individuals with low vision. There are no disadvantages to revising this regulation.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department for the Blind and Vision Impaired (DBVI) proposes to amend 22VAC45-110, Regulations Governing Low Vision, to update the agency name and clarify definitions, eligibility criteria, and financial participation in cost of services. These clarifications serve to replace outdated language and do not change the substance of the regulation.

Background. Based on a recent review of the regulation, DBVI elects to update language to reflect current usage. The proposed amendments include adding definitions for "DBVI"

and "Department," removing the definition of "consumer," and clarifying that "Low vision services" means "assistance and supports provided to an individual who has low vision, including preexamination evaluations, low vision examinations, provision of prescribed low vision aids, and follow up training and counseling in the use of low vision aids." Although the nature of assistance provided by DBVI has not changed, replacing the term "consumer" throughout the text with "individual who has low vision" or "individual seeking low vision services" would reflect current norms that encourage the use of people-first language.

DBVI also proposes to rename 22VAC45-110-50 Financial participation as Financial participation in cost of services and to add the stipulation that individuals not receiving services through other DBVI programs shall be responsible for the full cost of low vision services. DBVI states that this change reflects current practice and would not impose any new costs on individuals seeking low vision services.

Estimated Benefits and Costs. The proposed amendments benefit readers of the regulation, especially individuals with low vision, their families, caregivers and advocates, by removing outdated terminology and improving the clarity of the language. It does not introduce any additional costs.

Businesses and Other Entities Affected. Readers of the regulation, especially individuals with low vision, their families, caregivers and advocates would be affected. The proposed amendments do not introduce any new costs for businesses or other entities.

Small Businesses[1] Affected. The proposed amendments do not directly affect any small businesses, nor would they face any new costs as a result of the proposed amendments.

Localities[2] Affected.[3] The proposed amendments do not disproportionately affect any specific localities or introduce new costs for local governments.

Projected Impact on Employment. The proposed amendments are unlikely to cause any changes to total employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to affect the use or value of private property. Real estate development costs are unlikely to be affected.

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

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

[3]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Department for the Blind and Visually Impaired concurs with the economic impact analysis performed by the Department of Planning and Budget.

Summary:

The amendments update the agency name and clarify definitions, eligibility criteria, and financial participation in cost of services.

22VAC45-110-10. Definitions.

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

~~"Consumer" means any person receiving a service provided by the Low Vision Program of the Department for the Blind and Vision Impaired (DBVI).~~

"DBVI" means the Department for the Blind and Vision Impaired.

"Department" means the Department for the Blind and Vision Impaired.

"Low vision" means reduced visual functioning. It is the condition that exists when no further medical or surgical procedures or regular prescription lenses are beneficial but residual vision exists.

"Low vision aids" means optical and nonoptical devices that are prescribed for the purpose of enhancing low vision.

"Low vision services" means ~~all aspects that are necessary to the comprehensive provision of services, i.e.,~~ assistance and supports provided to an individual who has low vision, including preexamination evaluations, low vision examination, provision of prescribed low vision aids, and follow-up training and counseling in the use of low vision aids.

22VAC45-110-30. Eligibility.

An individual may be eligible for low vision services if the individual's corrected ~~visual acuity~~ vision is 20/70 or worse in the better eye and the ~~consumer has met~~ individual meets the eligibility requirements of at least one of the following department programs: education services, vocational rehabilitation, or rehabilitation teaching and independent living.

22VAC45-110-40. Preexamination.

An ophthalmological or optometrical eye report shall be required before a low vision examination is scheduled. The eye ~~examination~~ report shall ~~have been made~~ be dated within one year from the date of the scheduled low vision examination~~; except where the eye condition is stable, the eye examination may have been made within two years from the date of the scheduled low vision examination~~.

22VAC45-110-50. Financial participation in cost of services.

A. Low vision examination. An authorization form may be issued by ~~the agency~~ a DBVI case manager ~~may be prepared~~ to pay for the examination through an appropriate payment source in the ~~agency as long as~~ department if funds are available. There ~~is~~ shall be no ~~charge~~ cost to the ~~consumer~~ individual seeking low vision services for a low vision examination as long as funds are available ~~for this activity~~ as determined by the ~~agency~~ department.

