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REGISTER OF REGULATIONS

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Virginia Code Commission

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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>).

August 2021 through August 2022

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
38:26	July 27, 2022	August 15, 2022

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

Agency Decision

Title of Regulation: **18VAC10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations.**

Statutory Authority: §§ 54.1-201 and 54.1-404 of the Code of Virginia.

Name of Petitioner: Atticus Sawatzki.

Nature of Petitioner's Request: To amend 18VAC10-20-260 A 2 to allow applications for original professional engineer licensure or engineer-in-training designation to be received in the board's office no later than 75 days prior to the scheduled examination date rather than 130 days.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on June 22, 2021, the board considered the petitioner's request and voted to take no action. The board noted that its current application review process and timeframes provide applicants the opportunity to submit supplemental documentation after the 130-day deadline, up until National Council of Examiners for Engineering and Surveying exam registration closes. An applicant in the situation described by the petitioner, for instance, would be allowed to register and sit for the Principles and Practice of Engineering exam contingent upon receipt of degree verification; the unavailability of official transcripts before the application deadline is not an issue.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects, 9960 Mayland Drive, Suite 400, Richmond, VA, 23233, telephone (804) 367-8514, or email apelscidla@dpor.virginia.gov.

VA.R. Doc. No. PFR21-340; Filed June 23, 2021, 6:30 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: Adeyola Hendrickson.

Nature of Petitioner's Request: To delete the requirement of passage of a board-approved national exam for applicants with a licensed clinical social worker license in another state applying for licensure by endorsement.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition was filed with the Registrar of Regulations and will be published on July 19, 2021, with comment accepted through August 29, 2021. The petition is also posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov.

The petition and any comment will be considered by the board 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 29, 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. PFR21-40; Filed June 24, 2021, 3:07 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

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: **9VAC25-151, Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity**, and **9VAC25-190, Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining**. 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 19, 2021, and ends August 9, 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 (803) 698-4238.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Board for Asbestos, Lead, and Home Inspectors intends to consider amending **18VAC15-40, Home Inspector Licensing Regulations**. The purpose of the proposed action is to undertake a general regulatory review of the Home Inspector Licensing Regulations. The goals of the planned regulatory action are to review the existing regulation and propose any amendments the board determines to be necessary and appropriate. The board will likely need to address issues surrounding (i) possible barriers to licensure encountered by individuals who are properly licensed as home inspectors in other states, (ii) how applicants can adequately demonstrate requisite knowledge and experience in order to qualify for licensure, and (iii) what should be the minimum standards for the practice of home inspections. These issues are not inclusive of all potential issues that may be addressed during development of the regulation. A thorough review of the regulation is necessary to address these areas and ensure the regulation complements current Virginia law, provides minimal burdens on regulants while still protecting the public, is clearly written and understandable, and reflects current procedures and policies of the Department of Professional and Occupational Regulation.

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

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

Public Comment Deadline: August 18, 2021.

Agency Contact: Trisha L. Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email alhi@dpor.virginia.gov.

VA.R. Doc. No. R21-6496; Filed June 22, 2021, 5:44 p.m.

BOARD FOR BARBERS AND COSMETOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Barbers and Cosmetology intends to consider amending **18VAC41-20, Barbering and Cosmetology Regulations**, and **18VAC41-70, Esthetics Regulations**. The purpose of the proposed action is to establish a uniform instructor program among licensed cosmetology, barber, nail, and wax schools. The Board for Barbers and Cosmetology proposes a standard instructor curriculum that

unifies the barber, cosmetologist, nail technician, wax technician, and esthetics instructor programs. Establishing a standard instructor program for all license types will eliminate additional costs for instructors and schools. The board seeks to create a 400-hour instructor curriculum that is not profession-specific. The proposed amendment aligns the criteria for barber, cosmetology, nail, and wax instructor curricula with the esthetic instructor requirements. The board indicated that the esthetic instructor program's curriculum and hour requirements are sufficient for all professions and creates educational consistency between the programs.

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

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

Public Comment Deadline: August 18, 2021.

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

VA.R. Doc. No. R21-6774; Filed June 22, 2021, 5:47 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Proposed Regulation

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

Title of Regulation: 1VAC20-100. Ranked Choice Voting (adding 1VAC20-100-10 through 1VAC20-100-80).

Statutory Authority: § 24.2-673.1 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: August 9, 2021.

Agency Contact: Ashley Coles, Agency Regulatory Coordinator, Department of Elections, Washington Building, 1100 Bank Street, First Floor, Richmond, VA 23219, telephone (804) 864-8933, or email ashley.coles@elections.virginia.gov.

Summary:

The proposed regulatory action establishes standards for the administration of ranked choice voting for certain local seats elections, including ballot standards for localities that adopt ranked choice voting or instant runoff voting for a specified election. Ranked choice voting is a method of voting that permits voters to rank their preference of candidates.

Chapter 100

Ranked Choice Voting

1VAC20-100-10. Definitions.

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

"Active ballot" means a ballot that counts toward an active candidate in the current round of counting.

"Continuing candidate" means a candidate who has not been eliminated during a round-by-round vote count. In a count that lasts multiple rounds, the number of active candidates will decrease with each round.

"Defective ranking" means a voter assigned more than one candidate the same ranking.

"Duplicate ranking" means a voter has assigned one candidate multiple rankings.

"Election threshold" means the percentage of votes a candidate must receive to guarantee to win a seat or remain within the election.

"Eliminated candidate" means a candidate who has been eliminated during the round-by-round vote count.

"Exhausted ballot" means a ballot that can no longer be counted due to the ballot having no continuing candidates in the round.

"Instant runoff voting" means no more than one seat in the office must be filled by the election.

"Ranked choice voting" means method of voting that permits voters to rank their preference for candidates. Ranked choice voting is also known as instant runoff voting.

"Ranking" means the number preference a voter determines for a candidate.

"Round" means a stage of the vote tabulation in which a candidate may be elected or eliminated.

"Single transferable vote" means more than one seat in the office must be filled by the election.

"Skipped ranking" means a voter has left at least one ranking order unassigned but ranks a candidate at a subsequent ranking order.

"Surplus vote" means the number of votes a candidate receives beyond the minimum needed in order to receive a seat in a single transferable vote race.

"Inclusive Gregory Method of Reallocation" means vote counts are transferred fractionally. When a candidate wins a seat, votes for that candidate are reweighted, multiplying their current weight by the quotient of their surplus vote divided by their total vote.

1VAC20-100-20. Administration.

The Department of Elections shall publish on the department website, <https://www.elections.virginia.gov>, instructions on the administration of ranked choice voting elections.

1VAC20-100-30. Ranked choice voting.

As prescribed by § 24.2-673.1 of the Code of Virginia, a county board of supervisors or city council may elect by majority to conduct an election for its members by ranked choice voting. The adoption for ranked choice voting shall only

be valid for the election specified in the ordinance signed by the governing body.

- 1. Adoption to conduct an election by ranked choice voting must be enacted no later than 90 days prior to the date of the specified election.
- 2. Any locality that adopts to conduct an election by ranked choice voting must electronically transfer the signed ordinance to the Department of Elections promptly.
- 3. No ranked choice voting may be conducted for a primary with fewer than three candidates.
- 4. Notwithstanding § 24.2-613 E of the Code of Virginia, all ballot forms for an election conducted by ranked choice voting shall comply with the standards prescribed by the State Board of Elections.

1VAC20-100-40. Ballot treatment.

As prescribed by § 24.2-673.1 of the Code of Virginia, ballots shall be tabulated in the following manner:

- 1. Defective rankings.
 - a. A ballot with a defective ranking shall be counted in the initial round if voter intent can be determined. The ballot shall not be counted in any round in which the ballot has a defective ranking.
 - b. A ballot with a duplicate ranking shall be counted unless the voter's choice was eliminated.
 - c. In the event of a ballot with a skipped ranking, the next valid ranking shall be counted.
- 2. Tie breaking. All candidates with the fewest number of votes at the end of a round shall be eliminated from the election.

1VAC20-100-50. Reallocation of votes.

Vote reallocation will be conducted with the Inclusive Gregory Method of Reallocation.

1VAC20-100-60. Paper ballots.

For the purposes of this section, "paper ballot" means a tangible ballot that is marked by a voter and must be manually counted.

In the event the general registrar receives a ballot that cannot be read by the ballot scanner machine, the general registrar or election official shall transpose the voter's intent to a machine readable ballot.

1VAC20-100-70. Election results.

Results for all rounds must be publicly posted on the Department of Elections website at <https://www.elections.virginia.gov>.

1VAC20-100-80. Outreach.

A. For the purposes of this section, "educational information" means nonpartisan information that in plain language informs the public on the adoption of ranked choice voting for an election, a description of ranked choice voting, an unmarked official sample ranked choice voting ballot, and instructions on how to read and mark the ballot.

B. The Department of Elections shall be required to post educational information about ranked choice voting on its website at <https://www.elections.virginia.gov> for the public.

C. Any county board of supervisors or city council that adopts to conduct an election by ranked choice voting shall develop and distribute educational information about ranked choice voting no later than 60 days before the specified election.

1. Educational information must be disseminated to the public through circulation in the local newspaper, posted on the locality's website, or mailed to active and inactive voters eligible to vote in the specified election.

2. Educational information must be posted in the office of the general registrar and made available for distribution if requested by the public.

3. Educational information about ranked choice voting shall be posted in each satellite office and polling place operating for the election.

VA.R. Doc. No. R21-6851; Filed June 29, 2021, 11:50 a.m.



TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Fast-Track Regulation

Title of Regulation: 2VAC5-325. Regulations Governing Pine Shoot Beetle (repealing 2VAC5-325-10 through 2VAC5-325-120).

Statutory Authority: § 3.2-703 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: August 18, 2021.

Effective Date: September 2, 2021.

Agency Contact: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (800) 786-3515, FAX (804) 371-7793, TDD (800) 828-1120, or email david.gianino@vdacs.virginia.gov.

Basis: Section 3.2-109 of the Code of Virginia establishes the Board of Agriculture and Consumer Services as a policy board

Regulations

with the authority to adopt regulations in accordance with the provisions of Title 3.2 of the Code of Virginia. Section 3.2-703 of the Code of Virginia provides the legal basis for the promulgation and repeal of the regulation.

Purpose: In 1992, the U.S. Department of Agriculture (USDA) established federal regulations for the pine shoot beetle (*Tomicus piniperda*), following the initial detection of the beetle in Ohio. The initiation of this regulation at the federal level was in response to the potential for high economic losses caused by the pine shoot beetle in various species of pine trees.

In 2003, under authority granted by § 3.2-703 of the Tree and Crop Pests Law (§ 3.2-700 et seq. of the Code of Virginia), the Board of Agriculture and Consumer Services established Regulations Governing Pine Shoot Beetle (2VAC5-325) after the pine shoot beetle was found in a Christmas tree planting in Clarke County. The regulation established a quarantine, which was subsequently expanded to Loudoun County in 2010 after the pine shoot beetle was detected in that county. USDA also expanded the federal pine shoot beetle regulation to include Loudoun County at the same time, thereby ensuring that the federal and state pine shoot beetle regulations were aligned. To reduce the spread of pine shoot beetle, the regulation restricts the movement from regulated localities of those articles that are at risk for moving the pine shoot beetle.

In 2015, the USDA met with state departments of agriculture to reassess damages caused by the pine shoot beetle, the rate of spread of this insect, and the impact that the pine shoot beetle had on timber and Christmas tree production. An analysis was conducted, and it was determined that the pine shoot beetle had not spread throughout the country and the damages from this insect pest did not significantly impact the pine, timber, or Christmas tree industries. In 2019, USDA proposed to deregulate the pine shoot beetle, and the federal regulation was repealed effective November 2, 2020. The repeal of the regulations will align Virginia's response to the pine shoot beetle with the federal response to this pest and will support the economic welfare of Christmas tree and pine tree growers operating in the currently regulated localities.

Rationale for Using Fast-Track Rulemaking Process: The repeal of this regulation is anticipated to be noncontroversial because the pine shoot beetle has not caused significant damage to pine trees in Virginia, surveys indicate that the pine shoot beetle is no longer present in Virginia, and, as a result, there is no risk of spread to uninfested areas. In addition, there will be no restrictions on the movement of pine trees, pine logs, and other regulated articles, thereby benefiting the pine tree growers in regulated localities, which must currently comply with requirements of the regulation.

Substance: This regulatory action will repeal the Regulations Governing the Pine Shoot Beetle. Repealing the regulation will remove the restrictions on Christmas tree and pine tree growers, thereby allowing the unrestricted movement of pine logs, Christmas trees, and other regulated articles out of those counties currently under quarantine.

Issues: The primary advantage of this regulatory change is elimination of regulatory requirements placed on those businesses that must currently comply with the regulation, including those that move pine trees and logs and other regulated articles out of the quarantined areas. The primary advantage to the Commonwealth is removal of administrative processes related to ensuring compliance with the regulation. There are no known disadvantages to this regulatory change for businesses, citizens, or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services (Board) proposes to repeal regulations that restrict the movement of materials that host the pine shoot beetle.

Background. This action follows the repeal of similar federal regulations pertaining to the pine shoot beetle,¹ and the Board's findings that the pine shoot beetle has not caused significant economic impact to affected industries, that the pest has not spread throughout the Commonwealth, and that it can be successfully managed through the implementation of best management practices.

The pine shoot beetle (*Tomicus piniperda*) is a pest that affects pines in Africa, Asia, and Europe by colonizing fresh timber and dying pine trees in early spring. Larvae feed within the galleries under the bark and emerge as adults from the shoots. They then move to the base of the tree to reproduce. This species of bark beetle is not considered fatal for the tree, but it damages the growth form, reducing the economic value of the timber by reducing growth rates and stem straightness.

The first known occurrence of the pine shoot beetle in North America was in 1992 at a Christmas tree farm in Ohio, from where it has spread to 11 states in the United States and to Ontario and Quebec in Canada. Based on an initial finding of potentially high economic losses, the United States Department of Agriculture (USDA) implemented in 1992 a program regulating the movement of pine logs and bark, nursery stock, and Christmas trees from infested to uninfested areas.

In 2003, the Board promulgated Regulations Governing Pine Shoot Beetle after the pine shoot beetle was found in a Christmas tree planting in Clarke County. The regulation established a quarantine, which was subsequently expanded to Loudoun County in 2010 after the pine shoot beetle was detected in that county as well. USDA also expanded the federal pine shoot beetle regulation to include Loudoun County at the same time, thereby ensuring that the federal and state pine shoot beetle regulations were aligned.

Consistent with the federal regulation's focus on prevention of spread, containment of infestation, treatment, and eradication, Virginia's regulation primarily restricts the movement of articles that are at risk for transporting the pine shoot beetle out of regulated localities. The federal regulations have been repealed effective November 2, 2020, primarily due to the

finding that the beetle has not caused significant economic damage as originally anticipated.

Similarly, the Board has determined that pine shoot beetle has not caused significant economic impact to affected industries, that the pest has not spread throughout the Commonwealth, and that the pine shoot beetle can be successfully managed without limiting the movement of goods. As a result, the Board proposes to repeal this regulation.

Estimated Benefits and Costs. Currently, two Christmas tree growers (one in Loudoun County and one in Clarke County) are subject to this regulation, although as many as six businesses have been regulated at one time since 2003. The regulation is enforced by requiring the businesses that are at risk of pine shoot beetle presence and spread to enter into a compliance agreement with the Virginia Department of Agriculture and Consumer Services (VDACS). Through the compliance agreement, the regulants are required to limit shipment of regulated articles out of the regulated area unless all applicable components of the compliance management program are met.

Those requirements include 1) sanitation (removal and destruction of brood material such as dead and dying pine trees, recently cut or killed trees, tree tops, branches and other pine slash, and stump), 2) visual monitoring (random scouting of infested shoots and tips), 3) deployment of trap and sentinel logs by January and then destruction of logs in April (to trap and eradicate adult beetles searching for suitable brood material), 4) chemical control (application of pesticides), 5) record keeping (pertinent records include the number of trees scouted, scouting dates, sanitation treatments conducted, trap log activities and insecticide usage).

According to VDACS, the requirements in the compliance agreements are no more than best management practices (to control the movement of the beetle, to detect and eradicate the beetle from their stocks) and do not impose significant costs on regulants. There are no regulatory fees for compliance agreements, permits or certificates, or surveys that VDACS conducts.

In summary, the compliance costs implicated by the regulation include travel or postage costs, time, and effort to sign a compliance agreement with VDACS, inspection of shipments bound for transport out of the locality, visual inspection of fields where the trees are grown, application of pesticides to treat infestations when discovered, and recordkeeping expenses. Similarly, the agency costs are comprised of staff time to draft and enter into compliance agreements and a small fraction of two pest inspectors' time and travel devoted to survey the beetle presence under this regulation.

According to VDACS, the regulants would likely continue their best management practices for the beetle even if they may no longer be required to do so under this regulation. Such behavior would be rational if regulants are interested in minimizing the risk of economic losses that may stem from the pine shoot beetle. Thus, while the repeal of this regulation is

expected to eliminate administrative costs associated with signing the agreement with VDACS and the record keeping expenses, it is not expected to create any other significant economic impact on entities that are regulated.

Although without the regulation there would be no barrier to prevent the exportation of infested host materials out of the locality, VDACS reports that last time the beetle was found in Virginia was in 2010; according to the agency, this indicates that the beetle is no longer present in the Commonwealth.

Businesses and Other Entities Affected. The repeal of this regulation would primarily affect businesses that move pine trees, pine logs, and other regulated articles out of the quarantined area. Currently, two Christmas tree growers (one each, in Loudoun and Clarke Counties) would be affected. The repeal of this regulation is not anticipated to have an adverse impact² on affected entities.

Small Businesses³ Affected. The two entities regulated under this regulation are believed to be small businesses, but the proposed repeal of this regulation is not expected to adversely or significantly affect them.

Localities⁴ Affected.⁵ This regulation specifically applies to Loudoun and Clarke Counties, the localities where the pine shoot beetle is present. However, the proposed action does not introduce costs for the two localities.

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

Effects on the Use and Value of Private Property. The proposed action would remove restrictions on the movement of materials that host the pine shoot beetle. However, the repeal of such restrictions is not anticipated to have a significant impact on the use and value of private property or on real estate development costs.

¹<https://www.federalregister.gov/documents/2020/10/01/2020-21800/deregulation-of-pine-shoot-beetle>

²Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

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

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

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

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

Summary:

The action repeals Virginia's Regulations Governing Pine Shoot Beetle (2VAC5-325) as the regulation is no longer

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needed because the pine shoot beetle is not a threat in Virginia.

VA.R. Doc. No. R21-6592; Filed June 23, 2021, 12:48 p.m.

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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.

Title of Regulation: **4VAC15-35. Bird: Incidental Take of Bird Species (adding 4VAC15-35-10 through 4VAC15-35-100).**

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

Public Comment Deadline: July 27, 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 new regulation addresses the incidental take of migratory birds and includes (i) setting types of, requirements for, and procedure for acquiring, including for denial and appeal of denial, a permit to take migratory birds; (ii) exempting certain activities, including silvicultural and agricultural activities, residential construction, and certain emergency actions from requiring a permit; and (iii) setting standards of permits and enforcement of this chapter.

Chapter 35

Bird: Incidental Take of Bird Species

4VAC15-35-10. Purpose.

The purpose of this chapter is to:

1. Regulate the incidental take of regulated bird species and habitats in the context of the board's oversight authorities described in § 29.1-501 A of the Code of Virginia and the department's conservation and management authorities described in § 29.1-521 A 2 and A 10 of the Code of Virginia by establishing a regulatory framework for the administration, implementation, and enforcement of an incidental take permitting program;

2. Provide ample protections to regulated bird species and habitats while authorizing take that may occur incidental to regulated activities through the issuance of a general permit or an individual incidental take permit that stipulates best management practices with the intended purpose of avoiding, minimizing, or compensating incidental take; and

3. Delineate the procedures and requirements to be followed in connection with permits issued by the department, while providing flexibility for innovative solutions that avoid, minimize, or compensate incidental take of regulated bird species and habitats when such authorization meets the criteria of this chapter.

4VAC15-35-20. Definitions.

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

"Active nest" means any nest structure of a regulated bird species that contains one or more viable eggs incubated by attendant adults or live dependent young.

"Applicant" means a person who is seeking or has obtained an individual incidental take permit or general permit through the department in accordance with procedures established in this chapter.

"Best management practice" refers to structural or nonstructural measures designed to avoid or minimize the incidental take of regulated bird species or habitats that may result from regulated activities during the construction and operational phases of the project.

"Biologically significant avian habitat" means an area within public or private conservation lands and waters, including national wildlife refuges; national parks or seashores; national forests; national recreation areas; state wildlife management areas; state parks; state natural areas and preserves; state recreation areas; lands owned or under easement by conservation organizations; lands and waters that have been designated as biologically important, such as Coastal Avian Protection Zones, Important Bird Areas, and Marine Sanctuaries; and other lands and waters that encompass unique features deemed biologically important to regulated bird species by the department.

"Board" means the Board of Wildlife Resources.

