



VIRGINIA

REGISTER OF REGULATIONS

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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.virginia.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.

Members of the Virginia Code Commission: John S. Edwards, Chair; Marcus B. Simon, Vice Chair; Ward L. Armstrong; Nicole Cheuk; Rita Davis; Leslie L. Lilley; Jennifer L. McClellan; Christopher R. Nolen; Don L. Scott, Jr.; Charles S. Sharp; Samuel T. Towell; Malfourd W. Trumbo.

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

PUBLICATION SCHEDULE AND DEADLINES

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

July 2021 through August 2022

<u>Volume: Issue</u>	<u>Material Submitted By Noon*Will Be Published On</u>	
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
38:16	March 9, 2022	March 28, 2022
38:17	March 23, 2022	April 11, 2022
38:18	April 6, 2022	April 25, 2022
38:19	April 20, 2022	May 9, 2022
38:20	May 4, 2022	May 23, 2022
38:21	May 18, 2022	June 6, 2022
38:22	June 1, 2022	June 20, 2022
38:23	June 15, 2022	July 4, 2022
38:24	June 29, 2022	July 18, 2022
38:25	July 13, 2022	August 1, 2022

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Agency Decision

Title of Regulation: 18VAC110-20. Regulations Governing the Practice of Pharmacy.

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

Name of Petitioner: Leslie DuVal.

Nature of Petitioner's Request: To require prescriptions for opioids to be valid for a shorter period of time than the current six-month expiration standard for all controlled substances.

Agency Decision: Request denied.

Statement of Reason for Decision: The Board of Pharmacy has voted to take no action at this time but has included the issue of a six-month allowance on dispensing of Schedule II drugs in the periodic review of 18VAC60-20, Regulations Governing the Practice of Pharmacy. The board will gather information and any available outcome data from other states.

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

VA.R. Doc. No. PFR21-20; Filed June 4, 2021, 12:13 p.m.

BOARD OF COUNSELING

Initial Agency Notice

Title of Regulation: 18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners.

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

Name of Petitioner: Jennifer Stolpe.

Nature of Petitioner's Request: To amend the education requirement for licensure by endorsement to require only 36 class hours if all class hours were focused on addiction counseling.

Agency Plan for Disposition of Request: The petition will be posted on the Virginia Regulatory Town Hall and published in the Register of Regulations on July 5, 2021, with comment requested until August 4, 2021. The petition and all comments received will be considered at the first meeting of the regulatory committee scheduled on August 6, 2021. The board will receive a recommendation from the committee and decide

whether to initiate rulemaking at its meeting on August 20, 2021.

Public Comment Deadline: August 4, 2021.

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

VA.R. Doc. No. PFR21-35; Filed June 4, 2021, 12:13 p.m.

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: Adrian Rodriguez.

Nature of Petitioner's Request: To amend 18VAC140-20-45 to allow long years of experience to count as supervised experience for licensure.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition was filed with the Virginia Registrar of Regulations and will be published on July 5, 2021, with comment accepted through August 4, 2021. The petition is also posted on the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov>. The petition and any comment will be considered by the Board of Social Work at its next meeting following the close of comment, which is scheduled for September 10, 2021. The petitioner will be informed of its decision following that meeting.

Public Comment Deadline: August 4, 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. PFR21-38; Filed June 9, 2021, 9:37 a.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 4. CONSERVATION AND NATURAL RESOURCES

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Virginia Soil and Water Conservation Board conducted a periodic review and a small business impact review of **4VAC50-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated May 3, 2021, to support this decision.

The regulation meets the criteria set out in Executive Order 14 (2018) as it is necessary for the protection of public health, safety, and welfare of the citizens and visitors to the Commonwealth. The board conducted a period review of the regulation and will retain the regulation in its current form.

The regulation does not have an adverse impact on small businesses and do not overlap, duplicate, or conflict with any known federal or state law or regulation.

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

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **9VAC25-370, Policy for the Protection of Water Quality in Virginia's Shellfish Growing Waters**, and **9VAC25-770, Virginia Financial Responsibility Requirements for Mitigation Associated with Tidal Dredging Projects**. The review of these regulations will be guided by the principles in Executive Order 14 (as amended July 16, 2018). The purpose of this review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to these regulations, including whether each 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 July 5, 2021, and ends July 26, 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: 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.

REGULATIONS

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

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF WILDLIFE RESOURCES

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Titles of Regulations: 4VAC15-20. **Definitions and Miscellaneous: In General (adding 4VAC15-20-260).**

4VAC15-90. Game: Deer (amending 4VAC15-90-10; repealing 4VAC15-90-290).

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

August 19, 2021 - noon - Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228.

Public Comment Deadline: July 30, 2021.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments (i) prohibit hunting contests for coyotes and furbearer species in which participants are offered cash, prizes, or other inducements of monetary value; (ii) address the recent detection of Chronic Wasting Disease (CWD) in Montgomery County, create a new disease management zone in counties around that area, and adjust seasons accordingly; and (iii) repeal the Fairystone Quality Deer Management Area now that CWD has been detected within 25 miles of this area because disease management actions necessitate more aggressive deer harvest strategies.

4VAC15-20-260. Coyote and furbearer hunting contests.

It shall be unlawful to organize, sponsor, promote, conduct, participate, or solicit participation in a contest or organized competition in which participants are offered cash, prizes, or other inducements of monetary value for capturing or killing coyotes or fur-bearing animals defined in § 29.1-100 of the

Code of Virginia. No part of this regulation shall be construed to restrict coyote bounties authorized in § 15.2-926.1 of the Code of Virginia.

4VAC15-90-10. Open season; generally.

A. It shall be lawful to hunt deer in the following localities, including the cities and towns therein, during the following seasons, all dates inclusive.