B. Low vision aids. ~~Consumer~~ An individual's financial participation in the cost of low vision aids ~~will~~ shall be determined ~~according to regulations promulgated by the sponsoring DBVI program~~ in accordance with the applicable DBVI policies.

C. Individuals who are not receiving services through other DBVI programs shall be responsible for the full cost of low vision services.

VA.R. Doc. No. R21-6238; Filed January 19, 2021, 3:25 p.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

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

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

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Titles of Documents: Guidance for Educational and Pathology Coursework Requirements for Funeral Director License Applicants.

Guidance for Inspectors and Licensees.

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

Public Comment Deadline: March 17, 2021.

Effective Date: March 18, 2021.

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

STATE BOARD OF HEALTH

Title of Document: Policy for Virginia's Public Health Shellfish Program.

Public Comment Deadline: March 17, 2021.

Effective Date: March 18, 2021.

Agency Contact: Danielle Schools, Acting Director, Division of Shellfish Safety, Department of Health, 109 Governor Street, 6th Floor, Richmond, VA 23219, telephone (804) 864-7467, or email danielle.schools@vdh.virginia.gov.

REAL ESTATE BOARD

Title of Document: Housing Discrimination on the Basis of Source of Funds.

Public Comment Deadline: March 17, 2021.

Effective Date: March 18, 2021.

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

VIRGINIA WASTE MANAGEMENT BOARD

Title of Document: Guidance for the Certification of Recycling Machinery and Equipment for State Income Tax Credit (rev. 2021).

Public Comment Deadline: March 17, 2021.

Effective Date: March 19, 2021.

Agency Contact: Sanjay Thirunagari, Program Manager, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4193, or email sanjay.thirunagari@deq.virginia.gov.

STATE CORPORATION COMMISSION

Bureau of Insurance

February 1, 2021

TO: All Carriers Licensed to Market Credit Life Insurance or Credit Accident and Sickness Insurance in Virginia

RE: Credit Insurance Experience Exhibits

Virginia Code § 38.2-3730

Administrative Letter 2021-01

This Administrative Letter Withdraws and Replaces Administrative Letter 2018-01.

In accordance with § 38.2-3730 B of the Code of Virginia, adjustments to the prima facie rates applicable to credit life and credit accident and sickness insurance for the triennium commencing January 1, 2022 will be established and published later this year.

This letter serves as a reminder to all carriers licensed to write either or both of these coverages that the Credit Insurance Experience Exhibit (CIEE) for the 2020 reporting year, from which information will be obtained to properly calculate these rates, must be submitted in accordance with § 38.2-3730 A of the Code of Virginia, no later than **April 1, 2021**.

In order to expedite the review process, we are requesting that ALL carriers complete the attached questionnaire. This questionnaire will enable the Bureau of Insurance to distinguish carriers who have Virginia experience to report on the CIEE from those who do not have any Virginia experience to report. Carriers that have experience to report must answer all questions and submit the completed questionnaire to the Life and Health Forms and Rates Section of the Bureau. Because of the time constraints under which the rate calculation must be completed, carriers must submit complete and accurate CIEEs, as well as the questionnaire, on or before April 1, 2021. Please note that carriers with no experience to report are not required to answer questions 1-9 on the questionnaire; however, all carriers must return the questionnaire to the Bureau with its name, NAIC # and contact information completed.

We have attached to this administrative letter examples of some of the problems identified with CIEE filings in previous years. In some instances, although information was correct, an explanation was necessary to properly evaluate the information. Carriers are hereby directed to review the attachment to ensure that similar problems do not recur this year. Please note that the CIEE must be filed on a direct basis; i.e. before taking into account reinsurance ceded.

We require all carriers to electronically submit the questionnaires to the Life and Health Forms and Rates Section via the Company Filing Portal. To access the questionnaire and the portal, go to https://scc.virginia.gov/pages/Life-Health-Companies and scroll down to "Credit Insurance Experience Exhibit and Questionnaire". You will note that instructions are provided on the Bureau's website for submitting the documents through the portal.