"Compensation" means achieving no net loss of regulated habitats through restoration, creation, enhancement, or, in certain circumstances, out-of-kind measures for the purposes of offsetting incidental take of regulated bird species or habitats that remain after all appropriate and practicable avoidance and minimization has been considered or achieved. Where permissible, appropriate compensation will be set forth in individual take permits or other board regulation or guidance. There will be no compensation required under general permits.

"Department" means the Department of Wildlife Resources.

"General avian habitat" means lands and waters that are not classified as "biologically significant avian habitat" but nonetheless require evaluation using methods developed by the department to determine their biological value to regulated bird species.

"Incidental take" means any take of a regulated bird species that is incidental to, but not the purpose of, a regulated activity.

"Person" means any individual, non-federal government entity, firm, corporation, association, partnership, club, or private body.

"Regulated activity" or "activity" means a new construction or development activity or the expansion of an activity beyond the original or existing footprint of the activity for which the board has adopted a sector-specific plan.

"Regulated bird species" means any migratory bird species, or any active nest, or egg thereof, regulated by the federal Migratory Bird Treaty Act (16 USC § 703 et seq.) or its attendant regulations, excluding any bird species listed as endangered or threatened pursuant to 4VAC15-20-130.

"Regulated habitat" means biologically significant avian habitat or general avian habitat that is in an area subject to a sector-specific plan, an avian conservation and mitigation plan, or an individual incidental take permit.

"Sector-specific plan" means a framework adopted by regulation of the board that defines what activities will require a permit from the department for incidental take of regulated bird species and outlines the criteria for obtaining such a permit, such as specific best management practices, schedules, or criteria for avoiding or minimizing incidental take and circumstances in which project bundling may be applicable.

"Take" means to harass, harm, pursue, hunt, shoot, wound, kill, capture, trap, collect, possess, destroy, disturb, or to attempt to engage in any such conduct or any activity that significantly or permanently impedes breeding, foraging, resting, or other normal avian behaviors conducted during the annual life cycle, obstructs the use of or destroys or degrades regulated habitats, or reduces reproductive success or survival rates of regulated bird species.

4VAC15-35-30. Requirement for a permit.

Except as provided in this chapter, it shall be unlawful for any person to conduct a regulated activity that results or will result in incidental take of a regulated bird species or regulated habitat without obtaining and complying with a permit from the department. However, no permit shall be necessary for incidental take of regulated bird species or habitats unless the board has adopted a sector-specific plan requiring such permit. The board may adopt sector-specific plans for any of the following categories:

1. Commercial projects, including new construction or expansion:

- a. Retail stores or malls;
- b. Restaurants;
- c. Lodging facilities;
- d. Office buildings outside of an existing commercial park;
- e. Commercial parks;
- f. Medical facilities, including nursing homes, rehabilitation and convalescence centers;
- g. Sports facilities; or
- h. Other large-scale nonindustrial structures and facilities planned for commerce, health care, hospitality services, government use, or other business use.

2. Industrial projects, including new construction or expansion:

- a. Industrial manufacturing buildings outside of an existing industrial park;
- b. Industrial parks;
- c. Sewage treatment plants;
- d. Government facilities, such as warehouses and laboratories;
- e. Power generation plants; or
- f. Other large-scale noncommercial public, private, or governmental structures or facilities that directly engage in or are connected to the handling, storage, manufacturing, maintenance, treatment, or disposal of materials, products, goods, commodities, or hazardous waste.

3. Oil, gas, and wastewater disposal pits.

4. Methane or other gas burner pipes.

5. Communications towers.

6. Electric transmission and distribution lines.

7. Wind and solar energy projects.

8. Transportation projects.

4VAC15-35-40. Activities occurring before adoption of sector-specific plan.

No permit shall be necessary for any regulated activity that is actively under construction, has received all necessary permits and approvals but construction has not commenced or that has provided evidence of other contractual obligations that may be described in the appropriate sector-specific plan on or before the effective date of a sector-specific plan that would otherwise apply to that regulated activity. Upon request, the department may review the circumstances of a project and provide a letter stating that no permit is necessary to any person conducting such an activity.

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4VAC15-35-50. Applicability of other laws or regulations.

Nothing in this section shall be interpreted to excuse compliance with the prohibitions, provisions or requirements of any other federal, state, or local laws, regulations, or ordinances, including the Virginia Endangered Species Act (§ 29.1-563 et seq. of the Code of Virginia); the federal Migratory Bird Treaty Act (16 USC § 703 et seq.), the federal Bald and Golden Eagle Protection Act (16 USC § 668 et seq.), and the federal Endangered Species Act (16 USC § 1531 et seq.).

4VAC15-35-60. Exemptions.

The following activities are exempt from the permitting requirements of this chapter. Any incidental take associated with these activities will not be considered a violation of this section:

1. Activities that are not defined as "regulated activities";
2. Agricultural and silvicultural activities;
3. Residential construction activities; and
4. Regulated activities performed under emergency situations, including activities necessary to restore essential services, protect human health, address a public safety issue, or prevent imminent damage to property.

4VAC15-35-70. Permits.

The following permits authorize incidental take resulting from regulated activities:

1. General permit.
 - a. The board may, by regulation, adopt a sector-specific plan that provides the framework for general permits issued for a particular category of regulated activities.
 - b. An applicant whose activities qualifies for a general permit must submit an application to the department and comply with all requirements stated in the sector-specific plan.
 - c. The general permit authorizes a regulated activity only if the activity and applicant satisfy all of the terms and conditions of the general permit and associated sector-specific plan
 - d. An applicant for general permit coverage must adhere to the conditions set forth in this chapter pertaining to permit renewal, amendment, transfer, suspension, revocation, and other procedures for permit issuance. If a sector-specific plan expressly requires department review and authorization of general permit coverage, the applicant shall submit a permit application and any required documents, together with the applicable fee, to the department prior to commencing the proposed activity, and adhere to the following procedures unless the sector-specific plan otherwise specifies:

(1) The department will review the permit application and required documents to ensure that the activity complies with the terms and conditions of the general permit.

(2) If the department determines that the proposed activity is not covered by the general permit, the department will notify and instruct the applicant on necessary procedures for obtaining an individual incidental take permit or provide the applicant with the opportunity to revise the proposed activity to ensure its compatibility with the general permit.

e. Incidental take by a regulated activity of regulated bird species or habitats shall be first avoided and then minimized through the use of best management practices described in the appropriate sector-specific plan or otherwise authorized by the department.

f. Persons authorized by the general permit may be required to monitor and report impacts to and the incidental take of regulated bird species that result from the regulated activity as set forth in the sector-specific plan.

g. No general permit coverage issued under this chapter shall be valid for a period of more than eight years after the date of its issuance, or such shorter term otherwise specified in the applicable sector-specific plan or requested by the applicant. An applicant may terminate a permit prior to the expiration of the defined term upon providing written evidence to the department of the conclusion of construction and fulfillment of any applicable monitoring or site closure requirements defined in the appropriate general permit.

h. If the department, upon receiving an application for a general permit, determines that the activity does not qualify for a general permit, but still requires a permit from the department, the department will notify the applicant in writing of the reasons that the activity does not qualify for a general permit. The applicant may revise the activity and resubmit the application for a general permit or submit an application for an individual incidental take permit.

2. Individual incidental take permit.

a. Applicants shall obtain individual incidental take permits under such terms and conditions necessary to avoid, minimize, or compensate for the incidental take of regulated bird species or habitats when:

(1) Regulated activities will occur within or adjacent to biologically significant avian habitat, or

(2) Required by the terms of the applicable sector-specific plan.

b. In addition to the conditions set forth in this section governing permit renewal, amendment, transfer, suspension, revocation, and other procedures for permit issuance, an applicant for an individual incidental take permit must adhere to the following procedures:

(1) The applicant shall prepare and submit an avian conservation and mitigation plan in accordance with the provisions in this section for department approval and must submit the applicable fee and any additional information and documents that the department determines are necessary for permit issuance. The applicant must receive final permit approval prior to commencing the proposed activity.

(2) The department shall review the applicant's permit application and included avian conservation and mitigation plan and shall notify the person applying for the permit in writing of any necessary amendments or additions.

(3) Impacts of a regulated activity on regulated bird species or habitats shall be first avoided and then minimized through the use of best management practices or other measures as described in the appropriate sector-specific plan and the avian conservation and mitigation plan. Persons authorized by the individual incidental take permit will be required to compensate for unavoidable incidental take of regulated bird species or habitats.

(4) Persons authorized by the individual take permit may be required to monitor and report impacts to and the incidental take of regulated bird species that result from the regulated activity as set forth in the sector-specific plan, individual incidental take permit, or avian conservation and mitigation plan.

(5) No individual incidental take permit issued under this subsection shall be for a period of more than 10 years after the date of its issuance or such shorter time period determined appropriate by the department or requested by the applicant. An applicant may terminate a permit prior to the expiration of the defined term upon providing written evidence to the department of the conclusion of construction and fulfillment of any applicable monitoring requirements defined in the individual incidental take permit.

c. An avian conservation and mitigation plan must provide sufficient information to demonstrate that the conservation criteria established in the individual incidental take permit will be fulfilled. The plan must clearly define the project's scope of work and the project's possible impacts on regulated bird species or habitats. In addition, the plan must include:

(1) A site plan drawn to scale showing the location of the proposed activity;

(2) A detailed description and schedule of the work to be performed;

(3) A quantitative or narrative description of the likely incidental take of regulated bird species or habitats;

(4) The steps the applicant will take to avoid, minimize, and compensate for such impacts, including:

(a) Avoidance, minimization, and compensation measures the applicant shall employ using reliable department-approved methods that are based upon the best available science and utilizing the best practicable and necessary technology to meet the requirements of the applicable sector-specific plan. These measures shall be evaluated for effectiveness in a consistent and rigorous manner by the applicant throughout their implementation.

(b) Compensation measures that shall ensure that a naturally-sustaining ecosystem or quality of habitat comparable to the pre-activity conditions at the location of the regulated activity or within a reasonable proximity is established upon the activity's completion and achieves no net loss of regulated birds or habitats.

(c) Any actions included in the applicable sector-specific plan considered by the applicant and the reasons why such actions are not being utilized;

(d) A contingency plan to rectify any failures of implemented measures or actions necessary to provide additional protection to regulated bird species, including hazing programs or other temporary or emergency measures that would be instituted;

(e) A timeline of when each element of the plan will be completed; and

(f) Such other measures that the department or applicable sector-specific plan may require as being necessary or appropriate for purposes of the plan; and

(5) The avian conservation and mitigation plan may avoid duplication by incorporating information included in any permit application required by any other permitting agency. The plan shall identify by source, section, and page number when referencing such information.

d. While most general and individual incidental take permits will apply only to the construction phase of a regulated activity, nothing in this chapter shall prevent the board from including requirements for the operational phase of a particular regulated activity in a sector-specific plan if the board determines that operations are likely to incidentally take regulated bird species or habitats. If operational requirements are included in a sector-specific plan, permits may be renewed throughout the life of the regulated activity.

4VAC15-35-80. Permit procedures.

A. Required general information. A permit application must contain the following information:

1. Applicant's full name and address, telephone number, and, if available, fax number and email address;

a. If the applicant resides or is located outside of the Commonwealth of Virginia, the name and address of an agent located in the Commonwealth of Virginia; and

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b. If the applicant is an entity, a description of the type of entity and the name and title of an individual who will be responsible for the permit;

2. Location of the regulated activity;

3. Certification in the following language: "I hereby certify that the information submitted in this application is complete and accurate to the best of my knowledge and belief";

4. Desired effective date of the permit except where issuance date is fixed by the sector-specific plan under which the permit is issued;

5. Desired duration of the permit, if less than the default term for the sector-specific plan under which the general or individual incidental take permit is requested;

6. Date of application;

7. Signature or electronic signature of the applicant; and

8. Such other information or documentation as may be required by the applicable sector-specific plan.

B. Administrative procedures.

1. The department shall determine the completeness of an application and shall notify the applicant of any determination within 45 calendar days of receipt. Where available to the applicant, electronic communication may be considered communication in writing.

a. If, within those 45 calendar days, the application is deemed to be incomplete, the applicant shall be notified in writing of the reasons the application is deemed incomplete. If the application is resubmitted, all deadlines in this section shall apply from the date of receipt of the resubmitted application.

b. If a determination of completeness is made and the associated sector-specific plan does not require additional department review, the application is deemed approved and the applicant will be notified in writing.

c. If a determination of completeness is not made and communicated to the applicant within 45 calendar days of receipt, the application shall be deemed complete on the 46th day after receipt.

d. If the application is complete and the associated sector-specific plan requires additional department review, the department will take no more than 120 days to review. Bundled projects subject to prior approval of biennial standards and specifications as described in 4VAC15-35-90 may take up to 180 days. If, at the end of the designated review period, the department has not taken final action on the application or notified the applicant in writing of the need for an additional 60 days for review, the application shall be deemed approved.

2. During the review period, the application shall be approved or disapproved, and the decision communicated in

writing to the applicant. If the application is not approved, the reasons for not approving the application shall be provided in writing. Approval or denial shall be based on the application's compliance with the requirements of this chapter and the applicable sector-specific plan.

a. If the application is not approved, the applicant shall have 45 calendar days to revise the permit application to bring it into compliance with the appropriate sector-specific plan or to appeal the decision to the director of the department under the department's dispute resolution and administrative appeals procedure. The applicant may request, in writing, an extension of the timeframe in which to submit a revised application, not to exceed an additional 60 calendar days. If the revised application is not submitted within the defined timeframe, the department will administratively close the application.

b. Upon submission of a revised application after denial, the department shall have 120 days to review and make a determination. If the application is denied again, the applicant will have 45 days after denial to appeal the decision to the director of the department under the department's dispute resolution and administrative appeal procedure. Any new revisions to the permit must be submitted as a new application.

3. Upon approval of an application for an individual incidental take permit, the department will provide the applicant with a permit, including terms and conditions. The applicant shall have 30 calendar days to appeal terms and conditions to the department director under the department's dispute resolution and administrative appeals procedures.

C. Permit issuance.

1. Denial. The department shall not issue a permit if:

a. The applicant has one or more of the disqualifying factors included in subdivision 2 of this subsection;

b. The applicant has failed to disclose material information or has made false statements as to any material fact in connection with the application; or

c. The department determines that the application fails to comply with the applicable sector-specific plan or any other applicable wildlife law, regulation, or ordinance.

2. Disqualifying factors. The department will provide written notice of any known disqualifying factors to the applicant. Any one of the following will disqualify an applicant from receiving or exercising a permit:

a. A conviction of, or entry of a plea of guilty or nolo contendere by, the applicant or a representative of the applicant for a violation of the Lacey Act (16 USC § 3371 et seq.); the federal Migratory Bird Treaty Act (16 USC § 668 et seq.); the federal Bald and Golden Eagle Protection Act (16 USC § 668 et seq.); the federal Endangered Species Act (16 USC § 1531 et seq.); the Virginia Endangered Species Act (§ 29.1-563 et seq. of the

Code of Virginia); or this chapter within the five-year period preceding the application, unless such disqualification has been expressly waived by the department in response to a request by the applicant.

b. The failure to pay any required fees.

c. The suspension of any other incidental take permit. The applicant is disqualified from receiving any additional incidental take permits as long as the suspension exists.

3. Fees. An application fee of \$50 and a permit fee of \$50 per year shall be due for each permit. The application fee shall be due at the time of application submittal, and no application shall be processed until the fee is received. The full amount of the permit fee shall be based on the default duration of the permit and is due at the time of certification if no approval is required. If the department's approval is required, the full amount of the permit fee is due upon approval or issuance of a permit. The fees will be deposited into the Nongame Cash Fund and used for the conservation and management of regulated bird species consistent with § 58.1-344.3 of the Code of Virginia. No refund of any fees paid shall be made if a permit application is denied or if a permit is terminated prior to the expiration date.

4. Permit renewal. Applications for renewal shall meet and comply with all requirements for permit application and be submitted at least 90 calendar days prior to the expiration of an existing permit.

5. Modifications to permits. Permits may be modified with the department's approval in accordance with the following:

a. Applicant's request. Where circumstances have changed so that an applicant desires to have any condition of the permit modified, the applicant must submit a full written justification and supporting information to the department in conformity with the terms and conditions under which the permit was issued.

b. Department determination. The department may amend any permit during its term where circumstances have changed such that amendments to the permit are deemed necessary by the department. In such instances, the department will notify the applicant in writing 60 calendar days in advance of the effective date of any amendment. The applicant shall have 30 calendar days to appeal the decision to the department director under the department's dispute resolution and administrative appeals procedures.

6. Transfer of permits and scope of permit authorization.

a. Except as otherwise provided for in this subsection, permits issued under this part are not transferable or assignable.

b. Permits may be transferred in whole or in part through a joint submission by the applicant and the proposed transferee, or, in the case of a deceased applicant, the deceased applicant's legal representative and the proposed

transferee. The department will review the submission and approve the transfer provided that:

(1) The proposed transferee meets all of the qualifications under this part for holding a permit;

(2) The proposed transferee has provided adequate written assurances that it will implement the relevant terms and conditions of the permit; and

(3) The proposed transferee has provided other information that the department determines is relevant to the processing of the submission.

c. Except as otherwise stated on the face of the permit, any person who is under the direct control of the applicant or who is employed by or under contract to the applicant for purposes authorized by the permit may carry out the activity authorized by the permit. However, the applicant will remain responsible for ensuring compliance with all aspects of the permit.

7. Discontinuance of permit activity. When an applicant discontinues activities authorized by a permit, the applicant shall within 30 calendar days of the discontinuance notify the department of permit termination.

8. Permit inspections. The department shall have the right to perform inspections of a permitted activity to ensure compliance with permit conditions. Written, including electronic, or verbal notice of such inspection shall be given on a business day, and the inspection shall not occur no less than one and no more than five business days from the date of the notice, except when the department determines that an emergency inspection is necessary.

9. Permit suspension and revocation.

a. Criteria for suspension. The privileges of exercising some or all of the permit authority may be suspended at any time if the applicant is not in compliance with the conditions of the permit, the sector-specific plan, or any applicable laws or regulations governing the conduct of the regulated activity. Such suspension shall remain in effect until the department determines that the applicant has corrected the deficiencies.

b. Criteria for revocation. A permit may be revoked for any of the following reasons:

(1) The applicant willfully violates any provision of the Virginia Endangered Species Act (§ 29.1-563 et seq. of the Code of Virginia); the federal Migratory Bird Treaty Act (16 USC § 703 et seq.); the federal Bald and Golden Eagle Protection Act (16 USC § 668 et seq.); the federal Endangered Species Act (16 USC § 1531 et seq.); or the conditions or a permit issued under those acts or this chapter; or

(2) The applicant fails within 60 calendar days to correct deficiencies that were the cause of a permit suspension.

c. Procedure for suspension and revocation.

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(1) The applicant shall be notified in writing of the suspension or revocation by certified or registered mail. This notice shall identify the permit to be suspended, the reasons for such suspension, and the actions necessary to correct the deficiencies and inform the applicant of the right to appeal the suspension. The department may amend any notice of suspension or revocation at any time.

(2) The applicant shall be provided with an opportunity to appeal the suspension or revocation within 30 calendar days of mailing the suspension or revocation notice. Appeal may be requested by filing a written objection specifying the reasons the applicant objects to the suspension or revocation and may include supporting documentation. Amendment of a notice of suspension or revocation will allow the applicant another 30 calendar days to appeal the decision from the date of mailing notice of the amendment if they have not already initiated an appeal.

(3) If at the end of 30 calendar days no appeal has been received by the department, a final order shall be issued suspending or revoking the permit.

(4) If the applicant timely submits an appeal, an informal fact-finding proceeding will be held within 30 calendar days, or at the option of the department or the applicant, a formal hearing may be scheduled as soon as may be practicable.

(5) Following an informal fact-finding proceeding or formal hearing, a final decision shall be made by the director within 30 calendar days of the informal fact-finding proceeding or receipt of a recommendation by any hearing officer.

4VAC15-35-90. Biennial standards and specifications.

Any person who will undertake multiple regulated activities requiring a permit may biennially submit a single set of standards and specifications for department approval that describes how covered regulated activities shall be conducted.

1. Such standards and specifications shall be consistent with the requirements of this chapter and the applicable sector-specific plans. Each project constructed for which a permit is required shall obtain such permit by filing a permit application referencing the approved standards and specifications and paying the fee applicable under 4VAC15-35-80 C 3 prior to the commencement of the regulated activity. The standards and specifications shall include:

a. A reference to which sector-specific plans are addressed by the standards and specifications;

b. A description of the regulated activities that the applicant intends to be addressed by the standards and specifications, and, if applicable, any other regulated activities that the applicant intends to conduct that will not utilize the standards and specifications;

c. Information satisfactory to the department demonstrating how regulated activities conducted under the standards and specifications will meet the requirements of the applicable sector-specific plans, together with a copy of any reference materials cited by the standards and specifications; and

d. Implementation by the applicant of a regulated activity tracking system of all regulated activities conducted under the standards and specification, together with a permittee self-monitoring program that will ensure compliance with the standards and specifications.