Locality	Season
Accomack County	Saturday prior to the third Monday in November through the first Saturday in January
Albemarle County	Saturday prior to the third Monday in November through the first Saturday in January
Alleghany County	Saturday prior to the third Monday in November and for 14 consecutive days following
Amelia County	Saturday prior to the third Monday in November through the first Saturday in January
Amherst County (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River, except on national forest lands)	Saturday prior to the third Monday in November and for 28 consecutive days following
Amherst County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Amherst County (east of Business U.S. 29, as defined above)	Saturday prior to the third Monday in November through the first Saturday in January

Regulations

Appomattox County	Saturday prior to the third Monday in November through the first Saturday in January
Arlington County	Saturday prior to the third Monday in November through the first Saturday in January
Arlington County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Augusta County	Saturday prior to the third Monday in November and for 14 consecutive days following
Bath County	Saturday prior to the third Monday in November and for 14 consecutive days following
Bedford County (except on national forest lands)	Saturday prior to the third Monday in November and for 28 consecutive days following
Bedford County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Bland County	Saturday prior to the third Monday in November and for 14 consecutive days following
Botetourt County	Saturday prior to the third Monday in November and for 14 consecutive days following
Brunswick County	Saturday prior to the third Monday in November through the first Saturday in January

Buchanan County	Saturday prior to the third Monday in November and for 14 consecutive days following
Buckingham County	Saturday prior to the third Monday in November through the first Saturday in January
Campbell County	Saturday prior to the third Monday in November through the first Saturday in January
Caroline County	Saturday prior to the third Monday in November through the first Saturday in January
Carroll County	Saturday prior to the third Monday in November and for 14 consecutive days following
Charles City County	Saturday prior to the third Monday in November through the first Saturday in January
Charlotte County	Saturday prior to the third Monday in November through the first Saturday in January
Chesapeake (City of)	October 1 through November 30
Chesterfield County	Saturday prior to the third Monday in November through the first Saturday in January
Clarke County	Saturday prior to the third Monday in November through the first Saturday in January
Clarke County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March

Regulations

Craig County	Saturday prior to the third Monday in November and for 14 consecutive days following
Culpeper County (except Chester F. Phelps Wildlife Management Area)	Saturday prior to the third Monday in November through the first Saturday in January
Culpeper County (Chester F. Phelps Wildlife Management Area)	Saturday prior to the third Monday in November and for 14 consecutive days following
Culpeper County (private lands and antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October
Culpeper County (disease focus zones defined by the Department, antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Cumberland County	Saturday prior to the third Monday in November through the first Saturday in January
Dickenson County	Saturday prior to the third Monday in November and for 14 consecutive days following
Dinwiddie County	Saturday prior to the third Monday in November through the first Saturday in January
Essex County	Saturday prior to the third Monday in November through the first Saturday in January
Fairfax County	Saturday prior to the third Monday in November through the first Saturday in January

Fairfax County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Fauquier County (except Chester F. Phelps Wildlife Management Area)	Saturday prior to the third Monday in November through the first Saturday in January
Fauquier County (Chester F. Phelps Wildlife Management Area)	Saturday prior to the third Monday in November and for 14 consecutive days following
Fauquier County (private lands and antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October
Fauquier County (disease focus zones defined by the Department, antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Floyd County	Saturday prior to the third Monday in November and for 28 consecutive days following
<u>Floyd County (disease focus zones defined by the Department, antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March</u>
Fluvanna County	Saturday prior to the third Monday in November through the first Saturday in January

Regulations

Franklin County	Saturday prior to the third Monday in November and for 28 consecutive days following
Frederick County (non-national forest lands)	Saturday prior to the third Monday in November through the first Saturday in January
Frederick County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Frederick County (non-national-forest lands antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Giles County	Saturday prior to the third Monday in November and for 14 consecutive days following
Gloucester County	Saturday prior to the third Monday in November through the first Saturday in January
Goochland County	Saturday prior to the third Monday in November through the first Saturday in January
Grayson County	Saturday prior to the third Monday in November and for 14 consecutive days following
Greene County	Saturday prior to the third Monday in November through the first Saturday in January
Greensville County	Saturday prior to the third Monday in November through the first Saturday in January

Halifax County	Saturday prior to the third Monday in November through the first Saturday in January
Hanover County	Saturday prior to the third Monday in November through the first Saturday in January
Henrico County	Saturday prior to the third Monday in November through the first Saturday in January
Henry County	Saturday prior to the third Monday in November and for 28 consecutive days following
Highland County	Saturday prior to the third Monday in November and for 14 consecutive days following
Isle of Wight County	Saturday prior to the third Monday in November through the first Saturday in January
James City County	Saturday prior to the third Monday in November through the first Saturday in January
King and Queen County	Saturday prior to the third Monday in November through the first Saturday in January
King George County	Saturday prior to the third Monday in November through the first Saturday in January
King William County	Saturday prior to the third Monday in November through the first Saturday in January
Lancaster County	Saturday prior to the third Monday in November through the first Saturday in January

Regulations

Lee County	Saturday prior to the third Monday in November and for 14 consecutive days following	Middlesex County	Saturday prior to the third Monday in November through the first Saturday in January
Loudoun County	Saturday prior to the third Monday in November through the first Saturday in January	Montgomery County <u>(non-national forest lands)</u>	Saturday prior to the third Monday in November and for 14 28 consecutive days following
Loudoun County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March	<u>Montgomery County (national forest lands)</u>	<u>Saturday prior to the third Monday in November and for 14 consecutive days following</u>
Louisa County	Saturday prior to the third Monday in November through the first Saturday in January	<u>Montgomery County (disease focus zones defined by the Department, antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March</u>
Lunenburg County	Saturday prior to the third Monday in November through the first Saturday in January	Nelson County (west of Route 151, except on national forest lands)	Saturday prior to the third Monday in November and for 28 consecutive days following
Madison County	Saturday prior to the third Monday in November through the first Saturday in January	Nelson County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Madison County (private lands and antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October	Nelson County (east of Route 151)	Saturday prior to the third Monday in November through the first Saturday in January
Madison County (disease focus zones defined by the Department, antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March	New Kent County	Saturday prior to the third Monday in November through the first Saturday in January
Mathews County	Saturday prior to the third Monday in November through the first Saturday in January	Northampton County	Saturday prior to the third Monday in November through the first Saturday in January
Mecklenburg County	Saturday prior to the third Monday in November through the first Saturday in January	Northumberland County	Saturday prior to the third Monday in November through the first Saturday in January

Regulations

Nottoway County	Saturday prior to the third Monday in November through the first Saturday in January	Prince Edward County	Saturday prior to the third Monday in November through the first Saturday in January
Orange County	Saturday prior to the third Monday in November through the first Saturday in January	Prince George County	Saturday prior to the third Monday in November through the first Saturday in January
Orange County (private lands and antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October	Prince William County	Saturday prior to the third Monday in November through the first Saturday in January
Orange County (disease focus zones defined by the Department, antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March	Prince William County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Page County	Saturday prior to the third Monday in November and for 14 consecutive days following	Pulaski County (except on New River Unit of the Radford Army Ammunition Plant adjacent to the Town of Dublin <u>and national forest lands</u>)	Saturday prior to the third Monday in November and for 14 <u>28</u> consecutive days following
Page County (disease focus zones defined by the Department, antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March	Pulaski County (New River Unit of the Radford Army Ammunition Plant adjacent to the Town of Dublin)	Saturday prior to the second Monday in November through the first Saturday in January
Patrick County	Saturday prior to the third Monday in November and for 28 consecutive days following	<u>Pulaski County (national forest lands)</u>	<u>Saturday prior to the third Monday in November and for 14 consecutive days following</u>
Pittsylvania County	Saturday prior to the third Monday in November through the first Saturday in January	<u>Pulaski County (disease focus zones defined by the Department, antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March</u>
Powhatan County	Saturday prior to the third Monday in November through the first Saturday in January	Rappahannock County	Saturday prior to the third Monday in November through the first Saturday in January