Please contact the Bureau with any questions or requests for clarification. Questions or requests for clarification regarding the filing of required documents should be directed to: Amanda McCauley, (804) 371-0034, amanda.mccauley@scc.virginia.gov.

Questions or requests for clarification regarding the use of the portal should be directed to: Trish Todd, (804) 371-9195, trish.todd@scc.virginia.gov.

/s/ Scott A. White
Commissioner of Insurance

The following are examples of problems identified in filings of the Credit Insurance Experience Exhibits (CIEEs) in previous reporting years. Companies are directed to review the information below to ensure that similar problems do not recur in their 2020 CIEEs. Any of the following situations legitimately applicable to a 2020 CIEE should include an appropriate explanation in the attached questionnaire.

• **Prima facie premium not listed**. The prima facie premium is needed to evaluate the rates. Each company should explicitly state the prima facie premium on the appropriate exhibit line, even if it is the same as earned premium.

• **Prima facie premiums greater than earned premiums**. While this may not be a problem, our experience is that most companies charge the maximum rate allowed. This may be indicative of a miscalculation, especially on MOB business.

• **Earned premiums greater than prima facie premium**. For MOB business, this may be indicative of a miscalculation. Such premiums violate statutes unless the premium rates have been approved. If the premium rates have been approved, we ask that reporting carriers provide the Bureau with the approval date(s) to facilitate our analysis.

• **Changes in the reserves reported from the end of one reporting year to the beginning of the subsequent reporting year**. This can cause previously charged premium and claims to disappear. It can also cause claims without corresponding premium and vice versa. Restatement of opening reserves merely results in delay and unnecessary expense for the Bureau and, in light of the purpose of these CIEEs, companies should ensure that opening reserves (at the beginning of the year) are equal to closing reserves (at the end of the previous year).

• **Claim reserve errors**. These cause inaccurate incurred claims and may also indicate inadequate reserves for the product line.

• **Premium reserve errors**. These cause inaccurate premium reserve calculations.

• **Assumption reinsurance transactions**. If any business is transferred by assumption reinsurance, identify in the questionnaire the companies involved and the reserve amounts impacted by the transaction.

• **Company Name Changes or Mergers.** If the reporting company has changed its name and/or has been involved in a merger, full details should be provided in the questionnaire to enable the Bureau to appropriately combine experience for the past three years.

• **Calculation of Earned Premium at Prima Facie Rates.** Prima facie premium must be calculated using the prima facie rates approved and published by the Bureau effective January 1, 2019. Approval by the Bureau to charge alternate rates or use alternative rate structures does not constitute a change to the published prima facie rates, and these alternative rates or rates structures should not be used in calculating earned premium at prima facie rates.

Questionnaire

Company Name: _____

NAIC #: _____

For calendar year 2020, did the company have any earned premiums or incurred claims?

_____ Yes _____ No

If "yes," please complete the entire questionnaire. If "no," please proceed to the last page and complete the contact information only. Responses to questions 1-9 are not required.

1. Are both the *earned premiums* and *earned premiums at prima facie rates* stated? _____Yes _____No

What adjustments, if any, were made to the earned premiums at prima facie rates? Please explain in detail how the adjustments were made. If none were made, please explain why not.

2. Are incurred claims stated without stating earned premiums and earned premiums at prima facie rates? ____Yes _____No If "yes," please explain.

3. Are the beginning of year (BOY) reserves equal to the prior years' stated end of year (EOY) reserves? _____Yes _____No If "no," please provide a detailed explanation. (This applies to the premium, IBNR and claim reserves.)

4. Are the BOY reserves positive but no data was reported last year? _____Yes ____No If "yes," please explain.

5. Has the reserve methodology changed since the prior year's CIEE was filed in Virginia? ____Yes _____No If "yes," please explain.

6. Was any business transferred by assumption reinsurance? _____Yes _____No If "yes," identify the companies involved and explain how any values in the CIEE have been impacted by the transaction.