2. Such standards and specification may be utilized following department approval. Utilization of approved standards and specification shall not affect the department's authority to perform inspections of regulated activities addressed by the standards and specifications. Noncompliance with the approved standards and specifications shall have the same effect as noncompliance with the requirements of the applicable sector-specific plan for purposes of permit modification, suspension, or revocation under this section.

4VAC15-35-100. Enforcement; unpermitted regulated activities.

Administrative permit actions, including modification, suspension, and revocation, shall be addressed according to the department's dispute resolution and administrative appeals procedures. Any person conducting a regulated activity for which a permit is required by this chapter without such permit, including where a regulated activity has commenced without a permit or continued after permit suspension or revocation, shall be guilty of a Class 3 misdemeanor as specified by § 29.1-505 of the Code of Virginia.

VA.R. Doc. No. R21-6852; Filed June 30, 2021, 9:54 a.m.

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: **4VAC20-270. Pertaining to Blue Crab Fishery (amending 4VAC20-270-30 through 4VAC20-270-55).**

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

Effective Date: July 5, 2021.

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

Summary:

The amendments establish management provisions for the blue crab fisheries by updating the date of the season and clarifying provisions pertaining to hard crab pots.

4VAC20-270-30. Daily time limits for commercial harvest.

A. It shall be unlawful for any person licensed to catch and sell crabs taken by hard crab pot or peeler pot to take and harvest crabs from any hard crab pot or peeler pot, or to retrieve, bait, or set any hard crab pot or peeler pot, except during the lawful daily time periods described in subsections A, B, C, and D of this section. The lawful daily time periods for the commercial harvesting of crabs by hard crab pot or peeler pot shall be from 6 a.m. to 2 p.m. during the lawful seasons, as described in 4VAC20-270-40 A, except as described in subsections B, C, and D of this section. The lawful daily time periods for the commercial harvesting of crabs by hard crab pot or peeler pot shall be from 5 a.m. to 1 p.m. during the months of May, June, July, and August, as described in 4VAC20-270-40 A, except as specified in subsections B, C, and D of this section. ~~Crab~~ Hard crab pots or peeler pots already on board a boat at the end of the lawful daily time period, as defined in subsections A, B, and C of this section, may be set immediately following the end of lawful daily time period to one hour after the lawful daily time period ends.

B. Any licensed hard crab pot or peeler pot fisherman who provides an opinion and supporting documentation from an attending physician to the commissioner of an existing medical condition that prevents him from adhering to the daily time limit established in subsection A of this section may be permitted by the commissioner or his designee to take and harvest crabs from his hard crab pot or peeler pot, or to retrieve, bait, or set his hard crab pot or peeler pot during an alternate eight-hour daily time limit. That alternative eight-hour daily time limit will be prescribed by the commissioner or his designee in accordance with the medical condition that forms a basis for the exception to the daily time limit as described in subsection A of this section.

Nothing in this regulation shall prohibit any licensed hard crab pot or peeler pot fisherman, who has been granted an exception to the eight-hour work schedule, on a medical basis, from using another licensed hard crab pot or peeler pot fisherman as a mate; provided, however, during the designated alternate work hours, only the hard crab pots or peeler pots of the fisherman receiving the exception shall be fished. Further, it shall be unlawful for the licensed crab fisherman, who has been granted an exception, or his mate, who is a licensed hard crab pot or peeler pot fisherman, to fish, set, retrieve, or bait, during the alternate work hours, any hard crab pot or peeler pot that is not owned and licensed by the fisherman granted the exception.

C. Any licensed hard crab pot or peeler pot fisherman who requests and obtains an alternate eight-hour daily time limit permit shall be authorized to take and harvest crabs from his

hard crab pot or peeler pot or to retrieve, bait, or set his hard crab pot or peeler pot one hour earlier than described in subsection A of this section, only for the months of June, July, August, and September. During the months of March, April, May, October, and November, ~~and December~~, the lawful daily time period described in subsection A of this section applies to any hard crab pot or peeler pot licensee. The alternate lawful daily time periods for the commercial harvesting of crabs by hard crab pot or peeler pot shall be from 4 a.m. to 12 noon from June 1 through August 31 and from 5 a.m. to 1 p.m. from September 1 through September 30. Licensed hard crab pot or peeler pot fishermen must apply for this permit on an annual basis and shall adhere to the alternate daily time limit from the day the permit is issued through September 30, as well as subdivisions 1, 2, and 3 of this subsection.

1. It shall be unlawful for two or more licensed hard crab pot or peeler pot fishermen, or their agents, to crab aboard the same vessel if their authorized eight-hour daily time limits are not identical.

2. Requests for an alternate eight-hour time limit permit shall be submitted to the Marine Resources Commission annually and prior to May 15. Requests submitted on or after May 15 will not be considered.

3. Once any legal hard crab pot or peeler pot licensee obtains an alternate eight-hour daily time limit permit, that permittee shall be legally bound by the alternate eight-hour daily time limit as described in this subsection.

D. The lawful daily time periods for the commercial harvest of crabs by hard crab pot or peeler pot may be rescinded by the Commissioner of Marine Resources when the commissioner determines that a pending weather event is sufficient cause for the removal of hard crab pots from the tidal waters of the Commonwealth.

4VAC20-270-40. Season limits.

A. In ~~2020~~ 2021, the lawful season for the commercial harvest of crabs by hard crab pot shall be March 17 through ~~December 19~~ November 30. In ~~2021~~ 2022, the lawful season for the commercial harvest of crabs by hard crab pot shall be March 17 through November 30. For all other lawful commercial gear used to harvest crabs, as described in 4VAC20-1040, the lawful seasons for the harvest of crabs shall be April 1 through October 31.

B. It shall be unlawful for any person to harvest crabs or to possess crabs on board a vessel, except during the lawful season as described in subsection A of this section.

C. It shall be unlawful for any person knowingly to place, set, fish, or leave any hard crab pot in any tidal waters of Virginia from December ~~20, 2020~~ 1, 2021, through March 16, ~~2021~~ 2022. It shall be unlawful for any person to knowingly place, set, fish, or leave any lawful commercial gear used to harvest crabs, except any hard crab pot or any gear as described in

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4VAC20-460-25, in any tidal waters of Virginia from November 1, ~~2020~~ 2021, through March 31, ~~2021~~ 2022.

D. It shall be unlawful for any person knowingly to place, set, fish, or leave any fish pot in any tidal waters from March 12 through March 16, except as provided in subdivisions 1 and 2 of this subsection.

1. It shall be lawful for any person to place, set, or fish any fish pot in those Virginia waters located upriver of the following boundary lines:

- a. In the James River the boundary shall be a line connecting Hog Point and the downstream point at the mouth of College Creek.
- b. In the York River the boundary lines shall be the Route 33 bridges at West Point.
- c. In the Rappahannock River the boundary line shall be the Route 360 bridge at Tappahannock.
- d. In the Potomac River the boundary line shall be the Route 301 bridge that extends from Newberg, Maryland to Dahlgren, Virginia.

2. This subsection shall not apply to legally licensed eel pots as described in 4VAC20-500-50.

E. It shall be unlawful for any person to place, set, or fish any number of fish pots in excess of 10% of the amount allowed by the gear license limit, up to a maximum of 30 fish pots per vessel, when any person on that vessel has set any crab pots.

1. This subsection shall not apply to fish pots set in the areas described in subdivision D 1 of this section.
2. This subsection shall not apply to legally licensed eel pots as described in 4VAC20-500.
3. This subsection shall not apply to fish pots constructed of a mesh less than one-inch square or hexagonal mesh.

4VAC20-270-50. Peeler crab pot and hard crab pot limits.

A. It shall be unlawful for any person to place, set or fish or attempt to place, set or fish more than 210 peeler crab pots in Virginia tidal waters.

B. The lawful hard crab pot license categories and hard crab pot limits are as follows:

1. Up to 85 crab pots.
2. Up to 127 crab pots.
3. Up to 170 crab pots.
4. Up to 255 crab pots.
5. Up to 425 crab pots.

C. It shall be unlawful for any person to knowingly place, set or fish any amount of crab pots that exceeds that person's crab pot limit, as described in subsection B of this section.

4VAC20-270-51. Daily commercial harvester, vessel, and harvest and possession limits.

A. Any barrel used by a harvester to contain or possess any amount of crabs will be equivalent in volume to no more than three bushels of crabs.

B. From July 5, ~~2020~~ 2021, through ~~December 19, 2020~~ November 30, 2021, and April 1, ~~2021~~ 2022, through July 4, ~~2021~~ 2022, any commercial fisherman registration licensee legally licensed for any hard crab pot license, as described in 4VAC20-270-50 B, shall be limited to the following maximum daily harvest and possession limits for any of the following hard crab pot license categories:

1. 10 bushels, or three barrels and one bushel, of crabs if licensed for up to 85 crab pots.
2. 14 bushels, or four barrels and two bushels, of crabs if licensed for up to 127 crab pots.
3. 18 bushels, or six barrels, of crabs if licensed for up to 170 crab pots.
4. 29 bushels, or nine barrels and two bushels, of crabs if licensed for up to 255 crab pots.
5. 47 bushels, or 15 barrels and two bushels, of crabs if licensed for up to 425 crab pots.

C. From March 17, ~~2021~~ 2022, through March 31, ~~2021~~ 2022, any commercial fisherman registration licensee legally licensed for any hard crab pot license, as described in 4VAC20-270-50 B, shall be limited to the following maximum daily harvest and possession limits for any of the following crab pot license categories:

1. Eight bushels, or two barrels and two bushels, of crabs if licensed for up to 85 crab pots.
2. 10 bushels, or three barrels and one bushel, of crabs if licensed for up to 127 crab pots.
3. 13 bushels, or four barrels and one bushel, of crabs if licensed for up to 170 crab pots.
4. 21 bushels, or seven barrels, of crabs if licensed for up to 255 crab pots.
5. 27 bushels, or nine barrels, of crabs if licensed for up to 425 crab pots.

D. When a single harvester or multiple harvesters are on board any vessel, that vessel's daily harvest and possession limit shall be equal to only one daily harvest and possession limit, as described in subsections B and C of this section, and that daily limit shall correspond to the highest harvest and possession limit of only one licensee on board that vessel.

E. When transporting or selling one or more legal crab pot licensee's crab harvest in bushels or barrels, any agent shall possess either the crab pot license of that one or more crab pot licensees or a bill of lading indicating each crab pot licensee's

name, address, commercial fisherman registration license number, date, and amount of bushels or barrels of crabs to be sold.

F. If any police officer finds crabs in excess of any lawful daily bushel, barrel, or vessel limit, as described in this section, that excess quantity of crabs shall be returned immediately to the water by the licensee or licensees who possess that excess over lawful daily harvest or possession limit. The refusal to return crabs, in excess of any lawful daily harvest or possession limit, to the water shall constitute a separate violation of this chapter.

G. When any person on board any boat or vessel possesses a crab pot license, it shall be unlawful for that person or any other person aboard that boat or vessel to possess a seafood buyers boat license and buy any crabs on any day.

4VAC20-270-52. Area restriction.

A. It shall be unlawful for any person to use any gear, except hard crab pots or peeler pots, to harvest crabs from the waters of Back Bay and North Landing River or within the jurisdiction of the Albemarle and Currituck watersheds as described in § 28.2-101 of the Code of Virginia.

B. It shall be unlawful to possess, sell, or offer for sale crabs taken by any means other than hard crab pot or peeler pot from the waters described in this section.

4VAC20-270-55. Minimum size limits.

A. From March 17 through July 15, it shall be unlawful for any person to harvest, possess, sell, or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that measure less than 3-1/4 inches across the shell from tip to tip of the longest spikes. From July 16 through ~~December 19~~ November 30, it shall be unlawful for any person to harvest, possess, sell, or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that measure less than 3-1/2 inches across the shell from tip to tip of the longest spikes, except as described in subsections B and C of this section.

B. From July 16 through ~~December 19~~ November 30, it shall be unlawful for any person to harvest, possess, sell, or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that are harvested from waters on the ocean side of Accomack and Northampton Counties and measure less than 3-1/4 inches across the shell from tip to tip of the longest spikes, except as described in subsection C of this section.

C. In the enforcement of these peeler crab minimum size limits aboard a vessel, the marine police officer shall select a single container of peeler crabs of his choosing to determine if the contents of that container violate the minimum size and tolerance described in this section. If the officer determines the

contents of the container are in violation, then the officer shall return all peeler crabs on board the vessel to the water alive.

D. It shall be unlawful for any person to take, catch, harvest, possess, sell or offer for sale, or to destroy in any manner, any soft crab that measures less than 3-1/2 inches across the shell from tip to tip of the longest spikes.

VA.R. Doc. No. R21-6843; Filed June 24, 2021, 2:28 p.m.

Final Regulation

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

Title of Regulation: **4VAC20-610. Pertaining to Commercial Fishing and Mandatory Harvest Reporting (amending 4VAC20-610-20, 4VAC20-610-60).**

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

Effective Date: January 1, 2022.

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

Summary:

The amendments establish mandatory commercial online harvest reporting for blue crabs.

4VAC20-610-20. Definitions.

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

"Agent" means any person who possesses the Commercial Fisherman Registration License, fishing gear license, or fishing permit of a registered commercial fisherman in order to fish that commercial fisherman's gear or sell that commercial fisherman's harvest.

"Blue crab" means any crustacean of the species *Callinectes sapidus*.

"Clam aquaculture harvester" means any person who harvests clams from leased, subleased, or fee simple ground or any aquaculture growing area, within or adjacent to Virginia tidal waters.

"Clam aquaculture product owner" means any person or firm that owns clams on leased, subleased, or fee simple ground, or any aquaculture growing area within or adjacent to Virginia tidal waters that are raised by any form of aquaculture. This does not include any riparian shellfish gardeners whose activities are authorized by 4VAC20-336, General Permit No. 3 Pertaining to Noncommercial Riparian Shellfish Growing Activities.

Regulations

"Clam aquaculture product owner vessel" means any vessel, legally permitted through a no-cost permit, by a clam aquaculture product owner, used to transport clam aquaculture harvesters who do not possess an individual Clam Aquaculture Harvester Permit.

"Cobia" means any fish of the species *Rachycentron canadum*.

"Commercial fisherman" means any person who has obtained a Commercial Fisherman Registration License from the commission.

"Commission" means the Marine Resources Commission.

"Continuing business enterprise" means any business that is required to have a Virginia Seafood Buyer's License or is required to have a business license by county, city, or local ordinance.

"Mandatory Harvest Reporting Program Web Application" means the online web-based resource provided by the commission to report commercial harvest of seafood at <https://webapps.mrc.virginia.gov/harvest/>.

"Oyster" means any shellfish of the species *Crassostrea virginica*.

"Oyster aquaculture harvester" means any person who harvests oysters from leased, subleased, or fee simple ground or any aquaculture growing area, within or adjacent to Virginia tidal waters.

"Oyster aquaculture product owner" means any person or firm that owns oysters on leased, subleased, or fee simple ground or any aquaculture growing area within or adjacent to Virginia tidal waters that are raised by any form of aquaculture. This does not include any riparian shellfish gardeners whose activities are authorized by 4VAC20-336, General Permit No. 3 Pertaining to Noncommercial Riparian Shellfish Growing Activities.

"Oyster aquaculture product owner vessel" means any vessel, legally permitted through a no-cost permit, by an oyster aquaculture product owner, used to transport oyster aquaculture harvesters who do not possess an individual oyster aquaculture harvester permit.

"Seafood landing licensee" means any individual who has obtained a Seafood Landing License from the commission.

4VAC20-610-60. Mandatory harvest reporting.

A. It shall be unlawful for any valid commercial fisherman registration licensee, seafood landing licensee, oyster aquaculture product owner permittee, or clam aquaculture product owner permittee to fail to fully report harvests and related information as set forth in this chapter.

B. It shall be unlawful for any recreational fisherman, charter boat captain, head boat captain, commercial fishing pier operator, or owner of a private boat licensed pursuant to

§§ 28.2-302.7 through 28.2-302.9 of the Code of Virginia, to fail to report recreational harvests, upon request, to those authorized by the commission.

C. All registered commercial fishermen and any valid seafood landing licensee shall complete a daily form accurately quantifying and legibly describing that day's harvest from Virginia tidal waters and federal waters. The forms used to record daily harvest shall be those provided by the commission or another form or method approved by the commission. Registered commercial fishermen and seafood landing licensees may use more than one form when selling to more than one buyer.

D. Any oyster aquaculture product owner permittee or clam aquaculture product owner permittee shall provide monthly harvest records accurately quantifying and legibly describing that month's harvest from Virginia tidal waters as described in subsection H of this section. All records shall only be submitted through the Online Mandatory Harvest Reporting Program Web Application.

E. Registered commercial fishermen, seafood landing licensees, valid oyster aquaculture product owner permittees, and valid clam aquaculture product owner permittees shall submit a monthly harvest report to the commission no later than the fifth day of the following month, except as described in subsection F of this section. This report shall be accompanied by the daily harvest records described in subsection H of this section. Completed forms shall be mailed or delivered to the Virginia Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, or be submitted through the Online Mandatory Harvest Reporting Program Web Application.

F. All reports of the commercial harvest of cobia shall only be submitted through the Mandatory Harvest Reporting Program Web Application. This report shall provide daily harvest records from Sunday through Saturday as described in subsection H of this section and be submitted on a weekly basis no later than Wednesday of the following week.

G. All reports of the commercial harvest of oysters or blue crabs shall only be submitted through the Online Mandatory Harvest Reporting Program Web Application. This report shall provide daily harvest records of oysters or blue crabs as described in subsection H of this section and be submitted no later than the fifth day of the following month.

H. The harvest report requirements shall be as follows:

1. Registered commercial fishermen shall be responsible for providing a harvest report and daily harvest records that include the name and signature of the registered commercial fisherman and the commercial fisherman's registration license number; the name and license registration number of any agent, if used; the license registration number of no more than five additional harvesters who were not serving as agents; any buyer or private sale information; the date of any harvest; the city or county of

landing that harvest; the water body fished, gear type, and amount of gear used for that harvest; the number of hours any gear was fished and the number of hours the registered commercial fisherman fished; the number of crew on board, including captain; species harvested; market category; live weight or processed weight of species harvested; and vessel identification (Coast Guard documentation number, Virginia license number, or hull/VIN number). Any information on the price paid for the harvest may be provided voluntarily.

2. The harvest report from oyster aquaculture product owner permittees and clam aquaculture product owner permittees shall include the name, signature, permit number, lease number, date of the last day of the reporting month, city or county of landing, gear (growing technique) used, weight or amount of species harvested by market category, total number of individual crew members for the month, and buyer or private sale information.

3. The harvest report and daily harvest records from seafood landing licensees shall include the name and signature of the seafood landing licensee and the licensee's seafood landing license number; buyer or private sale information; date of harvest; city or county of landing; water body fished; gear type and amount used; number of hours gear fished; number of hours the seafood landing licensee fished; number of crew on board, including captain; non-federally permitted species harvested; market category; live weight or processed weight of species harvested; and vessel identification (Coast Guard documentation number, Virginia license number, or hull/VIN number).

I. Registered commercial fishermen, oyster aquaculture product owner permittees and clam aquaculture product owner permittees not fishing during a month, or seafood landing licensees not landing in Virginia during a month shall so notify the commission no later than the fifth of the following month by postage paid postal card provided by the commission or by calling the commission's toll free telephone line or through the Online Mandatory Harvest Reporting Program Web Application.

J. Any person licensed as a commercial seafood buyer pursuant to § 28.2-228 of the Code of Virginia shall maintain for a period of one year a copy of each fisherman's daily harvest record form for each purchase made. Such records shall be made available upon request to those authorized by the commission.

K. The reporting of the harvest of federally permitted species from beyond Virginia's tidal waters that are sold to a federally permitted dealer shall be exempt from the procedures described in this section.

L. The owner of any purse seine vessel or bait seine vessel (snapper rig) licensed under the provisions of § 28.2-402 of the Code of Virginia shall submit the Captain's Daily Fishing Reports to the National Marine Fisheries Service, in accordance with provisions of Amendment 1 to the Interstate Fishery Management Plan of the Atlantic States Marine Fisheries Commission for Atlantic Menhaden, which became effective July 2001.

M. Registered commercial fishermen, seafood landing licensees, and licensed seafood buyers shall allow those authorized by the commission to sample harvest and seafood products to obtain

biological information for scientific and management purposes only. Such sampling shall be conducted in a manner that does not hinder normal business operations.

N. Registered commercial fishermen, seafood landing licensees, oyster aquaculture product owner permittees, and clam aquaculture product owner permittees shall maintain their harvest records for one year and shall make them available upon request to those authorized by the commission.

VA.R. Doc. No. R21-6844; Filed June 23, 2021, 10:20 a.m.

Final Regulation

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

Title of Regulation: **4VAC20-1140. Prohibition of Crab Dredging in Virginia Waters (amending 4VAC20-1140-20).**

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

Effective Date: July 5, 2021.

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

Summary:

The amendment closes the 2021-2022 blue crab dredge fishery.

4VAC20-1140-20. Crab dredging prohibited.