Regulations

Rappahannock County (private lands and antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October
Rappahannock County (disease focus zones defined by the Department, antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Richmond County	Saturday prior to the third Monday in November through the first Saturday in January
Roanoke County	Saturday prior to the third Monday in November and for 14 consecutive days following
Rockbridge County	Saturday prior to the third Monday in November and for 14 consecutive days following
Rockingham County	Saturday prior to the third Monday in November and for 14 consecutive days following
Russell County	Saturday prior to the third Monday in November and for 14 consecutive days following
Scott County	Saturday prior to the third Monday in November and for 14 consecutive days following
Shenandoah County	Saturday prior to the third Monday in November and for 14 consecutive days following
Shenandoah County (non-national forest lands antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March

Smyth County	Saturday prior to the third Monday in November and for 14 consecutive days following
Southampton County	Saturday prior to the third Monday in November through the first Saturday in January
Spotsylvania County	Saturday prior to the third Monday in November through the first Saturday in January
Stafford County	Saturday prior to the third Monday in November through the first Saturday in January
Suffolk (City of) (east of Dismal Swamp Line)	October 1 through November 30
Suffolk (City of) (west of Dismal Swamp Line)	Saturday prior to the third Monday in November through the first Saturday in January
Surry County	Saturday prior to the third Monday in November through the first Saturday in January
Sussex County	Saturday prior to the third Monday in November through the first Saturday in January
Tazewell County	Saturday prior to the third Monday in November and for 14 consecutive days following
Virginia Beach (City of)	October 1 through November 30
Warren County	Saturday prior to the third Monday in November and for 14 consecutive days following

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Warren (non-national forest lands antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Washington County	Saturday prior to the third Monday in November and for 14 consecutive days following
Westmoreland County	Saturday prior to the third Monday in November through the first Saturday in January
Wise County	Saturday prior to the third Monday in November and for 14 consecutive days following
Wythe County	Saturday prior to the third Monday in November and for 14 consecutive days following
York County	Saturday prior to the third Monday in November through the first Saturday in January

B. Except as provided in subsection A of this section, east of the Blue Ridge Mountains deer may be hunted from the Saturday prior to the third Monday in November through the first Saturday in January, both dates inclusive, within the incorporated limits of any city or town that allows deer hunting.

C. Except as provided in subsection A of this section, west of the Blue Ridge Mountains deer may be hunted from the Saturday prior to the third Monday in November and for 14 consecutive days following within the incorporated limits of any city or town that allows deer hunting.

4VAC15-90-290. Special quality deer management areas. (Repealed.)

A. ~~The board hereby designates the following areas posted by the Department of Wildlife Resources as special quality deer management areas with special antlered buck harvest.~~

B. ~~Special Fairystone quality deer management area. It shall be unlawful to kill an antlered deer on the special Fairystone~~

~~quality deer management area unless the deer has at least four antler points, each greater than one inch in length, on either the right or left antler.~~

VA.R. Doc. No. R21-6836; Filed June 15, 2021, 3:17 p.m.



TITLE 12. HEALTH STATE BOARD OF HEALTH

Final Regulation

REGISTRAR'S NOTICE: Pursuant to 1VAC7-10-60, the Registrar of Regulations is updating certain regulations of the Virginia Department of Health to correct an invalid website link in the Virginia Administrative Code.

Title of Regulation: **12VAC5-110. Regulations for the Immunization of School Children (amending 12VAC5-110-80).**

Effective Date: July 5, 2021.

Agency Contact: Kristin Collins, Policy Analyst, Virginia Department of Health, 109 Governor Street, 6th Floor, Richmond, VA 23219, telephone (804) 864-7298, or email kristin.collins@vdh.virginia.gov.

Summary:

Pursuant to 1VAC7-10-60, the link to the school immunization requirements on the website of the Division of Immunization of the Virginia Department of Health is updated to <http://www.vdh.virginia.gov/immunization/requirements>.

VA.R. Doc. No. R21-6824; Filed June 15, 2021, 3:44 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Department of Medical Assistance Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with (i) § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved and (ii) § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The department will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-330, 12VAC30-50-335, 12VAC30-50-340).**

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

Effective Date: August 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.

Summary:

Pursuant to Chapters 304 and 356 of the 2020 Acts of Assembly, the amendments update (i) the definition of Uniform Assessment Instrument (UAI) and other term definitions to accommodate a change from the term "preadmission screening" to "long-term services and supports screening" and (ii) documentation requirements regarding the filing of the UIA to align regulation with statute.

12VAC30-50-330. PACE definitions.

For purposes of this part and all contracts establishing the Program of All-Inclusive Care for the Elderly (PACE) programs as defined in 42 CFR Part 460, the following definitions shall apply:

"Adult day health care center" or "ADHC" means a DMAS-enrolled provider that offers a community-based day program providing a variety of health, therapeutic, and social services designed to meet the specialized needs of those elderly and disabled individuals at risk of placement in a nursing facility. ~~The ADHC must be licensed by the Virginia Department of Social Services as an adult day care center (ADC) as defined in 22VAC40-60-10.~~

"Applicant" means an individual seeking enrollment in a PACE plan.

"Capitation rate" means the negotiated Medicaid monthly per capita amount paid to a PACE provider for all services provided to enrollees.

"Catchment area" means the designated service area for a PACE plan.

"Centers for Medicare and Medicaid Services" or "CMS" means the unit of the U.S. Department of Health and Human Services that administers the Medicare and Medicaid programs.

"CFR" means the Code of Federal Regulations.

"Direct marketing" means either (i) conducting directly or indirectly door-to-door, telephonic or other "cold call" marketing of services at residences and provider sites; (ii) mailing directly; (iii) paying "finders' fees;" (iv) offering financial incentives, rewards, gifts or special opportunities to eligible individuals or family/caregivers as inducements to use the providers' services; (v) continuous, periodic marketing activities to the same prospective individual or

family/caregiver for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's or family/caregiver's use of the providers' services.

"DMAS" means the Department of Medical Assistance Services.

"DSS" means the Department of Social Services.

"Enrollee" means a Medicaid-eligible individual meeting PACE enrollment criteria and receiving services from a PACE plan.