7. Has the Company changed its name or has the Company been involved in a merger since the prior year's CIEE was filed in Virginia? _____Yes _____No If "yes," please provide complete details in order that the Bureau of Insurance can appropriately combine experience for the past three years.

8. Have all totals been verified as correct? _____Yes _____No If "no," please explain.

9. Does the CIEE contain any negative numbers? _____Yes _____No If "yes," please provide a detailed explanation.

Completed by: _____

Title: _____

Date: _____

Phone #: _____

Email Address: _____

(Revised 1/7/21)

Contact Information: Amanda McCauley, State Corporation, Commission, 1300 East Main Street, Richmond, VA 23219, telephone (804) 371-0034, or email amanda.mccauley@scc.virginia.gov.

DEPARTMENT OF GENERAL SERVICES

Request for Comments on Revision to Fees for Drinking Water Laboratory Certification (1VAC30-41-270)

Effective May 1, 2021, to April 30, 2022

Purpose of notice and background information: The Division of Consolidated Laboratory Services (DCLS) is seeking comment on the revision to fees charged for certifying drinking water laboratories under 1VAC30-41-270.

1VAC30-41-270 I 2 requires DCLS to increase or decrease annually the fees charged for certifying drinking water laboratories using the Consumer Price Index-Urban percentage change, average to average for the previous calendar year published by the U.S. Bureau of Labor Statistics in January. The percentage change, average to average for 2020 is an

additional 1.2%. See the table labeled "Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, index averages" in the following document (page 4): bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202012.pdf.

The revised fees are exempt from the requirements of the Administrative Process Act. The Budget of the Commonwealth of Virginia (Chapter 1289, effective July 1, 2020) in Part I, Item 76, at C 3.a requires DCLS to provide notice and an opportunity to submit written comments on the revised fees.

The notice of fees for May 1, 2021, through April 30, 2022, will be published on the DCLS drinking water laboratory certification webpage after consideration of submitted comments.

Public comment period: February 15, 2021, through March 17, 2021.

How to comment: DCLS accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DCLS by the last day of the comment period. All materials received are part of the public record. Email comments should be sent to rhonda.bishton@dgs.virginia.gov. The number for faxed comments is (804) 371-8305. Written comments should be sent to Rhonda Bishton, Regulatory Coordinator, Department of General Services, Attn: DCLS DW Fee Comments, 1100 Bank Street, Richmond, VA, 23219.

NOTICE OF FEES FOR MAY 1, 2021 – APRIL 30, 2022

DCLS requests comments on the revised fees in the notice below.

TESTING CATEGORY	FEE ($)
Microbiological testing	
1 - 2 methods	667
3 - 5 methods	777
6 methods	889
Inorganic chemistry, nonmetals testing	
1 - 2 methods	722
3 - 5 methods	942
6 - 8 methods	1166
9 methods	1387
Inorganic chemistry, metals testing	
1 - 2 methods	1109
3 - 5 methods	1331
6 methods	1551
Organic chemistry	
1 - 2 methods	1166
3 - 5 methods	1387
6 - 8 methods	1608
9 methods	1832
Radiochemistry	
1 - 2 methods	1221
3 - 5 methods	1442
6 methods	1665
Asbestos	
1 - 2 methods	998
3 - 5 methods	1221

Contact Information: Rhonda Bishton, Director's Executive Administrative Assistant, Department of General Services, 1100 Bank Street, Suite 420, Richmond, VA 23219, telephone (804) 786-3311, FAX (804) 371-8305.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Energix Aditya LLC Notice of Intent for Small Renewable Energy Project (Solar) - Louisa County

Energix Aditya LLC, has provided the Department of Environmental Quality a notice of intent to submit the necessary document for a permit by rule for a small renewable energy project (solar) in Louisa County. Energix Aditya LLC will be located near the Town of Louisa. Latitude and longitude coordinates are as follows: 38.017539 -77.957089. The estimated fenced-in project area will be 95 acres and the maximum generating capacity of the project in alternating current will be 11 megawatts. The solar facility will consist of approximately 31,000 photovoltaic modules.

Contact Information: Mary Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4178.