In accordance with the provisions of § 28.2-707 of the Code of Virginia, the crab dredging season of December 1, ~~2020~~ 2021, through March 31, ~~2021~~ 2022, is closed, and it shall be unlawful to use a dredge for catching crabs from the waters of the Commonwealth during that season.

VA.R. Doc. No. R21-6845; Filed June 23, 2021, 10:18 a.m.



TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

REGISTRAR'S NOTICE: Chapters 860 and 861 of the 2020 Acts of Assembly transfer the authority to license and regulate child day programs and other early child care agencies from the State Board of Social Services to the State Board of Education effective July 1, 2021. This regulatory action to transfer and establish the necessary regulations is excluded from the Administrative Process Act in accordance with enactment clause 9 of Chapters 860 and 861.

Regulations

Titles of Regulations: 8VAC20-770. Background Checks for Child Day Programs and Family Day Systems (adding 8VAC20-770-10 through 8VAC20-770-150).

8VAC20-780. Standards for Licensed Child Day Centers (adding 8VAC20-780-10 through 8VAC20-780-610).

8VAC20-790. Child Care Program (adding 8VAC20-790-10 through 8VAC20-790-850).

8VAC20-800. Standards for Licensed Family Day Homes (adding 8VAC20-800-10 through 8VAC20-800-1020).

8VAC20-810. Minimum Standards for Licensed Family Day Systems (adding 8VAC20-810-10 through 8VAC20-810-60).

8VAC20-820. General Procedures and Information for Licensure (adding 8VAC20-820-10 through 8VAC20-820-500).

8VAC20-830. Fee Requirements for Processing Applications (adding 8VAC20-830-10).

8VAC20-840. Virginia Child Care Provider Scholarship Program (adding 8VAC20-840-10 through 8VAC20-840-90).

8VAC20-850. Voluntary Registration of Family Day Homes - Requirements for Providers (adding 8VAC20-850-10 through 8VAC20-850-110).

Statutory Authority: §§ 22.1-16 and 22.1-289.046 of the Code of Virginia.

Effective Date: July 1, 2021.

Agency Contact: Rebecca Ullrich, Early Childhood Planning and Policy Coordinator, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 371-7578, or email rebecca.ullrich@doe.virginia.gov.

Background:

Chapters 860 and 861 of the 2020 Acts of the General Assembly establish § 22.1-289.03 of the Code of Virginia, which requires the State Board of Education to establish a statewide unified public-private system for early childhood care and education in the Commonwealth. The system is to be administered by the board, the Superintendent of Public Instruction, and the Department of Education (VDOE) effective July 1, 2021. The acts transfer the authority to license and regulate child day programs and other early child care agencies from the State Board of Social Services and Department of Social Services (VDSS) to the board and VDOE. Funding and oversight of early childhood care and education (ECCE) programs and policies, including the Child Care Subsidy Program and child care licensing and monitoring, transition from VDSS to VDOE. The acts provide that the regulations governing the implementation and oversight of ECCE programs be transferred from the State Board of Social Services to the State Board of Education and maintain current licensure, background check, and other requirements of such programs.

Summary:

This action transfers or replicates the regulations of the State Board of Social Services for early childhood care and education to or under the State Board of Education. Amendments include (i) renumbering or replicating the regulations to place them under the State Board of Education in the Virginia Administrative Code (VAC); (ii) changing references from the State Board of Social Services to the State Board of Education; (iii) changing Code of Virginia and VAC references and descriptions.

Chapter 770

Background Checks for Child Day Programs and Family Day Systems

8VAC20-770-10. Defining words and phrases.

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

"Agent" means a person who is empowered to act on behalf of the applicant that is an association, partnership, limited liability company, business trust, public agency, or corporation in matters relating to a child day program or family day system.

"Applicant" means the person or persons applying for approval as a (i) licensed family day home; (ii) licensed family day system; (iii) voluntarily registered family day home; (iv) family day home approved by a licensed family day system; (v) religious exempt child day center or (vi) licensed child day center. In the case of a sole proprietorship, the applicant is the individual owner. In the case of a partnership, the applicants are all the partners. If the applicant is a corporation, association, or business trust, the applicants are officers. If the applicant is a limited liability company, the applicants are the members or managers. If the applicant is a public agency, the applicant is the person responsible for the overall operation of the public agency.

"Approved" means having obtained the status of approval through the process required in Minimum Standards for Licensed Family Day Systems (8VAC20-810). Approved facilities are family day homes approved by licensed family day systems.

"Background checks" means a sworn statement or affirmation, a criminal history record report, and a child protective services central registry check.

"Barrier crime" means a conviction identified at § 22.1-289.034 in the Code of Virginia. The convictions, and Code of Virginia references, are: a felony violation of a protective order as set out in § 16.1-253.2, murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.), malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A or B of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.), robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, extortion by threat as set out in § 18.2-59, felony stalking as set out in § 18.2-60.3, a felony violation

of a protective order as set out in § 18.2-60.4, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2, any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, drive-by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, failure to secure medical attention for an injured child as set out in § 18.2-314, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state.

"Board" means State Board of Education.

"Central registry" means the record of founded complaints of child abuse and neglect maintained by the Department of Social Services.

"Central registry finding" means the record of founded complaints of child abuse and neglect for an individual.

"Central Criminal Records Exchange" or "CCRE" means the information system containing conviction data of crimes committed in Virginia. The system is maintained by the Department of State Police.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

"Contract agency" means an entity with which the facility or a parent has an agreement to provide services to a child or children while attending the facility.

"Contract employee" means a person with whom the facility or a parent has an agreement to provide services to a child or children while attending the facility.

"Contracting organization" means an agency that has been designated by the Department of Education to administer the voluntary registration program for family day homes.

"Criminal history record check" means the process the Department of State Police uses to generate a criminal record report on a person. The check may be a state check generated solely through the Central Criminal Records Exchange or a check forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal history record information.

"Criminal history record report" means either the criminal record clearance or the criminal history record issued by the Central Criminal Records Exchange, Department of State Police. The report identifies convictions within the Commonwealth.

"Department" means the Department of Education.

"Department representative" means an employee of the department who carries out regulatory duties or an agency acting as an authorized agent of the department carrying out approval functions. Licensed family day systems have authority to approve family day homes.

"Disqualifying background" means having an offense, as defined in § 22.1-289.032 of the Code of Virginia. For the purpose of this chapter, having been the subject of a founded abuse or neglect complaint as described in "offense" includes records that have been purged from the child abuse and neglect central registry. However, no person is considered to be the subject of a founded complaint of child abuse or neglect until a decision upholding the finding has been rendered by the hearing officer after the administrative hearing, provided the person complies with the requirements for requesting an administrative hearing. No person is considered to be the subject of a founded complaint of child abuse or neglect if the child abuse or neglect finding is overturned by an administrative hearing or a subsequent court decision.

"Employee" means a person hired by a facility or with whom the facility has an employment agreement. A provider assistant in a family day home is considered an employee in this chapter.

"Facility" means (i) a licensed family day home; (ii) a licensed family day system; (iii) a voluntarily registered family day home; (iv) a family day home approved by a licensed family day system; (v) a licensed child day center; (vi) a religious exempt child day center; and (vii) an applicant seeking a waiver in order to establish one of the above listed entities.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13 years, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home must disclose to the parents or guardians of children in his care the percentage of time per week that persons other than the provider will care for the children. Family day homes

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servicing five through 12 children, exclusive of the provider's own children and any children who reside in the home, must be licensed. No family day home shall care for more than four children under the age of two years, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all related to the provider by blood or marriage is not required to be licensed.

"Family day system" means any person that approves family day homes as members of its system; that refers children to available family day homes in that system; and that, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Good character and reputation" means that the person (i) maintains business, professional, family, and community relationships that are characterized by honesty, fairness, truthfulness and dependability and (ii) has a history or pattern of behavior that demonstrates that the person is suitable and able to care for, guide, supervise, and protect children.

"Involved in the day-to-day operations" means:

1. In a supervisory or management position, making daily decisions regarding the operation of the facility;
2. Counted by the facility for purposes of staff-to-children ratios;
3. Employed by a licensed family day system as a home visitor; or
4. Having access to child-related and client-related records or to facility personnel records.

"Licensed" means having met the requirements of and obtained licensure as a licensed family day system, licensed child day program, or licensed family day home.

"Living in" means to reside in a place for an extended or permanent period of time.

"Local agency" means local department of social services.

"May" means has permission.

"Must" means the action is a requirement.

"Must not" means the action is prohibited.

"National criminal background check" means criminal history record information from the Federal Bureau of Investigation.

"Offense" means a (i) conviction of a barrier crime, (ii) conviction of any other felony not included in the definition of barrier crime unless five years have elapsed since conviction,

(iii) founded complaint of child abuse or neglect within or outside the Commonwealth, or (iv) a conviction of an offense set forth in § 9.1-902 of the Code of Virginia or a finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of the Code of Virginia of an offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901 of the Code of Virginia, or any similar registry in any other state. Convictions include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth.

"Other felony" means conviction for any felony in the last five years that is not a barrier crime felony.

"Parent-volunteer" means someone supervising, without pay, a group of children that includes the parent-volunteer's own child in a program that operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to § 22.1-289.035 or 22.1-289.039 of the Code of Virginia.

"Registered" means having obtained the status of registration through the process required in Voluntary Registration of Family Day Homes - Requirements for Providers (8VAC20-850).

"Registered family day home" means any family day home that has met the standards for voluntary registration for such homes and obtained a certificate of registration from the Superintendent.

"Religious exempt center" means an unlicensed child day center operated or conducted under the auspices of a religious institution that has filed with the Superintendent a satisfactory annual statement of intent to operate a child day center and other information as specified in § 22.1-289.031 of the Code of Virginia and has a letter of exemption from the Superintendent.

"Search of central registry" means the process the Virginia Department of Social Services' Child Protective Services Unit uses to generate a central registry report on a person.

"Superintendent" means Superintendent of Public Instruction or his designee.

"Sworn statement or affirmation" means a statement completed by a person attesting to whether he has ever been (i) convicted of or the subject of pending charges of any crime within or outside the Commonwealth or an equivalent offense outside the Commonwealth or (ii) the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. Additionally for family day homes, the provider affirms if he, or any person known to the provider who resides in the home, has a sex offense conviction or is the subject of a founded complaint of child abuse or neglect within

or outside the Commonwealth. Any person making a false statement regarding any such offense shall be guilty of a Class 1 misdemeanor pursuant to § 22.1-289.035 of the Code of Virginia.

"8VAC" means Title 8 of the Virginia Administrative Code. This is the education title.

"Visit" means a stay or sojourn as a guest for no longer than 30 calendar days.

"Volunteer" means a person who provides services without pay and who is alone with a child or children in performance of his duties.

8VAC20-770-20. Describing background checks.

A. The background checks covered by this chapter are:

1. Sworn statement or affirmation;
2. Criminal history record check;
3. National criminal background check; and
4. Central registry search.

B. The provisions for background checks are in §§ 22.1-289.015 and 22.1-289.034 through 22.1-289.041 of the Code of Virginia.

C. Provisions for enforcement of background check regulations and other licensing, registration, and approval standards are in Chapter 14.1 (§ 22.1-289.010 et seq.) of Title 22.1 of the Code of Virginia.

D. The sworn statement or affirmation is a written document in which a person must disclose any criminal conviction and any pending criminal charges within or outside Virginia.

1. For the purposes of this chapter, conviction includes any juvenile conviction or determination of delinquency if the offense involved would be a felony if committed by an adult within or outside Virginia.
2. The person must also disclose any instance of being the subject of a founded complaint of child abuse or neglect within or outside Virginia.
3. The person must use either the model form prepared by the department or use a self-created form that includes all of the information that appears on the model form.

The department provides the model sworn statement or affirmation form on its website. Requesters are permitted to submit copies of the form. The person who signs the sworn statement or affirmation affirms the truth of the statement.

E. The criminal history record check is the process of the Department of State Police to generate a criminal record report on a person. The report must be either the criminal record clearance or the criminal history record. The criminal record clearance shows whether the person is guilty of:

1. A barrier crime, as defined in § 22.1-289.034 of the Code of Virginia; and/or

2. Any other felony not included in the definition of barrier crime unless five years have elapsed since the conviction.

The criminal history record report shows all convictions.

F. The person must use the form and process of the Central Criminal Records Exchange (CCRE) of the Department of State Police for this check. The Department of State Police provides original criminal history record check forms to facilities upon receipt of request. The Department of State Police also provides website access to this form for facilities that are noncriminal justice inquiry interface users. The CCRE verifies criminal history record reports.

G. The national criminal background check is the process of obtaining criminal history record information from the Federal Bureau of Investigation through the Central Criminal Records Exchange.

1. The person must submit to fingerprinting and provide personal descriptive information.

2. The person must use the process of the Central Criminal Records Exchange to request and receive a national criminal background check.

H. The search of the central registry is a check to determine if the person has ever been the subject of a founded complaint of child abuse or neglect in Virginia.

I. The person must use the form and process of the Department of Social Services' Office of Background Investigations (OBI). The Department of Social Services provides the central registry request form on its website. Requesters are permitted to submit copies of this form. OBI verifies child protective services central registry check findings.

The department and registering and approval agencies provide copies of all forms in application packets.

8VAC20-770-30. Identifying the facilities that are not covered by this chapter.

A. Certified preschools or nursery schools operated by accredited private schools that are accredited in accordance with § 22.1-289.032 of the Code of Virginia; and family day homes that are not required to be licensed, registered, or approved are not covered by this chapter.

B. Background check requirements for certified preschool or nursery school programs operated by accredited private schools are at § 22.1-289.032 of the Code of Virginia.

C. Background check requirements for child day centers or family day homes that are not licensed, registered, approved, or exempt from licensure and receive federal, state or local child care funds are at § 22.1-289.040 of the Code of Virginia.

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8VAC20-770-40. Identifying who is covered by this chapter.

A. This chapter applies to:

1. Licensed family day homes;
2. Licensed family day systems;
3. Family day homes approved by family day systems;
4. Voluntarily registered family day homes;
5. Religious exempt child day centers; and
6. Licensed child day centers.

B. Except as provided in 8VAC20-770-50 A, no person with a disqualifying background who has not been granted a waiver according to 8VAC20-770-90 may operate or volunteer or work at a facility governed by this chapter.

C. Background checks are required at the time of initial application.

1. These background checks are required at the time of initial application for licensure, registration, or approval:

<u>Who</u>	<u>What</u>	<u>When</u>
<u>a. Any applicant</u>	<u>Sworn statement or affirmation, search of central registry, and criminal history record check</u>	<u>Upon application for licensure or registration as a child day program or family day system</u>
<u>b. Any agent at the time of application who is or will be involved in the day-to-day operations of the child day program or who is or will be alone with, in control of, or supervising one or more of the children</u>	<u>Same</u>	<u>Same</u>
<u>c. Any other adult living in the home of an applicant for licensure or registration as a family day home, or any existing employee or volunteer</u>	<u>Same</u>	<u>Upon application for licensure or registration as a family day home</u>

<u>d. Operator of family day home requesting approval by family day system</u>	<u>Sworn statement or affirmation, search of central registry, and criminal history record check</u>	<u>Upon request for approval by family day system</u>
<u>e. Any other adult residing in the family day home requesting approval and any employee or volunteer of a family day home</u>	<u>Same</u>	<u>Upon request by operator for approval by family day system</u>

2. These background checks are required at the time of initial application for religious exemption status:

<u>Who</u>	<u>What</u>	<u>When</u>
<u>Any person who will be expected to be alone with one or more children enrolled in a religious exempt child day center except a parent-volunteer, as defined in this chapter, or a parent or guardian who may be left alone with his or her own child</u>	<u>Documentary evidence of sworn statement or affirmation, search of the central registry, and criminal history record check</u>	<u>With the written request for religious exemption status</u>

D. Background checks are required after the initial licensure, registration, approval, or receipt of religious exemption status.

1. These background checks are required after initial licensure, registration, or approval:

<u>Who</u>	<u>What</u>	<u>When</u>
<u>a. New person designated as applicant, licensee, registrant, family day home operator approved by a family day system, or agent who is or will be involved in the day-to-day operations of the facility or who is or will be alone</u>	<u>Sworn statement or affirmation</u>	<u>Whenever an applicant, licensee, approved family day home operator, or registrant changes</u>
	<u>Search of central registry and criminal history record check</u>	<u>Before the end of 30 days after the change</u>

<u>with, in control of, or supervising one or more of the children</u>		
<u>b. Any employee of a licensed, registered, and approved facility who is involved in the day-to-day operations or who is alone with, in control of, or supervising one or more children</u>	<u>Sworn statement or affirmation</u>	<u>Prior to first day of employment at the facility</u>
	<u>Search of central registry and criminal history record check</u>	<u>Before 30 days of employment at the facility ends</u>
<u>c. Any applicant, licensee, family day home operator approved by a family day system, agent, employee, volunteer, and person living in the family day home who is required to have background checks</u>	<u>Sworn statement or affirmation, search of central registry and criminal history record check</u>	<u>Before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report</u>
<u>d. Voluntary registration provider, provider assistant, substitute provider, if any, and any adult residing in the home</u>	<u>Sworn statement or affirmation, search of central registry and criminal history record check</u>	<u>90 days before the date of application for renewal of the current certificate of registration (The application for renewal must be received by the contracting organization no later than 45 days before the expiration of the current certificate of registration.)</u>
<u>e. Volunteer at licensed, registered, or approved facility who will be alone with any child in the performance of duties, excluding a parent-volunteer for children attending a</u>	<u>Sworn statement or affirmation</u>	<u>Prior to first day of service at the facility</u>
	<u>Search of central registry and criminal history record check</u>	<u>Before 30 days of service at the facility elapses</u>

<u>licensed, registered, or approved program</u>		
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2. These background checks are required after receipt of the initial religious exemption status letter.

Annually, prior to the expiration date in the current exemption letter, the religious exempt child day center must file with the department documentary evidence that the center is in compliance with the following:

<u>Who</u>	<u>What</u>	<u>When</u>
<u>Prospective employee, volunteer, or any other person who is expected to be alone with one or more children enrolled in the religious exempt child day center except a parent-volunteer, or a parent or guardian who may be left alone with his or her own child</u>	<u>Sworn statement or affirmation</u>	<u>Before employment or commencement of service at the facility</u>
	<u>Search of central registry and criminal history record check, as requested by the individual</u>	<u>Within 30 days of employment or commencement of service</u>

3. Background checks are required for independent contract employees and employees hired by a contract agency.

If a licensed, registered, or approved facility uses independent contract employees or contract employees hired by a contract agency who will be involved in the day-to-day operations of the facility or who will be alone with, in control of, or supervising one or more children, the facility must:

a. Obtain background checks according to the above requirements for employees, or view the original required background checks maintained by the contract employee or contract agency;

b. Accept all satisfactory background checks dated less than six months before independent contract employees or contract employees hired by contract agencies begin providing services at facilities;

c. Make copies, and keep them at the licensed, registered, or approved facilities. Staff must write on the copies of the criminal record reports that they are photocopies of originals that facility staff verified; and

d. Provide a sworn statement or affirmation, search of central registry and criminal history record check before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report.

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4. A person 18 years of age and older must have background checks:

Who	What	When
A Person living in: <u>The home of an applicant* or</u> <u>The home of a licensed or registered family day home provider</u>	Sworn statement or affirmation	When person age 18 years or older begins residing in the home or when a person in the home becomes 18 years old
	Search of central registry and criminal history record check, as requested by the individual	Within 30 days of a person 18 years of age or older beginning to reside in the home or a person in the home becoming 18 years old
*Note: This does not apply to applicants for family day systems, child day centers, or to religious exempt child day centers.		

5. A person 14 years of age and older must have a search of the central registry and make the information available for regulatory purposes:

Who	What	When
Person living in: <u>An applicant's home,</u> <u>Home of a licensed or registered family day home provider,</u>	Child protective services central registry check	Within 30 days of a 14-year-old beginning to reside in the home or a person in the home becoming 14 years old

6. A facility must not accept a required criminal history record report or a central registry finding from an applicant, licensee, registrant, or other person required to obtain background checks that is dated more than 90 days prior to the date of employment, volunteering, residing in the home.

7. Exception: See provisions for contracting agencies in subdivision 3 of this subsection.

8. The department must not accept a required criminal history record report or a central registry finding from an applicant, licensee, registrant, or person who signs the statement of intent to operate a religious exempt center that is dated more than 90 days prior to date of licensure, registration, approval or exemption, or from the date when the person designated as the applicant or licensee changes.

9. The background checks remain valid at the facility if no more than 12 consecutive months have passed from when a person (i) began a leave of absence from that facility; (ii)

was terminated from employment at that facility; or (iii) was transferred to a facility owned and operated by the same employer or entity, unless there is a criminal conviction or a founded complaint of child abuse and neglect during that period.

8VAC20-770-50. Explaining requirements for satisfactory background checks.

A. The department and registering and approving authorities must require documentation of satisfactory background checks for applicants, agents, employees, volunteers, and others living in family day homes as specified in 8VAC20-770-40.