"Full disclosure" means fully informing all PACE enrollees at the time of enrollment that, pursuant to § 32.1-330.3 of the Code of Virginia, PACE plan enrollment can only be guaranteed for a 30-day period.

"Imminent risk of nursing facility placement" means that an individual will require nursing facility care within 30 days if a community-based alternative care program, such as a PACE plan, is not available.

"Long-term services and supports (LTSS) screening" or "screening" means the face to face process to (i) evaluate the functional, medical or nursing, and social support needs and at-risk status of individuals referred for certain long-term services requiring nursing facility level of care eligibility; (ii) assist individuals in determining what specific services the individual needs; (iii) evaluate whether a service or a combination of existing community services are available to meet the individual's needs; and (iv) provide a list to individuals of appropriate providers for Medicaid-funded nursing facility, PACE plan services, or the Commonwealth Coordinated Care Plus waiver for those individuals who meet nursing facility level of care.

"Long-term services and supports (LTSS) screening team" means the hospital screening team, community-based team (CBT), nursing facility team, or DMAS designee contracted to perform screenings pursuant to § 32.1-330 of the Code of Virginia.

"PACE" means a Program of All-Inclusive Care for the Elderly. PACE services are designed to enhance the quality of life and autonomy for frail, older adults; maximize dignity of, and respect for, older adults; enable frail, older adults to live in the community as long as medically and socially feasible; and preserve and support the older adult's family unit.

"PACE plan" means a comprehensive acute and long-term care prepaid health plan, pursuant to § 32.1-330.3 of the Code of Virginia and as defined in 42 CFR 460.6, operating on a capitated payment basis through which the PACE provider assumes full financial risk. PACE plans operate under both Medicare and Medicaid capitation.

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"PACE plan contract" means a contract, pursuant to § 32.1-330.3 of the Code of Virginia, under which an entity assumes full financial risk for operation of a comprehensive acute and long-term care prepaid health plan with capitated payments for services provided to Medicaid enrollees being made by DMAS. The parties to a PACE plan contract are the entities operating the PACE plan, DMAS and CMS.

"PACE plan feasibility study" means a study performed by a research entity approved by DMAS to determine a potential PACE plan provider's ability and resources, or lack thereof, to effectively operate a PACE plan. All study costs are the responsibility of the potential PACE provider.

"PACE protocol" means the protocol for the Program of All-Inclusive Care for the Elderly, as published by On Lok, Inc., as of April 14, 1995, or any successor protocol that may be agreed upon by the federal Secretary of Health and Human Services and On Lok, Inc.

"PACE provider" means the entity contracting with the Department of Medical Assistance Services to operate a PACE plan.

"PACE site" means the location, which includes a primary care center, where the PACE provider both operates the PACE plan's adult day health care center and coordinates the provision of core PACE services, including the provision of primary care.

"Plan of care" means the written plan developed by the provider related solely to the specific services required by the individual to ensure optimal health and safety while receiving services from the provider.

~~"Preadmission screening" means the process to: (i) evaluate the functional, nursing, and social supports of individuals referred for preadmission screenings; (ii) assist individuals in determining what specific services individuals need; (iii) evaluate whether a service or a combination of existing community based services are available to meet the individual's needs; (iv) refer individuals to the appropriate provider for Medicaid funded nursing facility or home and community based care for those individuals who meet nursing facility level of care.~~

~~"Preadmission screening team" means the entity contracted with DMAS that is responsible for performing preadmission screening pursuant to § 32.1-330 of the Code of Virginia.~~

"Primary care provider" or "PCP" means the individual responsible for the coordination of medical care provided to an enrollee under a PACE plan.

"Provider" means the individual or other entity registered, licensed, or certified, as appropriate, and enrolled by DMAS to render services to Medicaid recipients eligible for services.

"State Plan for Medical Assistance" or "the Plan" means the Commonwealth's legal document approved by CMS

identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

~~"Virginia Uniform Assessment Instrument" or "UAI" means the standardized, multidimensional questionnaire that assesses an individual's social, physical and mental health, and functional abilities assessment instrument that is completed by the LTSS screening team that assesses an individual's physical health, mental health, and psycho/social and functional abilities to determine if the individual meets the nursing facility level of care.~~

12VAC30-50-335. General PACE plan requirements.

A. DMAS, the state agency responsible for administering Virginia's Medicaid program, shall only enter into PACE plan contracts with approved PACE plan providers. The PACE provider must have an agreement with CMS and DMAS for the operation of a PACE program. The agreement must include:

1. Designation of the program's service area;
2. The program's commitment to meet all applicable federal, state, and local requirements;
3. The effective date and term of the agreement;
4. The description of the organizational structure;
5. Participant bill of rights;
6. Description of grievance and appeals processes;
7. Policies on eligibility, enrollment, and disenrollment;
8. Description of services available;
9. Description of the organization's quality improvement program;
10. A statement of levels of performance required on standard quality measures;
11. CMS and DMAS data requirements;
12. The Medicaid capitation rate or Medicaid payment rate methodology and the methodology used to calculate the Medicare capitation rate;
13. Procedures for program termination; and
14. A statement to hold harmless CMS, the state, and PACE participants if the PACE organization does not pay for services performed by the provider in accordance with the contract.

B. A PACE plan feasibility study shall be performed before DMAS enters into any PACE plan contract. DMAS shall contract only with those entities it determines to have the ability and resources to effectively operate a PACE plan. A feasibility plan shall only be submitted in response to a Request for Applications published by DMAS.

C. PACE plans shall offer a voluntary comprehensive alternative to enrollees who would otherwise be placed in a nursing facility. PACE plan services shall be comprehensive and offered as an alternative to nursing facility admission.

D. All Medicaid-enrolled PACE participants shall continue to meet the nonfinancial and financial Medicaid eligibility criteria established by federal law and this chapter. This requirement shall not apply to Medicare only or private pay PACE participants.

E. Each PACE provider shall operate a PACE site that is in continuous compliance with all state licensure requirements for that site.

F. Each PACE provider shall ensure that services are provided by health care providers and institutions that are in continuous compliance with state licensure and certification requirements.

G. Each PACE plan shall meet the requirements of §§ 32.1-330.2 and 32.1-330.3 of the Code of Virginia and 42 CFR Part 460.

H. All PACE providers must meet the general requirements and conditions for participation pursuant to the required contracts by DMAS and CMS. All providers must sign the appropriate participation agreement. All providers must adhere to the conditions of participation outlined in the participation agreement and application to provide PACE services, DMAS regulations, policies and procedures, and CMS requirements pursuant to 42 CFR Part 460.