Availability of the 2021 Annual Monitoring Plan

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) is announcing the availability of the 2021 Water Quality Monitoring Plan (MonPlan). The 2021 MonPlan is now available on the agency's website at https://www.deq.virginia.gov/water/water-quality/water-quality-monitoring/current-year-water-quality-monitoring-plan.

A map view of the 2021 MonPlan is available through DEQ's VEGIS viewer a https://geohub-vadeq.hub.arcgis.com /datasets/fcbf74731d4d4c79a881f8dd23587e52_131.

Background: Every year, DEQ staff from the agency's six regional offices collect water samples for testing from more than 1,000 locations across the Commonwealth. The agency's various monitoring activities for each calendar year are outlined in the annual statewide MonPlan.

2021 MonPlan: The 2021 MonPlan summarizes DEQ's water quality monitoring activities to be conducted from January 1 through December 31, and is developed for the purpose of implementing the goals and objectives of DEQ's Water Quality Monitoring Strategy. This water quality information is presented in compliance with the Virginia Water Quality Monitoring, Information and Restoration Act (§ 62.1-44.19:5 et seq. of the Code of Virginia) to help ensure public awareness of water quality issues and conditions. The MonPlan contains detailed information on DEQ's monitoring activities, including the station locations, specific conditions, frequency of monitoring, and costs.

Contacts for more information: Requests for more information on the 2021 MonPlan can be directed to Roger Stewart at (804) 698-4449 or roger.stewart@deq.virginia.gov. Additional information is also available on DEQ's Water Quality Monitoring website at https://www.deq.virginia.gov /water/water-quality/water-quality-monitoring.

Citizen Nominations for the 2022 MonPlan: Citizens can nominate portions of lakes, streams, and rivers of Virginia for water quality monitoring by DEQ. Nominations received on or before April 30, 2021, will be considered for inclusion in DEQ's 2022 MonPlan. More information on the citizen nomination process is available on DEQ's Citizen Monitoring website at https://www.deq.virginia.gov/water/water-quality/water-quality-monitoring/citizen-monitoring. Contact Stuart Torbeck at (804) 698-4461 or charles.torbeck@deq.virginia.gov for more information.

Contact Information: Roger Stewart, Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4449, FAX (804) 698-4178, or email roger.stewart@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

All Manuals Chapter III Draft Available for Review

The draft Chapter III of all provider manuals is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/#/manualdraft for public comment until February 24, 2021.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Hospital Provider Manual Chapter IV Draft Available for Review

The draft Hospital Manual Chapter IV is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/#/manualdraft for public comment until February 24, 2021.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Physician/Practitioner Provider Manual Chapter IV Draft Available for Review

The draft Physician/Practitioner Manual Chapter IV is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/#/manualdraft for public comment until February 24, 2021.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Good Luck Good Luck LLC

An enforcement action has been proposed for Good Luck Good Luck LLC for violations at the underground storage tank facility known as Mechanicsville Station, 2000 Mechanicsville Turnpike, Richmond, Virginia. The State Water Control Board proposes to issue a consent order to address noncompliance with State Water Control Law and regulations at the facility. The consent order requires corrective action and payment of a civil charge. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact will accept comments by email, fax, or postal mail from February 15, 2021, to April 17, 2021.

Contact Information: Frank Lupini, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, FAX (804) 698-4178, or email frank.lupini@deq.virginia.gov.

Public Meeting and Public Comment for a TMDL Implementation Plan for the McClure River Watershed in Dickenson County

Purpose of notice: The Department of Environmental Quality (DEQ) is seeking feedback from watershed stakeholders on the proposed draft plan to restore water quality in the McClure River watershed. A draft total maximum daily load (TMDL) Implementation Plan (IP) has been developed to explain the pollutant reductions needed to meet the targets contained in the 2018 TMDL report prepared for the watershed. A 30-day public comment period starts February 24, 2021, for interested persons to submit written comments. See directions in this notice to submit a comment. A public meeting to discuss the Water Quality Improvement Plan (also known as the Implementation Plan (IP)) for the McClure River watershed will be held on Tuesday, February 23, 2021, from 5:30 - 7 p.m. Given the existing State of Emergency related to the COVID-19 pandemic, this meeting will be held entirely virtually. The URL to register for the virtual meeting is provided at the end of this notice.