1. A satisfactory sworn statement or affirmation is:

- a. A fully completed original that states that the person does not have an offense; and
- b. There is no other knowledge that the individual has an unsatisfactory background.

Criminal convictions include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth. Convictions also include convictions in other states that are equivalent to those specified in this section.

2. A satisfactory central registry finding is one in which:

- a. A copy of the Department of Social Services child protective services check form is returned to the requesting agency, the Department, or local department of social services indicating that, as of the date on the reply, the individual whose name was searched is not identified in the central registry as an involved caregiver with a founded disposition of child abuse/neglect; and
- b. There is no other knowledge that the individual has a founded disposition in Virginia or elsewhere.

3. A satisfactory criminal history record check report is one in which:

- a. An original hard copy or Internet inquiry reply from the Department of State Police is returned to the agency, individual or authorized agent making the request with:
 - (1) No convictions indicated; or
 - (2) Convictions indicated, but no barrier crimes, offenses, or other felony convictions in the last five years;
- b. A letter is received from the Office of Background Investigations with a finding of "eligible"; and
- c. There is no other knowledge that the individual has an offense in Virginia or elsewhere.

The facility must have viewed an original criminal history record report maintained by a contract employee or contract agency that is dated less than six months before the independent contract employee or contract employee is hired by a contract agency begins providing services at the facility. (See also 8VAC20-770-90.)

4. A licensed child day center may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense as defined in § 18.2-57 of the Code of Virginia if 10 years have elapsed following the conviction, unless the person committed such offense while employed in a child day center or the object of the offense was a minor.

B. Background checks results are not open ended.

1. When a minor living in a family day home turns 18 years of age, the operator is responsible for making sure that the 18-year-old complies with all background check requirements for adults pursuant to 8VAC20-770-40 D.

2. Operators must submit new background checks as part of the renewal application packages of registered family day homes. With the exception of those facilities that are exempt per § 22.1-289.031 of the Code of Virginia, background checks are required every three years for all other persons required to have background checks pursuant to 8VAC20-770-40 D.

3. If a person leaves a facility and the criminal history record report or central registry check finding is less than 91 days old, the person must be permitted to take the report or reports with him. The facility must keep a copy of any report a person takes and write on it that it is a copy, and that the original of any criminal history record report was verified.

4. Unless there is a criminal conviction or a founded complaint of child abuse and neglect during that period, a background check remains valid at a facility if no more than 12 consecutive months have passed from when a person:

- a. Began a leave of absence from that facility;
- b. Was terminated from employment at that facility; or
- c. Was transferred to a center owned and operated by the same employer or entity.

5. The facility, department, or registering or approving authority may require a new background check relevant to this suspicion if there is reason to suspect that a person who has submitted acceptable background checks, as required by this chapter, has an offense in Virginia or elsewhere.

6. When the facility, department, or registering or approving authority chooses to require a new background check:

- a. The facility, department, or registering or approving authority may allow the person to continue the same relationship with the child day program until the child care provider or licensing, registering, or approval authority receives the new Virginia background check information or equivalent documentation from another state; or
- b. If there is reason to suspect that a person has an offense, the facility, department, or registering or approving authority may require that the person not be alone with children, even if the documentation is not Virginia

background check information or equivalent information from another state.

C. Waivers of some criminal convictions are possible. Refer to 8VAC20-770-90 through 8VAC20-770-130 for an explanation of the waiver.

8VAC20-770-60. Explaining consequences of unsatisfactory background checks results.

A. Applicants are denied licensure, registration or approval when there are unsatisfactory background checks results for:

- 1. Applicants as a child day program or family day system;
- 2. Agents at the time of application who are or will be involved in the day-to-day operations of the child day program or who are or will be alone with, in control of, or supervising one or more of the children;
- 3. Any other adult, or any child aged 14 or older, living in the home of an applicant for licensure or registration as a family day home with an unsatisfactory central registry finding;
- 4. Prospective family day home operators and family members seeking approval by family day systems.

B. An employee or volunteer of a licensed or registered child day program or of a family day home approved by a family day system must not be employed or provide volunteer service until the agency or home has the person's completed sworn statement or affirmation.

C. An employee or volunteer of a licensed or registered child day program, or of a family day home approved by a family day system, must be denied continued employment or volunteer service if:

- 1. The licensed or registered child day program or family day system does not have an original criminal history record report within 30 days of employment or volunteer service; or
- 2. The licensed or registered child day program or family day system does not have a central registry finding within 30 days of employment or volunteer service.

D. No violation will occur and an employee may continue to work, provide service, or live in a licensed, registered, or approved family day home if the facility has documentation that the criminal history record request, or the request for search of the central registry, was submitted within seven calendar days of the person being employed or volunteering, but the report is not returned within 30 calendar days.

- 1. If a requested report was sent within seven calendar days but was not returned within 30 calendar days, the requester must contact within four working days:
 - a. The Central Criminal Records Exchange of the Department of State Police; or

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b. The Office of Background Investigations of the Department of Social Services.

2. If the request was not received, the requestor must submit another request within five working days after the contact.

3. This provision also applies to someone beginning to live in a family day home after licensure, registration or approval is given or a child who becomes 18 years of age. It also applies to a child protective services central registry check for a person who becomes 14 years of age.

E. If the department or a local department of social services becomes aware that a person covered by this chapter has a disqualifying background, the department or local department of social services may release this information to facilities that are covered by this chapter. Those facilities must not further disseminate this information.

This provision also applies to a new adult beginning to live in a family day home or a child living in a family day home who becomes 18 years of age after licensure, registration or approval is given. It also applies to a child protective services central registry clearance for a person who becomes 14 years of age.

F. Licensed, registered, or approved facilities must inform compensated employees and volunteers that the facilities are requesting child protective services registry checks and criminal history record reports for them.

G. A facility may choose to request a national criminal background check, instead of the criminal history record check, for employees and volunteers.

1. The facility must adhere to Department of State Police requirements for obtaining fingerprints, in accordance with § 19.2-392.02 of the Code of Virginia.

2. The department, and family day system will accept a national criminal background check result of "qualified" from the Department of State Police.

3. If the screening result is "disqualified," the facility must obtain a satisfactory criminal history record check from the Central Criminal Record Exchange for the person if:

a. The facility wishes to employ the person or approve the person as a volunteer;

b. The entity wishes the department to issue a license or registration; or

c. The facility wishes a family day system or child-placing agency to issue an approval.

H. The facility may also require a background check from another state per the provisions in subdivision B 5 of 8VAC20-770-50.

I. A facility that does not comply with this chapter may have its licensure, registration, approval, or religious exempt status revoked or denied.

J. If a facility has knowledge that a person required to have a background check has an offense, and this person has neither a waiver nor an exception per 8VAC20-770-50, and the facility refuses to separate the person from employment, service, or residence in a family day home, then licensure, registration, or approval must be revoked or denied.

8VAC20-770-70. Keeping background check records.

A. A facility must keep background check records at the location where the person is an applicant, agent, employee, contract employee, volunteer, other adult in the home, or is any other adult who is involved in the day-to-day operations of the facility or who is alone with, in control of, or supervising one or more children.

1. If a facility is among two or more owned by the same entity, the background check reports and findings may be kept at corporate headquarters or at the facility and must be made available to the department representative upon request.

2. If a facility is not the primary work place for a person, the facility may keep copies on site, if there is:

a. Documentation of the place where original background check records are kept; and

b. Copies of the sworn disclosure statement or affirmation, criminal history record report with a statement that the facility designee has viewed and verified the original, and the child protective services central registry check form must be kept on site.

B. Contracting organizations and voluntarily registered family day homes certified eligible for registration by contracting organizations must keep background check records.

1. The contracting organization must keep:

a. The original criminal history record report and sworn statement or affirmation for the voluntarily registered provider;

b. The original or a copy of the central registry findings; and

c. A copy of the criminal history record report and central registry findings for all provider assistants, substitute providers, and central registry findings for persons aged 14 and older residing in the home.

2. The voluntarily registered family day home provider must keep:

a. The original criminal history record report and sworn statement of affirmation for any provider assistant, substitute provider, and any adult residing in the home; and

b. The original or a copy of the central registry finding for any provider assistant, substitute provider or any person aged 14 and older residing in the home; and

c. Copies of the provider's own background check records.

C. Family day systems and family day homes approved by family day systems must keep background check records. The requestor identified on the form must keep the original criminal history record check result and the original or copy of the child protective services central registry finding, and the other party keeps copies. The family day system must keep the original sworn disclosure statement or affirmation.

D. A voluntarily registered family day home must keep all background check information for two years after a person required to provide background check terminates his duties with a facility or no longer resides in the home. All other facilities must keep all background check information for one year after a person required to provide background checks terminates his duties with a facility or no longer resides in the home.

E. The sworn statement or affirmation, criminal history record report, and central registry finding must be kept in locked files.

F. Applicants and agents, and their designees, are the only facility staff who may have access to these documents. The board president must have access to these documents.

G. If a person is denied licensure, registration, or approval, or is denied employment or volunteer service because of information on a sworn statement or affirmation, a central registry finding, or criminal history record report, the facility must provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the person.

H. A facility must also release a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both when the subject of the information requests it.

I. Further dissemination of the background check information is prohibited other than to the Superintendent's representative or a federal or state authority or court in order to comply with an express requirement in the law for that dissemination. (See the provisions at 8VAC20-770-60 E8.)

8VAC20-770-80. Describing the waiver of criminal conviction.

The waiver of criminal conviction is the department's canceling the consequences of an unsatisfactory criminal history record check only for specific convictions.

8VAC20-770-90. Identifying who may apply for a waiver.

A. Any person who wants to operate or to volunteer or work at a facility covered by this chapter, but who is disqualified because of a criminal conviction, or a criminal conviction in the background check of any other adult living in a family day home governed by this chapter, may apply in writing to the Superintendent of the department for a waiver.

B. The superintendent may grant a waiver if:

1. A nonbarrier crime felony conviction occurred less than five years previously and the superintendent determines that the person is of good moral character and reputation and the waiver would not adversely affect the safety and well-being of the children in the person's care; or

2. Any other adult living in the home of a family day home applicant or provider has been convicted of not more than one misdemeanor offense of assault and battery or assault and battery against a family or household member as set out in §§ 18.2-57 and 18.2-57.2 of the Code of Virginia, provided five years have elapsed following the conviction and the department has conducted a home study that includes, but is not limited to:

a. An assessment of the safety of the children placed in the home and

b. A determination that the offender is now a person of good moral character and reputation.

The other adult must not be an assistant or substitute provider.

8VAC20-770-100. Explaining waiver application requirements.

A. The person requests a waiver application package from the Office of Child Care Licensing. The person sends the completed application and a waiver application fee made out to "Treasurer of Virginia" to the Office of Child Care Licensing. The Superintendent establishes the fee. It is identified in the application package.

B. Exception: A person wishing to operate a voluntarily registered family day home requests a waiver application from either the contracting organization or the voluntary registration consultant in the Office of Child Care Licensing. The person sends the completed application and application fee to the voluntary registration consultant in the Office of Child Care Licensing.

C. The superintendent acknowledges, in writing, receipt of the application and notifies the requester and the sponsor whether the request appears to be complete.

8VAC20-770-110. Describing the contents of a waiver application.

A. The waiver application is a personally prepared application.

B. The waiver application must be submitted in typewritten form or neatly printed and must include:

1. A statement that the request was solely and personally prepared by the requester, or other adult living in a family day home, as applicable, and has not been edited or changed by anyone else. Exception: the document may be typed by another person;

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2. A statement that the requester understands that the waiver will be available for inspection by the public and that the facility will provide a copy of the waiver to every parent and guardian if the waiver is granted;

3. A statement that the requester understands that information in the waiver application package will be made available by the Superintendent to any person upon request if the waiver is granted;

4. Personal and employment information;

5. If the request is for a family day home, all members of the household and their relationship to the requester;

6. A factual account of the crime of the person with the disqualifying conviction;

7. The current status and history with justice systems of the person with the disqualifying conviction;

8. Other information the person with the disqualifying background wants the superintendent to consider in evaluating the waiver request;

9. An explanation of why the waiver should be granted; and

10. Seven attachments:

a. A nonrefundable check, made payable to the "Treasurer of Virginia," for waiver application processing;

b. For the person with the disqualifying conviction:

(1) A "Current Employment and Employment History Form";

(2) A copy of the current sworn statement or affirmation;

(3) A copy of the current criminal history record report;

(4) A copy of all necessary documents verifying the person's statements regarding past and current involvement with adult or juvenile justice systems within or outside the Commonwealth;

(5) At least four references by disinterested individuals who will vouch for the "good moral character and reputation" of the person with the disqualifying conviction;

(6) The Sponsoring Agency Statement; and

(7) A notarized signature page.

C. If the waiver application is for another adult living in a family day home, the department conducts a home study to:

1. Assess the safety of children placed in the home; and

2. Determine that the offender is now a person of good moral character and reputation.

8VAC20-770-120. Describing the waiver evaluation criteria.

A. The superintendent may delegate all aspects of processing and evaluating waiver requests, provided that responsibility for

making the final decision may not be delegated below the level of a division director.

B. The final decision is based on the following:

1. The content of the waiver application package;

2. The nature of the conviction or convictions and relevance to decision criteria; and

3. The extent and pattern of criminal history or child abuse and neglect, including the person's age when the act occurred and how long ago the act occurred.

C. The applicant may be required to provide additional information that is reasonable and necessary to evaluate the application.

D. The superintendent may interview the applicant or other persons sufficient to verify and evaluate the information in the application package.

E. The superintendent may grant a waiver if the superintendent determines that:

1. The person is now of good moral character and reputation; and

2. The waiver would not adversely affect the safety and well-being of children in the person's care.

F. The superintendent will consider a waiver application abandoned, and close the file, when:

1. More than 60 days have passed since the superintendent advised the requester and the sponsoring agency that the waiver application was incomplete, or since the superintendent requested additional information that was reasonably necessary to evaluate the application; and

2. The superintendent informs the requester by certified mail that the waiver application would be considered abandoned unless the requester provides the requested information within 15 days.

G. Waiver decisions are not appealable.

8VAC20-770-130. Describing the waiver decision notification process.

A. The superintendent notifies the requester, or other adult if applicable, and the sponsor of his approval or denial in writing by certified mail.

B. Any approved waiver is for a specific person and a specific facility and must include:

1. Name of individual;

2. Name of facility;

3. Effective dates;

4. Terms, conditions, and stipulations, if any;

5. Criminal conviction for which the waiver was granted;

- 6. Date of criminal conviction;
- 7. Relevant court and location;
- 8. Sentence served; and
- 9. Signature of superintendent, or designee, and date.

8VAC20-770-140. Modifying, revoking, and terminating waivers.

A. The person and the sponsoring agency may request a modification of any of the terms, conditions, or stipulations of a waiver.

B. The superintendent may revoke a waiver if, after investigation, he determines that:

- 1. The waiver application contained false, deceptive, or misleading information;
- 2. The terms, conditions, or stipulations of a waiver have been violated; or
- 3. New or expanded information becomes known about the person that would change the previous determination made about the person's character, reputation, or suitability to work with or be in proximity to children.

C. If a waiver is revoked, the superintendent informs the person and the sponsoring agency, in writing by certified mail, of the reasons for the revocation.

D. A waiver automatically expires when:

- 1. The person terminates the approved arrangement with the sponsoring facility;
- 2. Five years have passed from the last date of a conviction for the felony or felonies for which the waiver was granted; or
- 3. The other adult living in a family day home was the reason for the waiver and the other adult no longer lives in the home.

8VAC20-770-150. Explaining the waiver public notification requirements.

A. Notification about waivers is conducted in accordance with agency policy.

B. The facility must post in a conspicuous place on the premises any waiver granted by the department.

C. The facility must notify in writing every parent and guardian of the children in its care of any waiver granted for its operators, employees, volunteers, or adult family members living in the home. This notification includes parents and guardians who, in the future, enroll children.

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 (8VAC20-770)

[Central Registry Release of Information Form](#) (eff. 7/1/21)

[Sworn Statement or Affirmation for Child Day Programs](#) (eff. 7/1/21)

Chapter 780

Standards for Licensed Child Day Centers

Part I

Introduction

22VAC40-185-10 8VAC20-780-10. Definitions.

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

"Adult" means any individual 18 years of age or older.

"Age and stage appropriate" means the curriculum, environment, equipment, and adult-child interactions are suitable for the ages of the children within a group and the individual needs of any child.

"Age groups":

- 1. "Infant" means children from birth to 16 months.
- 2. "Toddler" means children from 16 months up to two years.
- 3. "Preschool" means children from two years up to the age of eligibility to attend public school, five years by September 30.
- 4. "School age" means children eligible to attend public school, age five or older by September 30 of that same year. Four-year-old or five-year-old children included in a group of school age children may be considered school age during the summer months if the children will be entering kindergarten that year.

"Attendance" means the actual presence of an enrolled child.

"Balanced mixed-age grouping" means a program using a curriculum designed to meet the needs and interests of children in the group and is planned for children who enter the program at three through five years of age. The enrollment in the balance mixed-age grouping comprises a relatively even allocation of children in each of three ages (three to six years) and is designed for children and staff to remain together with turnover planned only for the replacement of exiting students with children of ages that maintain the class balance.

"Body fluids" means urine, feces, saliva, blood, nasal discharge, eye discharge, and injury or tissue discharge.

"Camp" means a child day camp that is a child day center for school age children that operates during the summer vacation

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months only. Four-year-old children who will be five by September 30 of the same year may be included in a camp for school age children.

"Center" means a child day center.

"Child" means any individual under 18 years of age.

"Child day center" means a child day program offered to (i) two or more children younger than 13 years of age in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child younger than 13 years of age for less than a 24-hour period.

Note: This does not include programs such as drop-in playgrounds or clubs for children when there is no service arrangement with the child's parent.

"Children with special needs" means children with developmental disabilities, mental retardation, emotional disturbance, sensory or motor impairment, or significant chronic illness who require special health surveillance or specialized programs, interventions, technologies, or facilities.

"Cleaned" means treated in such a way to reduce the amount of filth through the use of water with soap or detergent or the use of an abrasive cleaner on inanimate surfaces.

~~"Commissioner" means the Commissioner of the Virginia Department of Social Services.~~

"Communicable disease" means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse or mosquito) or environmental object (such as a table surface). Some communicable diseases are reportable to the local health authority.

"Department" means the Virginia Department of ~~Social Services~~ Education.

"Department's representative" means an employee or designee of the Virginia Department of ~~Social Services~~ Education, acting as the authorized agent of the ~~commissioner~~ superintendent.

"Evening care" means care provided after 7 p.m. but not through the night.

"Good character and reputation" means knowledgeable and objective people agree that the individual (i) maintains business, professional, family, and community relationships which are characterized by honesty, fairness, and truthfulness and (ii) demonstrates a concern for the well-being of others to the extent that the individual is considered suitable to be

entrusted with the care, guidance, and protection of children. Relatives by blood or marriage and people who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

"Group of children" means the children assigned to a staff member or team of staff members.

"High school program completion or the equivalent" means an individual has earned a high school diploma or General Education Development (G.E.D.) certificate, or has completed a program of home instruction equivalent to high school completion.

"Independent contractor" means an entity that enters into an agreement to provide specialized services or staff for a specified period of time.

"Individual service, education or treatment plan" means a plan identifying the child's strengths, needs, general functioning and plan for providing services to the child. The service plan includes specific goals and objectives for services, accommodations, and intervention strategies. The service, education or treatment plan clearly shows documentation and reassessment or evaluation strategies.

"Intervention strategies" means a plan for staff action that outlines methods, techniques, cues, programs, or tasks that enable the child to successfully complete a specific goal.

"Licensee" means any individual, partnership, association, public agency, or corporation to whom the license is issued.

"Minor injury" means a wound or other specific damage to the body such as, but not limited to, abrasions, splinters, bites that do not break the skin, and bruises.

"Overnight care" means care provided after 7 p.m. and through the night.

"Parent" means the biological or adoptive parent or legal guardian of a child enrolled in or in the process of being admitted to a center.

"Physician" means an individual licensed to practice medicine in any of the 50 states or the District of Columbia.

"Physician's designee" means a physician, licensed nurse practitioner, licensed physician assistant, licensed nurse (R.N. or L.P.N.), or health assistant acting under the supervision of a physician.

"Primitive camp" means a camp where places of abode, water supply system, or permanent toilet and cooking facilities are not usually provided.

"Programmatic experience" means time spent working directly with children in a group that is located away from the child's home. Work time shall be computed on the basis of full-time work experience during the period prescribed or equivalent work time over a longer period. Experience settings may include a child day program, family day home, child day

center, boys and girls club, field placement, elementary school, or a faith-based organization.

"Resilient surfacing" means:

1. For indoor and outdoor use underneath and surrounding equipment, impact absorbing surfacing materials that comply with minimum safety standards when tested in accordance with the procedures described in the American Society for Testing and Materials' standard F1292-99 as shown in Figures 2 (Compressed Loose Fill Synthetic Materials Depth Chart) and 3 (Use Zones for Equipment) on pages 6-7 of the National Program for Playground Safety's "Selecting Playground Surface Materials: Selecting the Best Surface Material for Your Playground," February 2004.
2. Hard surfaces such as asphalt, concrete, dirt, grass or flooring covered by carpet or gym mats do not qualify as resilient surfacing.