I. Requests for participation as a PACE provider will be screened by DMAS to determine whether the provider applicant meets these basic requirements for participation and demonstrates the abilities to perform, at a minimum, the following activities:

1. Immediately notify DMAS, in writing, of any change in the information that the provider previously submitted to DMAS.
2. Assure freedom of choice to individuals in seeking services from any institution, pharmacy, practitioner, or other provider qualified to perform the services required and participating in the Medicaid Program at the time the services are performed.
3. Assure the individual's freedom to refuse medical care, treatment, and services.
4. Accept referrals for services only when qualified staff is available to initiate and perform such services on an ongoing basis.
5. Provide services and supplies to individuals in full compliance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000 et seq.), which prohibits discrimination on the grounds of race, color, religion, sexual orientation, or national origin; the Virginians with

Disabilities Act (§ 51.5-1 et seq. of the Code of Virginia); § 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794), which prohibits discrimination on the basis of a disability; and the Americans with Disabilities Act of 1990, as amended (42 USC § 12101 et seq.), which provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

6. Provide services and supplies to individuals of the same quality and in the same mode of delivery as is provided to the general public.

7. Use only DMAS-designated forms for service documentation. The provider must not alter the DMAS forms in any manner unless approval from DMAS is obtained prior to using the altered forms.

8. Not perform any type of direct marketing activities to Medicaid individuals.

9. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided.

a. In general, such records shall be retained for at least 10 years from the last date of services or as provided by applicable federal and state laws, whichever period is longer. However, if an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least six years after such minor has reached the age of 18 years. However, records for Medicare Part D shall be maintained for 10 years in accordance with 42 CFR 423.505(d).

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of the storage location and procedures for obtaining records for review. The location, agent, or trustee shall be within the Commonwealth.

10. Furnish information on request and in the form requested to DMAS, the Attorney General of Virginia or his authorized representatives, federal personnel, and the state Medicaid Fraud Control Unit. The Commonwealth's right of access to provider agencies and records shall survive any termination of the provider agreement.

11. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to individuals of Medicaid.

12. Pursuant to 42 CFR 431.300 et seq., 12VAC30-20-90, and any other applicable federal or state law, all providers shall hold confidential and use for authorized DMAS

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purposes only all medical assistance information regarding individuals served. A provider shall disclose information in the provider's possession only when the information is used in conjunction with a claim for health benefits, or the data are necessary for the functioning of DMAS in conjunction with the cited laws.

13. CMS and DMAS shall be notified in writing of any change in the organizational structure of a PACE provider organization at least 14 calendar days before the change takes effect. When planning a change of ownership, CMS and DMAS shall be notified in writing at least 60 calendar days before the anticipated effective date of the change.

14. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider participation agreements and in the applicable DMAS provider manual. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies. A provider's noncompliance with DMAS policies and procedures may result in a retraction of Medicaid payment or termination of the provider agreement, or both.

15. Minimum qualifications of staff.

a. All employees must have a satisfactory work record as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of vulnerable adults and children. Prior to the beginning of employment, a criminal record check shall be conducted for the provider and each employee and made available for review by DMAS staff. Providers are responsible for complying with the Code of Virginia and state regulations regarding criminal record checks and barrier crimes as they pertain to the licensure and program requirements of their employees' particular practice areas.

b. Staff must meet any certifications, licensure, registration, etc., as required by applicable federal and state law. Staff qualifications must be documented and maintained for review by DMAS or its authorized contractors.

16. At the time of their admission to services, all providers participating in the Medicare and Medicaid programs must provide adult individuals with written information regarding each individual's right to make medical care decisions, including the right to accept or refuse medical treatment and the right to formulate advance directives.

J. Provider's conviction of a felony. The Medicaid provider agreement shall terminate upon conviction of the provider of a felony pursuant to § 32.1-325 of the Code of Virginia. A provider convicted of a felony in Virginia or in any other of the 50 states, the District of Columbia, or the U.S. territories must, within 30 days, notify the Virginia Medicaid Program of this conviction and relinquish the provider agreement. In addition,

termination of a provider participation agreement will occur as may be required for federal financial participation.

K. Ongoing quality management review. DMAS shall be responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and periodically recertify each provider for participation agreement renewal with DMAS to provide PACE services.

L. Reporting suspected abuse or neglect. Pursuant to §§ 63.2-1508 through 63.2-1513 and 63.2-1606 of the Code of Virginia, if a participating provider entity suspects that a child or vulnerable adult is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation shall report this immediately to DSS and to DMAS. In addition, as mandated reporters for vulnerable adults, participating providers must inform their staff that they are mandated reporters and provide education regarding how to report suspected adult abuse, neglect, or exploitation pursuant to § 63.2-1606 F of the Code of Virginia.

M. Documentation requirements. The provider must maintain all records of each individual receiving services. All documentation in the individual's record must be completely signed and dated with name of the person providing the service, title, and complete date with month, day, and year. This documentation shall contain, up to and including the last date of service, all of the following:

1. The ~~most recently updated~~ Virginia Uniform Assessment Instrument (UAI) and all required forms in the LTSS screening packet pursuant to 12VAC30-60-306, all other assessments and reassessments, plans of care, supporting documentation, and documentation of any inpatient hospital admissions;
2. All correspondence and related communication with the individual and, as appropriate, consultants, providers, DMAS, DSS, or other related parties; and
3. Documentation of the date services were rendered and the amount and type of services rendered.

12VAC30-50-340. Criteria for PACE enrollment.

A. Eligibility shall be determined in the manner provided for in the State Plan and these regulations. To the extent these regulations differ from other provisions of the State Plan for purposes of PACE eligibility and enrollment, these regulations shall control.

B. Individuals meeting the following nonfinancial criteria shall be eligible to enroll in PACE plans approved by DMAS:

1. Individuals who are age 55 or older;
2. Individuals who require nursing facility level of care and are at imminent risk of nursing facility placement as determined by a ~~nursing home preadmission~~ LTSS screening

team through a ~~nursing home preadmission~~ long-term services and supports screening performed using the UAI and all required forms in the LTSS screening packet pursuant to 12VAC30-60-306;

3. Individuals for whom PACE plan services are medically appropriate and necessary because without the services the individual is at imminent risk of nursing facility placement;
4. Individuals who reside in a PACE plan catchment area;
5. Individuals who meet other criteria specified in a PACE plan contract;
6. Individuals who participate in the Medicaid or Medicare programs as specified in § 32.1-330.3 E of the Code of Virginia; and
7. Individuals who voluntarily enroll in a PACE plan and agree to the terms and conditions of enrollment.

C. To the extent permitted by federal law and regulation, individuals meeting the following financial criteria shall be eligible to enroll in PACE plans approved by DMAS:

1. Individuals whose income is determined by DMAS under the provision of the State Plan to be equal to or less than 300% of the current Supplemental Security Income payment standard for one person; and
2. Individuals whose resources are determined by DMAS under the provisions of the State Plan to be equal to or less than the current resource allowance established in the State Plan.