How to participate in meeting: This meeting is open to the public and all interested parties are welcome. A computer or a telephone are necessary to participate virtually. URL and telephone information to participate in the meeting. Department of Environmental Quality, Southwest Regional Office, 355A Deadmore Street, Abingdon, VA 24210.

How to comment on draft: A public comment period on the development of the TMDL IP begins February 24, 2021, and ends March 26, 2021. All comments must be written and submitted via postal mail or email by 11:59 p.m. on March 26, 2021. Comments must include the name, address, and telephone number of the person submitting the comments. Please submit comments to staff contact person.

Contact Information: Stephanie Kreps, Department of Environmental Quality, Southwest Regional Office, 355A Deadmore Street, Abingdon, VA 24210, telephone (276) 676-4803, FAX (804) 698-4178, or email stephanie.kreps@deq.virginia.gov.

Proposal to Amend 9VAC25-71 to add Sarah Creek and Perrin River to Virginia's List of Designated No Discharge Zones

Purpose of notice: The U.S. Environmental Protection Agency (EPA) submitted to the Federal Register its final affirmative determination for No Discharge Zones (NDZ) for Sarah Creek and Perrin River, Gloucester County, Virginia pursuant to the federal Clean Water Act. EPA determined that there exists adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels within these two waterbodies. The NDZ designations would prohibit the overboard discharge of treated sewage from marine sanitation devices in these waterways. The Virginia Department of Environmental Quality (DEQ) is announcing its intent to ask the State Water Control Board to amend 9VAC25-71 to add the Sarah Creek and Perrin River NDZs to Virginia's list of designated NDZs and is seeking public comment.

Background: Section 62.1-44.33 of the Code of Virginia resolves that all tidal creeks in Virginia be designated federal No Discharge Zones premised on the improvement of impaired tidal creeks and directs DEQ to pursue this designation. It is illegal to discharge raw sewage in U.S. territorial waters. In an NDZ, this ban is expanded to include sewage treated by on-board marine sanitation devices. An NDZ is determined by EPA upon application from the state, and is contingent on the state demonstrating (i) the need for enhanced protection of water quality, (ii) the availability of sufficient local alternatives to overboard discharge (i.e. pump-outs), and (iii) local stakeholder support.

The Go Green Gloucester Advisory Committee of the Gloucester County Board of Supervisors partnered with the Virginia Institute of Marine Science (VIMS) to conduct an analysis of boat usage and pump-out availability for Sarah Creek and Perrin River in Gloucester County. VIMS, with the assistance of DEQ, then prepared a draft application and held a public meeting with a 30-day public comment period for which 25 comments were received; all in support of the application. The application was then transmitted to Virginia's Secretary of Natural Resources for submittal to EPA requesting an affirmative determination. EPA published its tentative affirmative determination in the Federal Register on March 11, 2020, followed by a 30-day public comment period. EPA did not receive any comments and published its final affirmative determination in the Federal Register on September 23, 2020. DEQ intends to ask the State Water Control Board to amend 9VAC25-71 to add the Sarah Creek and Perrin River NDZs to Virginia's list of designated NDZs. The NDZ application is located at https://www.deq.virginia.gov/water/water-quality/implementation/no-discharge-zone-program/ and EPA's final affirmative determination is located at https://www.federalregister.gov/documents/2020/09/23/2020-20956/clean-water-act-virginia-sarah-creek-and-perrin-river-vessel-sewage-no-discharge-zone-final.

How to comment: DEQ will accept written comments beginning Tuesday, February 16, 2021, by email or postal mail. Comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, which will expire on Thursday, March 18, 2021.

Contact the staff contact person listed for additional information and to submit comments.

Contact Information: Anne Schlegel, TMDL Coordinator, Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4046, FAX (804) 698-4178, or email anne.schlegel@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at https://commonwealthcalendar.virginia.gov.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.