"Sanitized" means treated in such a way to remove bacteria and viruses from inanimate surfaces through using a disinfectant solution (i.e., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat). The surface of the item is sprayed or dipped into the disinfectant solution and allowed to air dry after use of the disinfectant solution.

"Serious injury" means a wound or other specific damage to the body such as, but not limited to, unconsciousness; broken bones; dislocation; deep cut requiring stitches; concussion; or foreign object lodged in eye, nose, ear, or other body orifice.

"Shelter-in-place" means the facility or building in which a child day center is located.

"Short-term program" means a child day center that operates less than 12 weeks a year.

"Special needs child day program" means a program exclusively serving children with special needs.

"Specialty camps" means those centers that have an educational or recreational focus on one subject such as dance, drama, music, or sports.

"Sponsor" means an individual, partnership, association, public agency, corporation, or other legal entity in whom the ultimate authority and legal responsibility is vested for the administration and operation of a center subject to licensure.

"Staff" means administrative, activity, and service personnel including the licensee when the licensee is an individual who works in the center, and any persons counted in the staff-to-children ratios or any persons working with a child without sight and sound supervision of a staff member.

"Staff positions" are defined as follows:

1. "Aide" means the individual designated to be responsible for helping the program leader in supervising children and in implementing the activities and services for children.

Aides may also be referred to as assistant teachers or child care assistants.

2. "Program leader" means the individual designated to be responsible for the direct supervision of children and for implementation of the activities and services for a group of children. Program leaders may also be referred to as child care supervisors or teachers.

3. "Program director" means the primary, onsite director or coordinator designated to be responsible for developing and implementing the activities and services offered to children, including the supervision, orientation, training, and scheduling of staff who work directly with children, whether or not personally performing these functions.

4. "Administrator" means a manager or coordinator designated to be in charge of the total operation and management of one or more centers. The administrator may be responsible for supervising the program director or, if appropriately qualified, may concurrently serve as the program director. The administrator may perform staff orientation or training or program development functions if the administrator meets the qualifications of ~~22VAC40-185-190~~ 8VAC20-780-190 and a written delegation of responsibility specifies the duties of the program director.

"Superintendent" means Superintendent of Public Instruction.

"Therapeutic child day program" means a specialized program, including therapeutic recreation programs, exclusively serving children with special needs when an individual service, education or treatment plan is developed and implemented with the goal of improving the functional abilities of the children in care.

"Universal precautions" means an approach to infection control. According to the concept of universal precautions, all human blood and certain human body fluids are treated as if known to be infectious for human immunodeficiency virus (HIV), hepatitis B virus (HBV), and other bloodborne pathogens.

"Volunteer" means a person who works at the center and:

1. Is not paid;
2. Is not counted in the staff-to-children ratios; and
3. Is in sight and sound supervision of a staff member when working with a child.

Any unpaid person not meeting this definition shall be considered "staff" and shall meet staff requirements.

~~22VAC40-185-20~~ 8VAC20-780-20. **Legal base.**

A. ~~Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2 Chapter 14.1, Article 3 (§ 22.1-289.010 et seq.) and Article 4 (§ 22.1-289.030 et seq.) of Title 22 of the Code of Virginia describes the responsibility of the Department of Social Services~~ Education for the regulation of

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~~residential and day programs for children, including child day centers programs.~~

B. Section ~~63.2-1734~~ 22.1-16 of the Code of Virginia ~~requires~~ authorizes the State Board of ~~Social Services~~ Education to ~~prescribe standards for certain activities, services, and facilities for child day centers promulgate regulations to carry out its powers and duties.~~

C. Nothing in this chapter shall be construed to contradict or to negate any provisions of the Code of Virginia which may apply to child day centers.

~~22VAC40-185-30~~ **8VAC20-780-30.** **Purpose and applicability.**

A. The purpose of these standards is to protect children under the age of 13 who are separated from their parents during a part of the day by:

1. Ensuring that the activities, services, and facilities of centers are conducive to the well-being of children; and
2. Reducing risks in the environment.

B. The standards in this chapter apply to child day centers as defined in ~~22VAC40-185-10~~ 8VAC20-780-10 serving children under the age of 13.

Part II
Administration

~~22VAC40-185-40~~ **8VAC20-780-40.** **Operational responsibilities.**

A. Applications for licensure shall conform with ~~Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.)~~ Article 3 (§ 22.1-289.010 et seq.) and Article 4 (§ 22.1-289.030 et seq.) of Chapter 14.1, of Title ~~63.2~~ 22.1 of the Code of Virginia and the regulation entitled General Procedures and Information for Licensure, ~~22VAC40-80~~ 8VAC20-820.

B. Pursuant to ~~§§ 63.2-1719 and 63.2-1721.1~~ § 22.1-289.034 of the Code of Virginia and the regulation entitled Background Checks for ~~Child Welfare Agencies, 22VAC40-191,~~ Child Day Programs and Family Day Systems, 8VAC20-770, the applicant and any agent at the time of application who is or will be involved in the day-to-day operations of the center or who is or will be alone with, in control of, or supervising one or more of the children, shall be of good character and reputation and shall not be guilty of an offense as defined in ~~§ 63.2-1719~~ 22.1-289.034 of the Code of Virginia.

C. The sponsor shall afford the ~~commissioner~~ superintendent or his agents the right at all reasonable times to inspect facilities and to interview his agents, employees, and any child or other person within his custody or control, provided that no private interviews may be conducted with any child without prior notice to the parent of such child.

D. The license shall be posted in a place conspicuous to the public (~~§ 63.2-1701~~ 22.1-289.011 of the Code of Virginia).

E. The operational responsibilities of the licensee shall include, but not be limited to, ensuring that the center's activities, services, and facilities are maintained in compliance with these standards, the center's own policies and procedures that are required by these standards, and the terms of the current license issued by the department.

F. Every center shall ensure that any advertising is not misleading or deceptive as required by ~~§ 63.2-1713~~ 22.1-289.027 of the Code of Virginia.

G. The center shall meet the proof of child identity and age requirements as stated in ~~§ 63.2-1809~~ 22.1-289.049 of the Code of Virginia.

H. The sponsor shall maintain public liability insurance for bodily injury for each center site with a minimum limit of at least \$500,000 each occurrence and with a minimum limit of \$500,000 aggregate.

1. A public sponsor may have equivalent self-insurance that is in compliance with the Code of Virginia.
2. Evidence of insurance coverage shall be made available to the department's representative upon request.

I. The center shall develop written procedures for injury prevention.

J. Injury prevention procedures shall be updated at least annually based on documentation of injuries and a review of the activities and services.

K. The center shall develop written playground safety procedures which shall include:

1. Provision for active supervision by staff to include positioning of staff in strategic locations, scanning play activities, and circulating among children; and
2. Method of maintaining resilient surface.

L. Hospital-operated centers may temporarily exceed their licensed capacity during a natural disaster or other catastrophe or emergency situation and shall develop a written plan for emergency operations, for submission to and approval by the Department of ~~Social Services~~ Education.

M. When children 13 years or older are enrolled in the program and receive supervision in the licensed program, they shall be counted in the number of children receiving care and the center shall comply with the standards for these children.

~~22VAC40-185-50~~ **8VAC20-780-50.** **General recordkeeping; reports.**

A. Staff and children's records shall be treated confidentially. Exception: Children's records shall be made available to parents on request, unless otherwise ordered by the court.

B. Records and reports on children and staff required by this chapter shall be maintained and made accessible for two years

after termination of services or separation from employment unless specified otherwise.

C. Records may be kept at a central location except as stated otherwise in these standards.

~~22VAC40-185-60~~ 8VAC20-780-60. Children's records.

A. Each center shall maintain and keep at the center a separate record for each child enrolled which shall contain the following information:

1. Name, nickname (if any), sex, and birth date of the child;
 2. Name, home address, and home phone number of each parent who has custody;
 3. When applicable, work phone number and place of employment of each parent who has custody;
 4. Name and phone number of child's physician;
 5. Name, address, and phone number of two designated people to call in an emergency if a parent cannot be reached;
 6. Names of persons authorized to pick up the child. Appropriate legal paperwork shall be on file when the custodial parent requests the center not to release the child to the other parent;
 7. Allergies and intolerance to food, medication, or any other substances, and actions to take in an emergency situation;
 8. Chronic physical problems and pertinent developmental information and any special accommodations needed;
 9. Health information as required by ~~22VAC40-185-130~~ 8VAC20-780-130 through ~~22VAC40-185-150~~ 8VAC20-780-150;
- Exception: When a center is located on the same premises where a child attends school and the child's record has a statement verifying the school's possession of the health record, the center is not required to maintain duplicates of the school's health record for that child provided the school's records are accessible during the center's hours of operation.
10. Written agreements between the parent and the center as required by ~~22VAC40-185-90~~ 8VAC20-780-90;
 11. Documentation of child updates and confirmation of up-to-date information in the child's record as required by ~~22VAC40-185-420 E 3~~ 8VAC20-780-420 E 3;
 12. Any blanket permission slips and opt out requests;
 13. Previous child day care and schools attended by the child;
 14. Name of any additional programs or schools that the child is concurrently attending and the grade or class level;
 15. Documentation of viewing proof of the child's identity and age; and

16. First and last dates of attendance.

B. The proof of identity, if reproduced or retained by the child day program or both, shall be destroyed upon the conclusion of the requisite period of retention. The procedures for the disposal, physical destruction or other disposition of the proof of identity containing social security numbers shall include all reasonable steps to destroy such documents by (i) shredding, (ii) erasing, or (iii) otherwise modifying the social security numbers in those records to make them unreadable or indecipherable by any means.

~~22VAC40-185-70~~ 8VAC20-780-70. Staff records.

A. The following staff records shall be kept for each staff person:

1. Name, address, verification of age requirement, job title, and date of employment or volunteering; and name, address and telephone number of a person to be notified in an emergency which shall be kept at the center.
2. For staff hired after March 1, 1996, documentation that two or more references as to character and reputation as well as competency were checked before employment or volunteering. If a reference check is taken over the phone, documentation shall include:
 - a. Dates of contact;
 - b. Names of persons contacted;
 - c. The firms contacted;
 - d. Results; and
 - e. Signature of person making call.
3. Background checks as required by the regulation entitled Background Checks for Licensed Child Day Centers (~~22VAC15-54~~) Programs and Family Day Systems (8VAC20-770).
4. Written information to demonstrate that the individual possesses the education, orientation training, staff development, certification, and experience required by the job position.
5. First aid, cardiopulmonary resuscitation and other certifications as required by the responsibilities held by the staff member.
6. Health information as required by ~~22VAC40-185-160~~ 8VAC20-780-160 and ~~22VAC40-185-170~~ 8VAC20-780-170.
7. Information, to be kept at the center, about any health problems which may interfere with fulfilling the job responsibilities.
8. Date of separation from employment.

B. Exception: Background check records for independent contractors must be kept in accordance with ~~22VAC15-51-70~~ 8VAC20-770-40 of the background check regulation.

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~~22VAC40-185-80~~ 8VAC20-780-80. Attendance records; reports.

A. The center shall keep a written record of children in attendance each day.

B. Reports shall be filed and maintained as follows:

1. The center shall inform the ~~commissioner's~~ superintendent's representative as soon as practicable but not to exceed one working day of the circumstances surrounding the following incidents:

- a. Death of a child while under the center's supervision; and
- b. Missing child when local authorities have been contacted for help.

2. Any suspected incident of child abuse shall be reported in accordance with § 63.2-1509 of the Code of Virginia.

~~22VAC40-185-90~~ 8VAC20-780-90. Parental agreements.

A written agreement between the parent and the center shall be in each child's record by the first day of the child's attendance. The agreement shall be signed by the parent and include:

1. An authorization for emergency medical care should an emergency occur when the parent cannot be located immediately unless the parent states in writing an objection to the provision of such care on religious or other grounds;
2. A statement that the center will notify the parent when the child becomes ill and that the parent will arrange to have the child picked up as soon as possible if so requested by the center; and
3. A statement that the parent will inform the center within 24 hours or the next business day after his child or any member of the immediate household has developed any reportable communicable disease, as defined by the State Board of Health, except for life threatening diseases which must be reported immediately.

~~22VAC40-185-100~~ 8VAC20-780-100. Enrollment procedures of therapeutic child day programs and special needs child day programs.

Before the child's first day of attendance, there shall be personal communication between the director, or his designee, and the parent to determine:

1. The child's level of general functioning as related to physical, affective/emotional, cognitive and social skills required for participation; and
2. Any special medical procedures needed.

~~22VAC40-185-110~~ 8VAC20-780-110. Individual assessment for therapeutic child day programs.

A. An individual assessment completed within six months before the child's attendance or 30 days after the first day of attendance shall be maintained for each child.

B. An individual assessment shall be reviewed and updated for each child no less than once every 12 months.

~~22VAC40-185-120~~ 8VAC20-780-120. Individual service, education or treatment plan for therapeutic child day programs.

A. An individual service, education or treatment plan:

1. Shall be developed for each child by the director or his designee and primary staff responsible for plan implementation;
2. Shall be implemented within 60 days after the first day of the child's attendance.

B. The child's individual service, education or treatment plan shall be developed, reviewed, and revised every three months and rewritten annually by the director or his designee and primary staff responsible for plan implementation. This shall be done in partnership with the parent, residential care provider or advocate.

C. A copy of the initial plan and subsequent or amended service, education or treatment plans shall be maintained in the child's record and a copy given to the child's parent.

~~22VAC40-185-130~~ 8VAC20-780-130. Immunizations for children.

A. The center shall obtain documentation that each child has received the immunizations required by the State Board of Health before the child can attend the center.

Exemptions (subsection C of § 22.1-271.2 of the Code of Virginia and 12VAC5-110-110 of the Regulations for the Immunizations of School Children): Documentation of immunizations is not required for any child whose (i) parent submits an affidavit to the center, on the form entitled "Certification of Religious Exemption," stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices, or (ii) physician or a local health department states on a MCH 213B or MCH 213C, or other Department of Health-approved form that one or more of the required immunizations may be detrimental to the child's health.

B. The center shall obtain documentation of additional immunizations once every six months for children under the age of two years.

C. The center shall obtain documentation of additional immunizations once between each child's fourth and sixth birthdays.

22VAC40-185-140 8VAC20-780-140. Physical examinations for children.

A. Each child shall have a physical examination by or under the direction of a physician:

1. Before the child's attendance; or
2. Within one month after attendance.

B. If the child has had a physical examination prior to attendance, it shall be within the time period prescribed below:

1. Within two months prior to attendance for children six months of age and younger;
2. Within three months prior to attendance for children aged seven months through 18 months;
3. Within six months prior to attendance for children aged 19 months through 24 months; and
4. Within 12 months prior to attendance for children two years of age through five years of age.

C. Exceptions:

1. Children transferring from a facility licensed by the Virginia Department of ~~Social Services~~ Education, certified by a local department of public welfare or social services, registered as a small family day home by the Virginia Department of ~~Social Services~~ Education or by a contract agency of the Virginia Department of ~~Social Services~~ Education, or approved by a licensed family day system:

- a. If the initial report or a copy of the initial report of immunizations is available to the admitting facility, no additional examination is required.
- b. If the initial report or a copy of the initial report is not available, a report of physical examination and immunization is required in accordance with ~~22VAC40-185-130~~ 8VAC20-780-130 and this section.

2. Pursuant to subsection D of § 22.1-270 of the Code of Virginia, physical examinations are not required for any child whose parent objects on religious grounds. The parent must submit a signed statement noting that the parent objects on religious grounds and certifying that to the best of the parent's knowledge the child is in good health and free from communicable or contagious disease.

22VAC40-185-150 8VAC20-780-150. Form and content of immunizations and physical examination reports for children.

A. The current form required by the Virginia Department of Health or a physician's form shall be used to report immunizations received and the results of the required physical examination.

B. Each report shall include the date of the physical examination and dates immunizations were received and shall

be signed by a physician, his designee, or an official of a local health department.

22VAC40-185-160 8VAC20-780-160. Tuberculosis screening for staff and independent contractors.

A. Each staff member and individual from an independent contractor shall submit documentation of a negative tuberculosis screening.

Documentation of the screening shall be submitted no later than 21 days after employment or volunteering and shall have been completed within 12 months prior to or 21 days after employment or volunteering.

B. Acceptable forms of documentation of tuberculosis screening are:

1. A clearance statement signed by a physician, the physician's designee or an official of the local health department. This statement shall include language that the individual does not have any current symptoms of active tuberculosis, does not have either a risk factor for acquiring tuberculosis infection or a risk factor for progression to active tuberculosis disease as defined by the local health department, or has been treated for these conditions in the past, and is currently free of tuberculosis in a communicable form. Individuals who have a risk factor for progression to active tuberculosis disease as defined by the Virginia Department of Health shall submit documentation as stated in subdivision 2 or 3 of this subsection;
2. The results of a negative tuberculin skin test (TST). The documentation shall include the date the test was given and results of the test and be signed by a physician, physician's designee or an official of the local health department.
3. The results of a chest x-ray negative for active tuberculosis disease. The documentation shall include the date of the test and location where the examination was performed.

C. At least every two years from the date of the initial screening or testing, or more frequently if recommended by a licensed physician or the local health department, staff members and individuals from independent contractors shall obtain and submit the results of a follow-up tuberculosis screening as stated in subsection B of this section.

D. Any staff member or individual from an independent contractor who develops symptoms compatible with active tuberculosis disease, regardless of the date of the last tuberculosis screening or assessment, shall obtain and submit within 14 days a determination of noncontagiousness by a physician or local health department.

1. Until such determination is made, that staff member may not be permitted to work at the center.
2. Any staff member or individual from an independent contractor who comes in contact with a known active case

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of tuberculosis or who tests positive on a tuberculin skin test, regardless of the date of the last tuberculosis screening or assessment, shall submit within 30 days a statement indicating that all needed follow-up for the incident has been completed and that the individual is free of tuberculosis in a communicable form. This statement shall be signed by a physician, physician's designee or an official of the local health department.

22VAC40-185-170 8VAC20-780-170. Physical and mental health of staff and volunteers.

A. When there is evidence that the safety of children may be jeopardized by contact with a staff member or volunteer because of the physical health or mental health of such staff member or volunteer, the licensee shall, at a minimum, prohibit the employee or volunteer from engaging in contact with the children or participation in the food service program until a physician or a clinical psychologist skilled in the diagnosis and treatment of mental illness confirms that any risk has been eliminated or can be reduced to an acceptable level by reasonable accommodations.

B. The requirement of subsection A of this section should not be construed as a mandatory precondition to any other employment action that an employer may otherwise take.

Part III Staff Qualifications and Training

22VAC40-185-180 8VAC20-780-180. General qualifications.

A. No staff shall be guilty of an offense, as defined in § ~~63.2-4719~~ 22.1-289.034 of the Code of Virginia.

B. Staff shall be:

1. Of good character and reputation;
2. Capable of carrying out assigned responsibilities;
3. Capable of accepting training and supervision; and
4. Capable of communicating effectively both orally and in writing as applicable to the job responsibility.

C. Staff who work directly with children shall be capable of communicating with emergency personnel.

D. Staff who drive a vehicle transporting children shall disclose any moving traffic violation that occurred five years prior to or during employment or assignment as a driver.

E. For therapeutic child day programs and special needs child day programs, staff who work with children shall have knowledge of the groups being served and skills specific to the special needs of the children in care including, but not limited to, functional abilities, accommodations, assessment techniques, behavior management, and medical and health concerns.

22VAC40-185-190 8VAC20-780-190. Program director qualifications.

A. Program directors shall be at least 21 years of age and shall meet one of the following:

1. A graduate degree in a child-related field such as, but not limited to, elementary education, nursing, or recreation from a college or university and six months of programmatic experience;
2. An endorsement or bachelor's degree in a child-related field such as, but not limited to, elementary education, nursing, or recreation from a college or university and one year of programmatic experience;
3. Forty-eight semester hours or 72 quarter hours of college credit from a college or university of which 12 semester hours or 18 quarter hours are in child-related subjects and one year of programmatic experience;
4. Two years of programmatic experience with one year in a staff supervisory capacity and at least one of the following education backgrounds:
 - a. A one-year early childhood certificate from a college or university that consists of at least 30 semester hours;
 - b. A child development credential that requires:
 - (1) High school program completion or the equivalent;
 - (2) 480 hours working with children in a group which could include a supervised practicum; and
 - (3) Determination of competency in promoting children's development, providing a safe and healthy environment, managing the classroom environment and/or childhood program, and promoting positive and productive relationships with parents/guardians; and
 - (4) At least 120 clock hours of child-related training taught by an individual or by an organization with expertise in early childhood teacher preparation provided that the training facilitator:
 - (a) Documents the student's mastery and competence;
 - (b) Observes the student's application of competence in a classroom setting;
 - (c) Has a combination of at least six years of education (leading to a degree or credential in a child-related field) or programmatic experience; and
 - (d) Has at least 12 semester hours or 180 clock hours in a child-related field, a child development credential or equivalent, and two years of programmatic experience with one year in a staff supervisory capacity; or
 - c. A certification of qualification from an internationally or nationally recognized Montessori organization; or
5. Three years of programmatic experience including one year in a staff supervisory capacity and fulfilled a high school program completion or the equivalent.