D. For purposes of a financial eligibility determination, applicants shall be considered as if they are institutionalized for the purpose of applying institutional deeming rules.

E. DMAS shall not pay for services provided to an applicant by a PACE contractor if such services are provided prior to the PACE plan authorization date set by the ~~nursing home preadmission~~ LTSS screening team.

VA.R. Doc. No. R21-6560; Filed June 2, 2021, 2:50 p.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

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

Title of Regulation: 14VAC5-45. 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.

Effective Date: September 1, 2021.

Agency Contact: Raquel C. Pino, Insurance Policy Advisor, Bureau of Insurance, State Corporation Commission, Tyler Building, 1300 East Main Street, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9873, or email raquel.pino@scc.virginia.gov.

Summary:

The amendments incorporate provisions contained in the Suitability in Annuity Transactions Model Regulation of the National Association of Insurance Commissioners 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. Changes to the proposed regulation extend the deadline for compliance with continuing education requirements.

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, JUNE 11, 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 ADOPTING AMENDMENTS TO RULES

By Order to Take Notice ("Order") entered January 19, 2021, insurers and interested persons were ordered to take notice that subsequent to March 19, 2021, the State Corporation Commission ("Commission") would consider the entry of an order adopting amendments to rules set forth in Chapter 45 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Suitability in Annuity Transactions" ("Rules"), which amends the Rules at 14 VAC 5-45-10 through 14 VAC 5-45-47 and adds new forms, unless on or before March 19, 2021, any person objecting to the adoption of the amendments to the Rules filed a request for a hearing with the Clerk of the Commission ("Clerk").

The Order also required insurers and interested persons to file their comments in support of or in opposition to the proposed amendments to the Rules with the Clerk on or before March 19, 2021.

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No request for a hearing was filed with the Clerk. Comments were timely filed with the Clerk from the following: Pamela Heinrich with the National Association for Fixed Annuities, Michelle Carroll Foster with the American Council of Life Insurers, Robert Bradshaw with the Independent Insurance Agents of Virginia, Jason Berkowitz with the Insured Retirement Institute, Robert Stafford, Julie Harrison with the National Association of Insurance & Financial Advisors, Daniel Barnard, Karl Klingmann II, Timothy Roscher, William Frazer, Eric Coon, Racent Dowdie, Michael Williams, John Doyle with the Doyle Insurance Agency LLC, Gwendolyn Apperton with the World Financial Group, Kristen Rodriguez with the World Financial Group, Bonita Haubert with Haubert and Associates, and Shaheena Kabir.

The amendments to the Rules 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 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.

Following review of the submitted comments, the Bureau filed a Response to Comments ("Response"). The Response recommends to the Commission a minor amendment to 14 VAC 5-45-45 to adjust the effective date to accommodate agent training. Regarding the remaining comments, the Response does not recommend any further revisions to the proposed amendments.

NOW THE COMMISSION, having considered the proposed amendments, the comments filed and the Bureau's Response, is of the opinion that the attached amendments to the Rules should be adopted as amended, effective September 1, 2021.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to the Rules Governing Suitability in Annuity Transactions at Chapter 45 of Title 14 of the Virginia Administrative Code that amend the Rules at 14 VAC 5-45-10 through 14 VAC 5-45-47 and add new forms, which are attached hereto and made a part hereof, are hereby ADOPTED effective September 1, 2021.

(2) The Bureau shall provide notice of the adoption of the amendments to the Rules to all insurers licensed to sell annuities or variable annuities in Virginia and to all interested persons.

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

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

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

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

A COPY hereof shall be sent electronically by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 North 9th Street, 8th Floor, Richmond, Virginia 23219, MBrowder@oag.state.va.us; 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;~~

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- 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.

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~~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 ~~4 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 ~~4 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

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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.

~~G. 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 240.1511) 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.

F. E. 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 [and annuities] 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 [and annuities] line of authority prior to [~~May 1, 2021~~ September 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~~ by March 1, 2022]. Individuals who obtain a life insurance [and annuities] line of authority on or after ~~January 1, 2018~~, [~~May 1, 2021~~ September 1, 2021], may not engage in the sale of [~~annuities~~ annuity products] 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~~ September 1, 2021], shall, [~~within six months after May 1, 2021~~ by March 1, 2022], complete either:~~

a. ~~A new [one-time] 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.

9. ~~10.~~ 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.~~

10. ~~11.~~ 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.

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

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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 \(eff. 9/2021\)](#)

[Consumer Refusal to Provide Information, CN02 \(eff. 9/2021\)](#)

[Consumer Decision to Purchase an Annuity Not Based on a Recommendation, CN03 \(eff. 9/1/2021\)](#)

VA.R. Doc. No. R21-6588; Filed June 11, 2021, 3:39 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Notice of Extension of Emergency Regulation

Title of Regulation: 18VAC110-60. Regulations Governing Pharmaceutical Processors (amending 18VAC110-60-10, 18VAC110-60-20, 18VAC110-60-40 through 18VAC110-60-90, 18VAC110-60-130, 18VAC110-60-160, 18VAC110-60-170, 18VAC110-60-190 through 18VAC110-60-230, 18VAC110-60-300, 18VAC110-60-310, 18VAC110-60-320; adding 18VAC110-60-251).

Statutory Authority: §§ 54.1-2400, 54.1-3442.6, and 54.1-3447 of the Code of Virginia.

The Governor has approved the request of the Board of Pharmacy to extend the expiration date of the emergency regulation for 18VAC110-60 for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation is continued in effect through December 28, 2021. This extension is required because the emergency regulation authorizes patients to use a registered agent to obtain doses of medical cannabis. Chapter 690 of the 2019 Acts of Assembly requires the board to promulgate this regulation. The proposed regulation was published in [37:14 VA.R. 2087-2100 March 1, 2021](#).

Effective Date Extended Through: December 28, 2021.

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

VA.R. Doc. No. R20-6129; Filed June 17, 2021, 5:05 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: 20VAC5-355. Rules Governing Operator's Responsibilities to Redistribute Topsoil (adding 20VAC5-355-10, 20VAC5-355-20, 20VAC5-355-30).

Statutory Authority: §§ 12.1-13 and 56-257.5 of the Code of Virginia.

Effective Date: July 1, 2021.

Agency Contact: Lauren Govoni, Deputy Director, Division of Utility and Railroad Safety, State Corporation Commission, Tyler Building, 1300 East Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9590, FAX (804) 371-9734, or email lauren.govoni@scc.virginia.gov.

Summary:

Pursuant to Chapter 666 of the 2020 Acts of Assembly, the new regulation requires a utility company installing an underground pipeline or conduit with an inside diameter greater than 12 inches or an underground electric transmission or distribution line of greater than 115

kilovolts in capacity to mitigate the effects of the project if the project disturbs 10,000 square feet or more of agricultural land by removing topsoil from the planned construction site and either redistributing it to graded areas elsewhere on the land of the affected property owner or storing it nearby protected from erosion and compaction for later redistribution on the disturbed area. Changes from the proposed regulation include (i) addressing areas outside of an operator's easement, landowner and land management agency rights, and the location of stockpiled topsoil in provisions; (ii) clarification of operator duties relative to stockpiled topsoil; (iii) a public interest standard; and (iv) a requirement that operators take reasonable steps to protect stockpiled topsoil.

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, JUNE 11, 2021

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION
CASE NO. URS-2020-00378

Ex Parte: In the matter of adopting new rules of the State Corporation Commission governing operator's responsibilities to redistribute topsoil under § 56-257.5 of the Code of Virginia

ORDER ADOPTING REGULATIONS

During its 2020 Session, the Virginia General Assembly enacted Chapter 666 (HB 723) of the 2020 Virginia Acts of Assembly ("Act"), which became effective on July 1, 2020. The Act, inter alia, amended the Code of Virginia by adding a section, § 56-257.5 to require the State Corporation Commission ("Commission") to establish rules by which operators are required to remove topsoil from certain planned construction sites and either redistribute it or store it for later redistribution on the disturbed area ("Proposed Rules").

On November 17, 2020, the Commission entered an Order for Notice and Comment in this proceeding, which among other things, permitted the filing of comments by interested persons and the Commission Staff ("Staff"). The Proposed Rules were attached to the Commission's Order for Notice and Comment. Washington Gas Light Company, Virginia-American Water Company, Virginia Natural Gas ("VNG"), and Virginia Electric and Power Company filed comments on the Proposed Rules.

Staff filed comments in the case on January 19, 2021 and filed Supplemental Comments on February 25, 2021.

NOW THE COMMISSION, upon consideration of the foregoing, finds that we should adopt the Rules appended hereto as Attachment A effective July 1, 2021. As an initial

matter, the Commission expresses appreciation to those who have submitted written comments for our consideration. We have carefully reviewed and considered all comments filed in this matter.

The Rules we adopt herein contain a number of modifications to those that were first proposed by Staff and published in the Virginia Register of Regulations on December 7, 2020, as well as those proposed in Comments and Supplemental Comments. These modifications follow our consideration of the entire record in this proceeding. Although we will not comment on each Rule in detail here, all modifications are made for clarity and to further implement and support the statute.

Accordingly, IT IS ORDERED THAT:

(1) The rules governing operator's responsibilities to redistribute topsoil under § 56-257.5 of the Code of Virginia, as shown in Attachment A to this Order, are hereby adopted and are effective as of July 1, 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 appropriate publication in the Virginia Register of Regulations.

(3) An electronic copy of this Order with Attachment A shall be made available on the Division of Utility and Railroad Safety's section of the Commission's website: scc.virginia.gov/pages/Rulemaking.

(4) 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.

Chapter 355
Rules Governing Operator's Responsibility to Redistribute
Topsoil

20VAC5-355-10. Applicability.

This chapter sets forth requirements for operators installing underground pipeline or conduit, with an inside diameter greater than 12 inches or an underground electric transmission or distribution line of greater than 115 kilovolts in capacity, to mitigate the effects of the project if the project disturbs 10,000 square feet or more of agricultural land. [~~Such operators shall remove topsoil from the planned construction site and either redistribute the topsoil to graded areas elsewhere on the land of the affected property owner or store it nearby protected from erosion and compaction for later redistribution on the disturbed area.~~]

20VAC5-355-20. Definitions.

The following terms shall have the following meanings, unless the context clearly indicates otherwise:

Regulations

"Operator" means any person who owns, furnishes, or transports materials or services by means of a utility line.

"Topsoil" means at least 12 inches of the surface soil layer or a six-inch layer of soil that includes the surface soil and the unconsolidated subsoil immediately below it.

"Underground utility line" means an underground pipeline or conduit of an inside diameter greater than 12 inches or an underground electrical transmission or distribution line of a capacity greater than 115 kilovolts.

20VAC5-355-30. Operator's responsibilities to redistribute topsoil; waiver.

A. If any operator, in the course of installing an underground utility line, disturbs an area of land that measures 10,000 square feet or more and constitutes one or more agricultural operations, as defined in § 3.2-300 of the Code of Virginia, the operator shall [~~if desired~~ provide written notice to the landowner or land management agency of their respective rights under § 56-257.5 of the Code of Virginia and this chapter, document any responses received, and if requested] by the landowner or land management agency, take the following actions:

1. Redistribute the topsoil removed from the disturbed area to graded areas elsewhere on the land of the affected property [~~owner~~ inside or outside of the operator's easement, however the operator shall not also then be required to replace or replenish topsoil on the disturbed area]; or

2. If insufficient graded areas are available as sites for such redistribution [inside or outside of the operator's easement], stockpile the [removed] topsoil [~~removed from the disturbed area~~ within or outside of the operator's easement] until it can be redistributed on the area initially disturbed.

B. Operators redistributing topsoil pursuant to this section shall place the topsoil on scarified land [~~and shall protect the topsoil from erosion and compaction~~]. [Operators also shall protect stockpiled topsoil from erosion and compaction by taking reasonable steps such as strategic placement, sediment management, temporary seeding, constructing silt fencing and other barriers, or employing other measures not inconsistent with Virginia State Water Control Board Erosion and Sediment Control Regulations (9VAC25-840) and Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870).]

C. If the property owner does not agree to the redistribution of topsoil pursuant to this section, the topsoil shall be disposed of in accordance with other applicable law.

D. A request [~~or~~ for] waiver of any of the provisions in this chapter shall be considered by the State Corporation Commission on a case-by-case basis and may be granted upon [a finding that such waiver is in the public interest and on] such terms and conditions as the State Corporation Commission may impose.

VA.R. Doc. No. R21-6548; Filed June 11, 2021, 2:22 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.

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Title of Document: [Adult Protective Services Division Manual, Chapters 1-4, 8.](#)

Public Comment Deadline: August 4, 2021.

Effective Date: August 5, 2021.

Agency Contact: Elizabeth Patacca, Administrative Staff Assistant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Henrico, VA 23229, telephone (804) 726-6625, or email elizabeth.patacca@dars.virginia.gov.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Title of Document: [2021 Person-Centered Individual Support Plan Guidance.](#)

Public Comment Deadline: August 4, 2021.