- a. Such programmatic experience shall be obtained in a child day center that offers a staff training program that includes: written goals and objectives; assessment of the employee's participation in the training; and the subject areas of first aid, human growth and development, health and safety issues and behavioral management of children.
- b. Such employees shall complete 120 hours of training during this three-year period and provide documentation of completing the training.
- c. Effective June 1, 2008, program directors shall meet a qualification as stated in subdivisions 1 through 4 of this subsection.

6. Exception (a): Program directors hired before June 1, 2005, who do not meet the qualifications may continue to be program directors as long as the program director: (i) obtains each year three semester hours or six quarter hours of college credit related to children until meeting a qualification option or (ii) is enrolled in and regularly works toward a child development credential as specified in subdivision 4 b of this subsection, which credential must be awarded by June 1, 2009.

Exception (b): Program directors hired or promoted on or after June 1, 2005, until June 1, 2006, who do not meet the qualifications may continue to be program directors as long as the program director: (i) obtains each year six semester hours or nine quarter hours of college credit related to children until meeting a qualification option or (ii) is enrolled in and regularly works toward a child development credential as specified in subdivision 4 b of this subsection, which credential must be awarded no later than June 1, 2007.

B. Program directors without management experience shall have one college course in a business-related field, 10 clock hours of management training, or one child care management course that satisfactorily covers the management functions of:

- 1. Planning;
- 2. Budgeting;
- 3. Staffing; and
- 4. Monitoring.

*Note: Management experience is defined as at least six months of on-the-job training in an administrative position that requires supervising, orienting, training, and scheduling staff.

C. For program directors of therapeutic child day programs and special needs child day programs, education and programmatic experience shall be in the group care of children with special needs.

D. Notwithstanding subsection A of this section, a person between 19 and 21 years of age may serve as a program director at a short-term program serving only school age children if the program director has daily supervisory contact

by a person at least 21 years of age who meets one of the program director qualification options.

~~22VAC40-185-200~~ 8VAC20-780-200. Program directors and back-up for program directors.

A. The center shall have a qualified program director or a qualified back-up program director who meets one of the director qualifications who shall regularly be on site at least 50% of the center's hours of operation.

B. For centers offering multiple shifts, a qualified program director or qualified back-up director shall regularly be on site at least 50% of the day shift and at least two hours during the evening shift and two hours during the night shift.

C. For centers employing one or more program leaders who are qualified under subsection C of ~~22VAC40-185-210~~ 8VAC20-780-210 but not under subsection A of that section, the qualified program director or qualified back-up program director shall be on site at least 75% of the center's hours of operation.

~~22VAC40-185-210~~ 8VAC20-780-210. Program leader qualifications.

A. Program leaders shall be at least 18 years of age, have fulfilled a high school program completion or the equivalent, and meet one of the following:

- 1. Have one of the program director qualifications in ~~22VAC40-185-190~~ 8VAC20-780-190;
- 2. Have an endorsement or bachelor's degree in a child-related field such as, but not limited to, elementary education, nursing, or recreation, from a college or university;
- 3. Have three months of programmatic experience and at least one of the following education backgrounds:
 - a. A one year early childhood certificate from a college or university that consists of at least 30 semester hours;
 - b. A child development credential by an organization listed in § ~~63.2-1738~~ 22.1-289.048 of the Code of Virginia;
 - c. A teaching diploma from an internationally or nationally recognized Montessori organization; or
- 4. Have six months of supervised programmatic experience.
 - a. Within six months before being promoted or beginning work or one month after being promoted or beginning work, a minimum of 12 hours of training shall be received related to the care of children, including but not limited to:
 - (1) Child development;
 - (2) Playground safety;
 - (3) Health and safety issues; and
 - (4) Preventing and reporting child abuse and neglect.

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b. Such training may take place on site while not supervising children. Such training hours shall increase according to the following:

(1) Program leaders hired or promoted after June 1, 2006	16 hours
(2) Program leaders hired or promoted after June 1, 2007	20 hours
(3) Program leaders hired or promoted after June 1, 2008	24 hours

B. For program leaders of therapeutic child day programs and special needs child day programs, at least three months of programmatic experience shall be in the group care of children with special needs.

C. Notwithstanding the experience requirements in subsection A of this section, program leaders at short-term programs may have only one season of programmatic experience, provided that this experience shall include at least 200 hours, of which up to 24 hours can be formal training, working directly with children in a group.

~~22VAC40-185-220~~ 8VAC20-780-220. **Aides.**

Aides shall be at least 16 years of age.

~~22VAC40-185-230~~ 8VAC20-780-230. **Independent contractors; volunteers.**

A. Individuals from independent contractors shall not be counted in the staff-to-children ratios unless they meet the qualifications for the applicable position.

B. Individuals from independent contractors who do not meet staff qualifications shall, when in the presence of children, be within sight and sound supervision of a staff member.

C. Volunteers who work with children shall be at least 13 years of age.

~~22VAC40-185-240~~ 8VAC20-780-240. **Staff training and development.**

A. Staff shall receive the following training by the end of their first day of assuming job responsibilities:

1. Job responsibilities and to whom they report;
2. The policies and procedures listed in subsection B of this section and ~~22VAC40-185-420 A~~ 8VAC20-780-420 A that relate to the staff member's responsibilities;
3. The center's playground safety procedures unless the staff member will have no responsibility for playground activities or equipment;
4. Recognizing child abuse and neglect and the legal requirements for reporting suspected child abuse as required by § 63.2-1509 of the Code of Virginia;

5. Confidential treatment of personal information about children in care and their families; and

6. The standards in this chapter that relate to the staff member's responsibilities.

B. By the end of the first day of supervising children, staff shall be provided in writing with the information listed in ~~22VAC40-185-420 A~~ 8VAC20-780-420 A and the following:

1. Procedures for supervising a child who may arrive after scheduled classes or activities including field trips have begun;
2. Procedures to confirm absence of a child when the child is scheduled to arrive from another program or from an agency responsible for transporting the child to the center;
3. Procedures for identifying where attending children are at all times, including procedures to ensure that all children are accounted for before leaving a field trip site and upon return to the center;
4. Procedures for action in case of lost or missing children, ill or injured children, medical emergencies and general emergencies;
5. Policy for any administration of medication; and
6. Procedures for response to natural and man-made disasters.

C. Program directors and staff who work directly with children shall annually attend ~~40~~ 16 hours of staff development activities that shall be related to child safety and development and the function of the center. ~~Such training hours shall increase according to the following:~~

- ~~1. June 1, 2006 — 12 hours~~
- ~~2. June 1, 2007 — 14 hours~~
- ~~3. June 1, 2008 — 16 hours~~

4. Staff development activities to meet this subsection may include up to two hours of training in first aid or cardiopulmonary resuscitation. Staff development activities to meet this subsection may not include rescue breathing and first responder as required by ~~22VAC40-185-530~~ 8VAC20-780-530 and training in medication administration and daily health observation of children as required by subsection D of this section.

5. Exceptions to training requirements are as follows:

- a. Staff who drive a vehicle transporting children and do not work with a group of children at the center do not need to meet the annual training requirement.
- b. In a cooperative preschool center that is organized, administered, and maintained by parents of children in care, parent volunteers, or other persons who participate and volunteer in a cooperative preschool center on behalf of a child attending such cooperative preschool center,

including such volunteers who are counted in the staff-to child ratios required in ~~22VAC40-185-340~~ 8VAC20-780-340, shall complete four hours of training per year and shall be exempt from orientation and training requirements applicable to staff of child day programs. This orientation and training exemption shall not apply to any parent volunteer or other person as referred to in this subdivision if the cooperative preschool center has entered into a contract with the department, the Department of Social Services, or a local department of Social Services to provide child care services funded by the Child Care and Development Block Grant.

c. Staff who are employed at a short-term program shall obtain 10 hours of staff training per year.

D. 1. To safely perform medication administration practices listed in ~~22VAC40-185-510~~ 8VAC20-780-510, whenever the center has agreed to administer prescribed medications, the administration shall be performed by a staff member or independent contractor who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and taught by a registered nurse, licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist; or administration shall be performed by a staff member or independent contractor who is licensed by the Commonwealth of Virginia to administer medications.

a. The approved training curriculum and materials shall be reviewed by the department at least every three years and revised as necessary.

b. Staff required to have the training shall be retrained at three-year intervals.

2. The decision to administer medicines at a facility may be limited by center policy to:

- a. Prescribed medications;
- b. Over-the-counter or nonprescription medications; or
- c. No medications except those required for emergencies or by law.

3. To safely perform medication administration practices listed in ~~22VAC40-185-510~~ 8VAC20-780-510, whenever the center has agreed to administer over-the-counter medications other than topical skin gel, cream, or ointment, the administration must be performed by a staff member or independent contractor who has satisfactorily completed a training course developed or approved by the Department of ~~Social Services~~ Education in consultation with the Department of Health and the Board of Nursing and taught by an R.N., L.P.N., physician, or pharmacist; or performed by a staff member or independent contractor who is licensed by the Commonwealth of Virginia to administer medications.

a. The course, which shall include competency guidelines, shall reflect currently accepted safe medication administration practices, including instruction and

practice in topics such as, but not limited to, reading and following manufacturer's instructions; observing relevant laws, policies and regulations; and demonstrating knowledge of safe practices for medication storage and disposal, recording and reporting responsibilities, and side effects and emergency recognition and response.

b. The approved training curriculum and materials shall be reviewed by the department at least every three years and revised as necessary.

c. Staff required to have the training shall be retrained at three-year intervals.

4. Any child for whom emergency medications (such as but not limited to albuterol, glucagon, and epipen) have been prescribed shall always be in the care of a staff member or independent contractor who meets the requirements in subdivision 1 of this subsection.

5. There shall always be at least one staff member on duty who has obtained within the last three years instruction in performing the daily health observation of children.

6. Daily health observation training shall include:

- a. Components of daily health check for children;
- b. Inclusion and exclusion of the child from the class when the child is exhibiting physical symptoms that indicate possible illness;
- c. Descriptions of how diseases are spread and the procedures or methods for reducing the spread of disease;
- d. Information concerning the Virginia Department of Health Notification of Reportable Diseases pursuant to 12VAC5-90-80 and 12VAC5-90-90, also available from the local health department and the website of the Virginia Department of Health; and
- e. Staff occupational health and safety practices in accordance with Occupational Safety and Health Administration's (OSHA) Bloodborne Pathogens regulation.

E. Before assuming job responsibilities, staff who work with children in therapeutic child day programs and special needs child day programs shall receive training in:

- 1. Universal precautions procedures;
- 2. Activity adaptations;
- 3. Medication administration;
- 4. Disabilities precautions and health issues; and
- 5. Appropriate intervention strategies.

F. For therapeutic child day programs and special needs child day programs, staff who work directly with children shall annually attend 24 hours of staff development activities. At least eight hours of this training shall be on topics related to the care of children with special needs.

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Part IV
Physical Plant

~~22VAC40-185-250~~ 8VAC20-780-250. **Approval from other agencies; requirements prior to initial licensure.**

A. Before issuance of the first license and before use of newly constructed, renovated, remodeled, or altered buildings or sections of buildings, written documentation of the following shall be provided by the center to the licensing representative:

1. Approval by the authority having jurisdiction that each building meets building and fire codes or that a plan of correction has been approved; and

Exception: Any building which is currently approved for school occupancy and which houses a public or private school during the school year shall be considered to have met the requirements of subdivision 1 of this subsection when housing a center only serving children two and a half years of age or older.

2. Approval from the local health department, or approval of a plan of correction, for meeting requirements for:

- a. Water supply;
- b. Sewage disposal system; and
- c. Food service, if applicable.

B. For buildings built before 1978, the following shall be submitted before the initial license is issued:

1. A written statement from a person licensed in Virginia as an asbestos inspector and management planner as required by § ~~63.2-1811~~ 22.1-289.052 of the Code of Virginia and the requirements of the Asbestos Hazard Emergency Response Act (15 USC § 2641 et seq.); and

2. A written statement that the response actions to abate any risk to human health have been or will be initiated in accordance with a specific schedule and plan as recommended by the asbestos management planner in accordance with § ~~63.2-1811~~ 22.1-289.052 of the Code of Virginia.

C. A notice regarding the presence and location of asbestos containing materials and advising that the asbestos inspection report and management plan are available for review shall be posted.

Exception: The provisions of subsections B and C of this section do not apply to centers located in buildings required to be inspected according to Article 5 (§ 2.2-1162 et seq.) of Chapter 11 of Title 2.2 of the Code of Virginia.

D. Before the first license is issued, camps shall notify the responsible fire department and the responsible emergency medical service of the camp location and hours of operation.

~~22VAC40-185-260~~ 8VAC20-780-260. **Approval from other agencies; requirements subsequent to initial licensure.**

A. The center shall provide to the licensing representative an annual fire inspection report from the appropriate fire official having jurisdiction.

Exception: If a center is located in a building currently housing a public or private school, the school's annual fire inspection report shall be accepted.

B. After the first license, annual approval from the health department shall be provided, or approvals of a plan of correction, for meeting requirements for:

1. Water supply;
2. Sewage disposal system; and
3. Food service, if applicable.

C. For those buildings where asbestos containing materials are detected and not removed:

1. A signed, written statement that the center is following the recommendations of the management plan shall be submitted to the department before subsequent licenses are issued; and

2. The notice regarding the presence and location of asbestos containing materials and advising that the asbestos inspection report and management plan are available for review shall continue to be posted.

3. Exception: The provisions of this subsection do not apply to child day centers located in buildings required to be inspected according to Article 5 (§ 2.2-1162 et seq.) of Chapter 11 of Title 2.2 of the Code of Virginia.

~~22VAC40-185-270~~ 8VAC20-780-270. **Building maintenance.**

A. Areas and equipment of the center, inside and outside, shall be maintained in a clean, safe and operable condition. Unsafe conditions shall include, but not be limited to, splintered, cracked or otherwise deteriorating wood; chipped or peeling paint; visible cracks, bending or warping, rusting or breakage of any equipment; head entrapment hazards; and protruding nails, bolts or other components that could entangle clothing or snag skin.

B. Heat shall be supplied from a heating system approved in accordance with the Uniform Statewide Building Code (USBC, 13VAC5-62) except for camps. The heating system shall:

1. Be installed to prevent accessibility of children to the system; and
2. Have appropriate barriers to prevent children from being burned, shocked, or injured from heating equipment. In addition, proper supervision shall be available to prevent injury.

3. Exception: In case of emergency, portable heaters may be used in accordance with the manufacturer's instructions.

C. In inside areas occupied by children, the temperature shall be maintained no lower than 68°F.

D. Fans or other cooling systems shall be used when the temperature of inside areas occupied by children exceeds 80°F.

E. Drinking fountains or individual disposable cups with safe drinking water shall be accessible at all times.

F. Equipment shall include, but not be limited to, the following:

1. Outside lighting provided at entrances and exits used by children before sunrise or after sundown; and
2. An in-service, nonpay telephone.

~~22VAC40-185-280~~ 8VAC20-780-280. Hazardous substances and other harmful agents.

A. No center shall be located where conditions exist that would be hazardous to the health and safety of children.

B. Hazardous substances such as cleaning materials, insecticides, and pesticides shall be kept in a locked place using a safe locking method that prevents access by children.

1. If a key is used, the key shall not be accessible to the children.
2. Exception: Cleaning supplies to clean and sanitize the diapering area or toilet chairs do not need to be kept locked during diapering or toilet training time as long as they are inaccessible to children.

C. Pesticides or insecticides shall not be stored in areas used by children or in areas used for food preparation or storage.

D. Cleaning and sanitizing materials shall not be located above food, food equipment, utensils or single-service articles and shall be stored in areas physically separate from food.

E. Cleaning materials (e.g., detergents, sanitizers and polishes) and insecticides/pesticides shall be stored in areas physically separate from each other.

F. Hazardous substances shall be stored in the original container unless this container is of such a large size that its use would be impractical.

G. If hazardous substances are not kept in original containers, the substitute containers shall clearly indicate their contents and shall not resemble food or beverage containers.

H. Cosmetics, medications, or other harmful agents shall not be stored in areas, purses or pockets that are accessible to children.

I. Hazardous art and craft materials shall not be used with children.

J. Smoking shall be prohibited in the interior of a center that is not used for residential purposes.

K. In residential areas of the center and outside the center, smoking shall be prohibited in the presence of children.

~~22VAC40-185-290~~ 8VAC20-780-290. General physical plant requirements for centers serving children of preschool age or younger.

In areas used by children of preschool age or younger, the following shall apply:

1. Guardrails and handrails shall be provided in accordance with the USBC (13VAC5-62) in effect at time of first occupancy or construction.
2. Fans, when used, shall be out of reach of children and cords shall be secured so as not to create a tripping hazard.
3. Electrical outlets shall have protective covers that are of a size that cannot be swallowed by children.

~~22VAC40-185-300~~ 8VAC20-780-300. General physical plant requirements for centers serving school age children.

A. Any building which is currently approved for school occupancy and which houses a school during the school year shall be considered to have met the building requirements in this ~~regulation~~ chapter when housing a center only serving school age children.

B. Portable camping equipment for heating or cooking that is not required to be approved by the building official shall bear the label of a nationally recognized inspection agency and be used in accordance with the manufacturer's specifications, except for charcoal and wood burning cooking equipment.

C. No cooking or heating shall occur in tents except as provided by the USBC (13VAC5-62).

~~22VAC40-185-310~~ 8VAC20-780-310. Areas.

A. Indoor space shall be measured inside wall-to-wall excluding spaces not routinely used by children as referenced in subdivisions 1 and 2 of this subsection:

1. Areas not routinely used for children's activities shall not be calculated as available space.
2. Space not calculated shall include, but not be limited to, offices, hallways, restrooms, kitchens, storage rooms or closets.

B. There shall be 25 square feet of indoor space available per child until subdivisions 1 and 2 of this subsection take effect.

1. Effective June 1, 2008, applicants must have 35 square feet of indoor wall-to-wall space per child.
2. Current licensees and subsequent licensees at currently licensed facilities may continue to provide 25 square feet per child.

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3. New additions shall have 35 square feet of indoor wall-to-wall space per child effective June 1, 2008.

C. Space in areas used by infants shall be calculated separately from space for older children. There shall be a minimum of 25 square feet of space per infant excluding space occupied by cribs and changing tables or a minimum of 35 square feet of available space per infant including space occupied by cribs and changing tables.

D. Camps for school age children are not required to meet this space requirement. However, when weather prevents outdoor activities, the required indoor space per child shall be provided either at the program site or at a predesignated, approved location off site.

E. When children are on the outdoor play area, at least 75 square feet of space per child shall be provided at any one time.

F. Centers licensed for the care of infants and toddlers shall provide a separate playground area for these children that has at least 25 square feet of unpaved surface per infant/toddler on the outdoor area at any one time. This space may be counted as part of the 75 square feet required in subsection B of this section.

G. A separate space shall be designated for children who are ill or injured.

22VAC40-185-320 8VAC20-780-320. Restroom areas and furnishings.

A. Centers shall be provided with at least two toilets and two sinks.

B. Each restroom area provided for children shall:

1. Be within a contained area, readily available and within the building used by the children (Exception: Restrooms used by school age children at camps are not required to be located within the building);
2. Have toilets that are flushable;
3. Have sinks located near the toilets and that are supplied with running warm water that does not exceed 120°F (Exception: Camps are exempt from the requirement that running water be warm); and
4. Be equipped with soap, toilet paper, and disposable towels or an air dryer within reach of children.

C. For restrooms available to males, urinals shall not be substituted for more than one-half the required number of toilets.

D. An adult size toilet with privacy shall be provided for staff use. Staff toilets may be counted in the number of required toilets for children only if children are allowed unrestricted access to them.

Exception: Primitive camps are not required to have a toilet with privacy for staff.

E. Centers shall be provided with at least one toilet and one sink per 20 preschool children and at least one standard size toilet and one sink per 30 school age children. When sharing restroom areas with other programs, the children in those programs shall be included in the toilet and sink ratio calculations. The toilet and sink ratio appropriate to the younger age group shall apply.

F. When child size toilets, urinals, and low sinks are not available in restrooms used by children of preschool age and younger, one or more platforms or sets of steps shall be provided.

G. School age children of the opposite sex shall not use the same restroom at the same time.

H. A restroom used for school age children that contains more than one toilet shall have at least one toilet enclosed.

I. Restrooms used by school age children at primitive camps are not required to have:

1. Sinks, if adequate water, supplies, and equipment for hand washing are available; and
2. Flushable toilets, if the number of sanitary privies or portable toilets constructed and operated in accordance with the applicable law and regulations of the Virginia Department of Health meets the toilet ratio stated in subsection E of this section. No privy or outdoor toilet shall be located within 75 feet of other buildings or camp activities.

22VAV40-185-330 8VAC20-780-330. Play areas.