Effective Date: August 6, 2021.

Agency Contact: Eric Williams, Director, Provider Development, DD Services Division, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 371-7428, or email eric.williams@dbhds.virginia.gov.

BOARD OF DENTISTRY

Titles of Documents: [Policy on Auditing Continuing Education and Sanctioning for Failure to Meet the Requirements.](#)

[Dental Clinical Competency Examination Requirements for Licensure.](#)

[Dental Hygiene Clinical Competency Examination Requirements for Licensure.](#)

[Dental Appliance Subcontractor Disclosure and Subwork Order Form.](#)

[Dental Appliance Work Order Forms.](#)

[Policy on Sanctioning for Failure to Comply with Advertising Guidelines.](#)

[Policy on Sanctioning for Failure to Comply with Insurance and Billing Practices.](#)

Public Comment Deadline: August 4, 2021.

Effective Date: August 5, 2021.

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

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Document: [Virginia Telecommunications Initiative \(VATI\) Program Guidelines and Criteria.](#)

Public Comment Deadline: August 4, 2021.

Effective Date: August 5, 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, or email kyle.flanders@dhcd.virginia.gov.

DEPARTMENT OF MOTOR VEHICLES

Title of Document: [Personalized License Plate Guidelines and Restrictions.](#)

Public Comment Deadline: August 4, 2021.

Effective Date: August 5, 2021.

Agency Contact: Melissa K. Velazquez, Legislative Manager, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804)367-1844, or email melissa.velazquez@dmv.virginia.gov.

Guidance Documents

BOARD OF PHARMACY

Titles of Documents: [Information for Applicants for a License as a Pharmacist.](#)

[Instructions for Graduates of Foreign Schools of Pharmacy.](#)

Public Comment Deadline: August 4, 2021.

Effective Date: August 5, 2021.

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

STATE WATER CONTROL BOARD

Title of Document: [Implementation Guidance for Reissuance of the VPDES General Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day.](#)

Public Comment Deadline: August 4, 2021.

Effective Date: August 5, 2021.

Agency Contact: Peter Sherman, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4044, or email peter.sherman@deq.virginia.gov.

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Title of Document: [Review Procedures for Water Quality Improvement Fund Grant Applications and Agreement Negotiations for Wastewater Conveyance Infrastructure Projects.](#)

Public Comment Deadline: August 4, 2021.

Effective Date: August 15, 2021.

Agency Contact: Karen Doran, Clean Water Financing and Assistance Program Manager, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4133, or email karen.doran@deq.virginia.gov.

GENERAL NOTICES

DEPARTMENT OF MINES, MINERALS AND ENERGY

Residential Property Assessed Clean Energy Work Group

Pursuant to Item 125 E of Chapter 552 of the 2021 Acts of the Assembly, Special Session I, the Department of Mines, Minerals and Energy (DMME) is seeking public comment for a feasibility study on a Residential Property Assessed Clean Energy (R-PACE) program in Virginia. R-PACE provides a mechanism for homeowners to implement clean energy improvements to their home while financing the cost through their property tax bill. The first workgroup meeting is being held virtually on June 9, 2021, at 2 p.m. The meeting information has been posted to the Virginia Regulatory Town Hall, and all future meetings will be posted as well. DMME welcomes public comment at the meetings and/or through this public comment forum.

Contact Information: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, or email mike.skiffington@dmme.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Northern Virginia Auto Recycling LLC

An enforcement action has been proposed for Northern Virginia Auto Recycling LLC for violations of the State Water Control Law and regulations at the Northern Virginia Auto Recycling LLC facility located in Lorton, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Northern Virginia Auto Recycling LLC facility. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov/permits-regulations/public-notices. The staff contact person listed will accept comments by email or by postal mail from July 6, 2021, through August 5, 2021.

Contact Information: Benjamin Holland, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, 22193, or email benjamin.holland@deq.virginia.gov.

Proposed Enforcement Action for Windswept Development LLC

The State Water Control Board has proposed an enforcement action for Windswept Development LLC for the Aston Subdivision, located off Aston Trail, north of Virginia State Route 711 in Powhatan County, Virginia, to address noncompliance with State Water Control Law and regulations. A description of the proposed action is available at the

Department of Environmental Quality office listed or online at www.deq.virginia.gov/permits-regulations/public-notices.

The staff contact person listed will accept comments by email or postal mail from July 5, 2021, to August 5, 2021.

Contact Information: Frank Lupini, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, or email frank.lupini@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.

ERRATA

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Title of Regulation: **2VAC5-585. Retail Food Establishment Regulations.**

Publication: 37:19 VA.R. 2797-2831 May 10, 2021.

Correction to Fast-track Regulation:

Page 2821, 2VAC5-585-1190 A, line 3, after "~~Celsius and~~" unstrike "shall be"

VA.R. Doc. No. R21-5895; Filed June 15, 2021, 9:43 a.m.

STATE CORPORATION COMMISSION

Title of Regulation: **14VAC5-430. Insurance Data Security Risk Assessment and Reporting.**

Publication: 37:21 VA.R. 3358-3363 June 7, 2021.

Correction to Final Regulation:

Page 3360, 14VAC5-430-30, line 1, after "following" replace "word" with "words"

VA.R. Doc. No. R21-6459; Filed June 8, 2021, 2:55 p.m.

STATE BOARD OF HEALTH

Title of Regulation: **12VAC5-421. Food Regulations.**

Publication: 37:18 VA.R. 2687-2738 April 26, 2021.

Correction to Fast-Track Regulation:

Page 2703, 12VAC5-421-55 A,

line 1, after "A." unstrike "At least one employee with supervisory and management responsibility and the authority to direct and control food preparation and service"

line 3, remove "The person in charge"

line 4, after "manager" unstrike ", demonstrating" and remove "who has shown"

line 5, after "required" unstrike "knowledge and"

Page 2703, 12VAC5-421-55 C,

line 1, after "C." insert "The person in charge shall be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program."

after "purposes of" strike "enforcement, this section will" and insert "enforcing this subsection, this requirement"

line 2, after "~~2018~~" remove "June 10, 2023" and insert "June 24, 2023"

VA.R. Doc. No. R21-5671; Filed June 14, 2021, 3:43 p.m.

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Title of Regulation: **12VAC5-590. Waterworks Regulations.**

Publication: 37:22 VA.R. 3448 June 21, 2021.

Correction to Errata:

Page 3448, column 1, Table 570.13, row 4, in each of the three instances of "[mJ/cm2 mJ/cm²]" replace "[mJ/cm2 mJ/cm²]" with "[mJ/cm² mJ/cm²]"

VA.R. Doc. No. R18-5204; Filed June 21, 2021, 9:33 a.m.