A. Playgrounds shall be located and designed to protect children from hazards.

B. Where playground equipment is provided, resilient surfacing shall comply with minimum safety standards when tested in accordance with the procedures described in the American Society for Testing and Materials standard F1292-99 as shown in Figures 2 (Compressed Loose Fill Synthetic Materials Depth Chart) and 3 (Use Zones for Equipment) on pages 6-7 of the National Program for Playground Safety's "Selecting Playground Surface Materials: Selecting the Best Surface Material for Your Playground," February 2004, and shall be under equipment with moving parts or climbing apparatus to create a fall zone free of hazardous obstacles. Fall zones are defined as the area underneath and surrounding equipment that requires a resilient surface. A fall zone shall encompass sufficient area to include the child's trajectory in the event of a fall while the equipment is in use. Falls zones shall not include barriers for resilient surfacing. Where steps are used for accessibility, resilient surfacing is not required.

C. Ground supports shall be covered with materials that protect children from injury.

D. Swing seats shall be constructed with flexible material.

1. Exceptions: Nonflexible molded swing seats may be used only in a separate infant or toddler play area.

2. Swings made specifically for a child with a special need shall be permitted in any area as long as a staff member is positioned to see and protect other children who might walk into the path of the swing.

E. Sandboxes with bottoms which prevent drainage shall be covered when not in use.

F. A shady area shall be provided on playgrounds during the months of June, July, and August.

EXCEPTION: The requirements of this section shall not prohibit child day programs providing care for school-age children at a location that is currently approved by the Department of Education or recognized as a private school by the State Board of Education for school occupancy and that houses a public or private school during the school year from permitting school-age children to use outdoor play equipment and areas approved for use by students of the school during school hours.

Part V
Staffing and Supervision

~~22VAC40-185-340~~ **8VAC20-780-340. Supervision of children.**

A. When staff are supervising children, they shall always ensure their care, protection, and guidance.

B. During the center's hours of operation, one adult on the premises shall be in charge of the administration of the center. This person shall be either the administrator or an adult appointed by the licensee or designated by the administrator.

C. During the stated hours of operation, there always shall be on the premises and on field trips when one or more children are present one staff member who meets the qualifications of a program leader or program director and an immediately available staff member, volunteer or other employee who is at least 16 years of age, with direct means for communication between the two of them. The volunteer or other employee shall have received instruction in how to contact appropriate authorities if there is an emergency.

D. In each grouping of children at least one staff member who meets the qualifications of a program leader or program director shall be regularly present. Such a program leader shall supervise no more than two aides.

E. Exception: A program leader is not required in each grouping of children during the first and last hour of operation when a center operates more than six hours per day and during the designated rest period if the following are met: (i) there is a staff member in the group who is over 18 years of age and has at least three months of programmatic experience at the center; (ii) there is an additional staff person on site who meets program leader qualifications, is not counted in the staff-to-

children ratios and is immediately available to help if needed; and (iii) there is a direct means for communicating between these two staff members.

F. Children under 10 years of age always shall be within actual sight and sound supervision of staff, except that staff need only be able to hear a child who is using the restroom provided that:

1. There is a system to assure that individuals who are not staff members or persons allowed to pick up a child in care do not enter the restroom area while in use by children; and

2. Staff check on a child who has not returned from the restroom after five minutes. Depending on the location and layout of the restroom, staff may need to provide intermittent sight supervision of the children in the restroom area during this five-minute period to assure the safety of children and to provide assistance to children as needed.

G. Children 10 years of age and older shall be within actual sight and sound supervision of staff except when the following requirements are met:

1. Staff can hear or see the children (video equipment, intercom systems, or other technological devices shall not substitute for staff being able to directly see or hear children);

2. Staff are nearby so they can provide immediate intervention if needed;

3. There is a system to ensure that staff know where the children are and what they are doing;

4. There is a system to ensure that individuals who are not staff members or persons allowed to pick up children in care do not enter the areas where children are not under sight supervision; and

5. Staff provide sight and sound supervision of the children at variable and unpredictable intervals not to exceed 15 minutes.

H. When the outdoor activity area is not adjacent to the center, there shall be at least two staff members on the outdoor activity area whenever one or more children are present.

I. Staff shall greet each child upon arrival at the center and oversee each child's departure from the center.

J. Staff shall not allow a child to leave the center unsupervised.

~~22VAC40-185-350~~ **8VAC20-780-350. Staff-to-children ratio requirements.**

A. Staff shall be counted in the required staff-to-children ratios only when they are directly supervising children.

B. A child volunteer 13 years of age or older not enrolled in the program shall not be counted as a child in the staff-to-children ratio requirements.

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C. When children are regularly in ongoing mixed age groups, the staff-to-children ratio applicable to the youngest child in the group shall apply to the entire group.

D. During the designated rest period and the designated sleep period of evening and overnight care programs, the ratio of staff to children may be double the number of children to each staff required by subdivisions E 2 through 4 and 7 of this section if:

1. A staff person is within sight and sound of the resting/sleeping children;
2. Staff counted in the overall rest period ratio are within the building and available to ensure safe evacuation in an emergency; and
3. An additional person is present at the center to help, if necessary.

E. The following ratios of staff to children are required wherever children are in care:

1. For children from birth to the age of 16 months: one staff member for every four children;
2. For children 16 months old to two years: one staff member for every five children;
3. For two-year-old children: one staff member for every eight children ~~effective June 1, 2006~~;
4. For children from three years to the age of eligibility to attend public school, five years by September 30: one staff member for every 10 children ~~effective June 1, 2006~~;
5. For children from age of eligibility to attend public school through eight years, one staff member for every 18 children; and
6. For children from nine years through 12 years, one staff member for every 20 children ~~effective June 1, 2006~~.
7. Notwithstanding subdivisions 4 and 5 of this subsection and subsection C of this section, the ratio for balanced mixed-age groupings of children shall be one staff member for every 14 children, provided:
 - a. If the program leader has an extended absence, there shall be sufficient substitute staff to meet a ratio of one staff member for every 12 children.
 - b. The center shall have readily accessible and in close classroom proximity auxiliary persons sufficient to maintain a 1:10 adult-to-child ratio for all three-year-olds who are included in balanced mixed-age groups to be available in the event of emergencies.
 - c. The program leader has received training in classroom management of balanced mixed-age groupings of at least eight hours.

F. With a parent's written permission and a written assessment by the program director and program leader, a center may

choose to assign a child to a different age group if such age group is more appropriate for the child's developmental level and the staff-to-children ratio shall be for the established age group.

1. If such developmental placement is made for a child with a special need, a written assessment by a recognized agency or professional shall be required at least annually. These assignments are intended to be a permanent new group and staff members for the child.

2. A center may temporarily reassign a child from his regular group and staff members for reasons of administrative necessity but not casually or repeatedly disrupt a child's schedule and attachment to his staff members and group.

G. For therapeutic child day programs, in each grouping of children of preschool age or younger, the following ratios of staff to children are required according to the special needs of the children in care:

1. For children with severe and profound disabilities, multiple special needs, serious medical need, or serious emotional disturbance: one staff member to three children.

2. For children diagnosed as trainable mentally retarded (TMR), or with physical and sensory disabilities, or with autism: one staff member to four children.

3. For children diagnosed as educable mentally retarded (EMR) or developmentally delayed or diagnosed with attention deficit/hyperactivity disorder (AD/HD): one staff member to five children.

4. For children diagnosed with specific learning disabilities: one staff member to six children.

5. When children with varied special needs are regularly in ongoing groups, the staff-to-children ratio applicable to the child with the most significant special need in the group shall apply to the entire group.

6. Note: Whenever ~~22VAC40-185-350 E~~ 8VAC20-780-350 E requires more staff than ~~22VAC40-185-350 G~~ 8VAC20-780-350 G because of the children's ages, ~~22VAC40-185-350 E~~ 8VAC20-780-350 E shall take precedence over ~~22VAC40-185-350 G~~ 8VAC20-780-350 G.

H. For therapeutic child day programs, in each grouping of school age children, the following ratios of staff to children are required according to the special needs of the children in care:

1. For children with severe and profound disabilities, autism, multiple special needs, serious medical need, or serious emotional disturbance: one staff member to four children.

2. For children diagnosed as trainable mentally retarded (TMR), or with physical and sensory disabilities; attention deficit/hyperactivity disorder (AD/HD), or other health impairments: one staff member to five children.

3. For children diagnosed as educable mentally retarded (EMR), or developmentally delayed: one staff member to six children.
4. For children diagnosed with specific learning disabilities, or speech or language impairments: one staff member to eight children.
5. When children with varied special needs are regularly in ongoing groups, the staff-to-children ratio applicable to the child with the most significant special need in the group shall apply to the entire group.

Part VI
Programs

~~22VAC40-185-360~~ **8VAC20-780-360. Daily Activities.**

A. The variety of daily activities for all age groups shall be age and stage appropriate and provide opportunities for teacher-directed, self-directed, and self-chosen tasks and activities; a balance of active and quiet activities; individual and group activities; and curiosity and exploration.

Exception: Specialty camps do not need to provide opportunities for self-chosen tasks and curiosity and exploration.

B. For a child who cannot move without help, staff shall offer to change the places and position of the child at least every 30 minutes or more frequently depending on the child's individual needs.

C. Children shall be allowed to sleep or rest as individually needed.

D. For a child in a therapeutic child day program, daily activities shall be in accordance with the program's individual plan for such child.

~~22VAC40-185-370~~ **8VAC20-780-370. Daily activities for infants.**

There shall be a flexible daily schedule for infants based on their individual needs. During the day, infants shall be provided with:

1. Sleep as needed.
 - a. When an infant is placed in his crib, he shall be placed on his back (supine).
 - b. When an infant is able to easily turn over from the back (supine) to the belly (prone) position and he is placed in his crib, he shall still be put on his back (supine) but allowed to adopt whatever position he prefers. This applies unless otherwise directed by the infant's physician in writing.
 - c. If the side position is used, caregivers shall bring the dependent arm forward to lessen the likelihood of the infant rolling into a belly (prone) position.

d. Resting or sleeping infants shall be individually checked every 15-20 minutes.

e. An infant who falls asleep in a play space specified in subdivision 5 a of this section may remain in that space if comfortable and safe.

2. Food as specified in ~~22VAC40-185-560~~ **8VAC20-780-560** and ~~22VAC40-185-570~~ **8VAC20-780-570**.

3. Outdoor time if weather and air quality allow based upon the Air Quality Color Code Chart as provided by the Department of Environmental Quality.

4. Comfort as needed.

5. Play spaces.

a. Play spaces may include, but are not limited to, cribs, infant seats, play yards, exercise chairs or saucers (but not walkers), infant swings, high chairs, and floor space.

b. The variety of play spaces shall cumulatively offer:

(1) Room for extensive movement (rolling, crawling, or walking) and exploration;

(2) A diversity of sensory and perceptual experiences; and

(3) Equipment and toys that support large and small motor development.

c. Staff shall provide frequent opportunities for infants to creep, crawl, toddle and walk.

d. Infants shall be protected from older children.

e. Staff shall provide awake infants not playing on the floor or ground a change in play space at least every 30 minutes or more often as determined by the individual infant's needs.

f. Staff shall change the position of an awake infant playing on the floor or ground and the selection of toys available to the infant every 30 minutes or more often as determined by the individual infant's needs.

g. Infants, who cannot turn themselves over and are awake, shall be placed on their stomachs a total of 30 minutes each day to facilitate upper body strength and to address misshapen head concerns.

6. Stimulation and language development activities, including but not limited to staff reading, talking to, showing pictures to, naming objects for, playing with and engaging in positive interactions (such as smiling, cuddling, and making eye contact) with infants.

~~22VAC40-185-380~~ **8VAC20-780-380. Daily activities for toddlers and preschoolers.**

A. There shall be a posted daily schedule that allows for flexibility as children's needs require. The daily schedule need not apply on days occupied a majority of the time by a field trip or other special event. The daily schedule shall include opportunities for:

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1. Outdoor activity, weather and air quality allowing, for at least:

- a. Fifteen minutes per day or session if the center operates up to three hours per day or session;
- b. Thirty minutes per day or session if the center operates between three and five hours per day or session; or
- c. One hour per day or session if the center operates more than five hours per day or session.

2. Sleep or rest.

a. Centers operating five or more hours per day shall have a designated rest period for at least one hour but no more than two hours.

(1) Cribs, cots, beds, or mats shall be used.

(2) After the first 30 minutes, children not sleeping may engage in quiet activities.

b. A child who falls asleep in a place other than his designated sleeping location may remain in that space if comfortable and safe.

c. Sleeping toddlers shall be individually checked every 30 minutes.

3. Meals and snacks as specified in ~~22VAC40-185-560~~ 8VAC20-780-560 and ~~22VAC40-185-570~~ 8VAC20-780-570.

4. Small and large motor activities, language and communication experiences, sensory experiences, art or music activities, and play acting or social living.

B. Staff shall encourage language development by having conversations with children that give them time to initiate and respond, by labeling and describing objects and events, having storytelling time and by expanding the children's vocabulary.

~~22VAC40-185-390~~ 8VAC20-780-390. Daily activities for school age children.

A. Before or after school, the center shall provide an opportunity for children to do homework or projects or hobbies in a suitable area. In the afternoon, there shall be an opportunity for large motor activities at least 25% of the time.

B. On nonschool days, the daily activity shall include opportunities for large motor activities at least 25% of the time; small motor activities; projects, hobbies, or homework in a suitable place; art or music activities; outdoor activity in accordance with ~~22VAC40-185-380 A 1~~ 8VAC20-780-380 A 1 and food as specified in ~~22VAC40-185-560~~ 8VAC20-780-560 and ~~22VAC40-185-570~~ 8VAC20-780-570.

Exception: Specialty camps are not required to meet the requirements of this subsection.

~~22VAC40-185-400~~ 8VAC20-780-400. Behavioral guidance.

A. In order to promote the child's physical, intellectual, emotional, and social well-being and growth, staff shall

interact with the child and one another to provide needed help, comfort, support and:

1. Respect personal privacy;
2. Respect differences in cultural, ethnic, and family backgrounds;
3. Encourage decision-making abilities;
4. Promote ways of getting along;
5. Encourage independence and self-direction; and
6. Use consistency in applying expectations.

B. Behavioral guidance shall be constructive in nature, age and stage appropriate, and shall be intended to redirect children to appropriate behavior and resolve conflicts.

~~22VAC40-185-410~~ 8VAC20-780-410. Forbidden actions.

The following actions or threats thereof are forbidden:

1. Physical punishment, striking a child, roughly handling or shaking a child, restricting movement through binding or tying, forcing a child to assume an uncomfortable position, or exercise as punishment;
2. Enclosure in a small confined space or any space that the child cannot freely exit himself; however, this does not apply to the use of equipment such as cribs, play yards, high chairs, and safety gates when used with children preschool age or younger for their intended purpose;
3. Punishment by another child;
4. Separation from the group so that the child is away from the hearing and vision of a staff member;
5. Withholding or forcing of food or rest;
6. Verbal remarks which are demeaning to the child;
7. Punishment for toileting accidents; and
8. Punishment by applying unpleasant or harmful substances.

~~22VAC40-185-420~~ 8VAC20-780-420. Parental involvement.

A. Before the child's first day of attending, parents shall be provided in writing the following:

1. The center's philosophy and any religious affiliation;
2. Operating information, including the hours and days of operation and holidays or other times closed, and the phone number where a message can be given to staff;
3. The center's transportation policy;
4. The center's policies for the arrival and departure of children, including procedures for verifying that only persons authorized by the parent are allowed to pick up the child, picking up children after closing, when a child is not

picked up for emergency situations including but not limited to inclement weather or natural disasters;

5. The center's policy regarding any medication or medical procedures that will be given;

6. The center's policy regarding application of:

- a. Sunscreen;
- b. Diaper ointment or cream; and
- c. Insect repellent.

7. Description of established lines of authority for staff;

8. Policy for reporting suspected child abuse as required by § 63.2-1509 of the Code of Virginia;

9. The custodial parent's right to be admitted to the center as required by § ~~63.2-1813~~ 22.1-289.054 of the Code of Virginia;

10. Policy for communicating an emergency situation with parents;

11. The appropriate general daily schedule for the age of the enrolling child;

12. Food policies;

13. Discipline policies including acceptable and unacceptable discipline measures; and

14. Termination policies.

B. Staff shall promptly inform parents when persistent behavioral problems are identified; such notification shall include any disciplinary steps taken in response.

C. A custodial parent shall be admitted to any child day program. Such right of admission shall apply only while the child is in the child day program (§ ~~63.2-1813~~ 22.1-289.054 of the Code of Virginia).

D. The center shall provide opportunities for parental involvement in center activities.

E. Communication.

1. For each infant, the center shall post a daily record which can be easily accessed by both the parent and the staff working with the child. The record shall contain the following information:

- a. The amount of time the infant slept;
- b. The amount of food consumed and the time;
- c. A description and time of bowel movements;
- d. Developmental milestones; and
- e. For infants, who are awake and cannot turn over by themselves, the amount of time spent on their stomachs.

2. If asked by parents, staff shall provide feedback about daily activities, physical well-being, and developmental milestones.

3. Parents shall be provided at least semiannually in writing information on their child's development, behavior, adjustment, and needs.

a. Staff shall provide at least semiannual scheduled opportunities for parents to provide feedback on their children and the center's program.

b. Staff shall request at least annually parent confirmation that the required information in the child's record is up to date.

c. Such sharing of information shall be documented.

d. Short-term programs (as defined in 22VAC40-185-10 8VAC20-780-10) are exempt from this requirement.

4. Parents shall be informed of reasons for termination of services.

~~22VAC40-185-430~~ 8VAC20-780-430. Equipment and materials.

A. Furnishings, equipment, and materials shall be of an appropriate size for the child using it.

B. Materials and equipment available shall be age and stage appropriate for the children and shall include an adequate supply as appropriate for each age group of arts and crafts materials, texture materials, construction materials, music and sound materials, books, social living equipment, and manipulative equipment.

C. Play equipment used by children shall meet the following requirements:

1. Openings above the ground or floor which allow a 3-1/2 inch by 6-1/4 inch rectangle to fit through shall also allow a nine-inch circle to fit through;

2. S-hooks where provided may not be open more than the thickness of a penny; and

3. Have no protrusions, sharp points, shearing points, or pinch points.

D. The unenclosed climbing portion of slides and climbing equipment used by toddlers and preschool children shall not be more than seven feet high and must be located over resilient surfacing where outdoors, and shall not be more than five feet high where indoors.

E. Centers may not install after June 1, 2005, any slide or climbing equipment to be used by preschoolers or toddlers when the climbing portion of the equipment is more than six feet in height.

F. The climbing portions of indoor slides and climbing equipment over 18 inches shall not be over bare flooring.

G. The climbing portions of indoor slides and climbing equipment 36 inches or more shall be located over a resilient surface.

H. Trampolines may not be used.

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EXCEPTION: The requirements of subsections A through H of this section shall not prohibit child day programs providing care for school-age children at a location that is currently approved by the Department of Education or recognized as a private school by the State Board of Education for school occupancy and that houses a public or private school during the school year from permitting school-age children to use outdoor play equipment and areas approved for use by students of the school during school hours.

I. If combs, toothbrushes, or other personal articles are used, they shall be individually assigned.

J. Disposable products shall be used once and discarded.

K. Provision shall be made for an individual place for each child's personal belongings.

L. Infant walkers shall not be used.

M. Play yards where used shall:

1. Meet the Juvenile Products Manufacturers Association (JPMA) and the American Society for Testing and Materials (ASTM) requirements and shall retain the manufacturer's label documenting product compliance with current safety standards at the time they were manufactured;
2. Not be used after recalled;
3. Not use any pillows or filled comforters;
4. Not be used for the designated sleeping areas;
5. Not be occupied by more than one child; and
6. Be sanitized each day of use or more often as needed.

N. Upon being informed that a product has been recalled, center staff shall remove the item from the center.

O. Where portable water coolers are used, they shall be of cleanable construction, maintained in a cleaned condition, kept securely closed and so designed that water may be withdrawn from the container only by water tap or faucet.

P. Drinking water which is transported to camp sites shall be in closed containers.

Q. Therapeutic child day programs and special needs child day programs serving children who use wheelchairs shall provide cushioned vinyl-covered floormats for use when activities require children to be out of their wheelchairs.

22VAC40-185-440 8VAC20-780-440. Cribs, cots, rest mats and beds.

A. Cribs, cots, rest mats or beds shall be provided for children during the designated rest period and not be occupied by more than one child at a time.

B. Cribs, cots, rest mats, and beds shall be identified for use by a specific child.

C. Double decker cribs, cots, or beds, or other sleeping equipment when stacked shall not be permitted.

D. Occupied cribs, cots, rest mats, and beds shall be at least 2-1/2 feet from any heat producing appliance.

E. There shall be at least 12 inches of space between occupied cots, beds, and rest mats.

Exception: Twelve inches of space are not required where cots, beds, or rest mats are located adjacent to a wall or a divider as long as one side is open at all times to allow for passage.

F. If rest mats are used, they shall have cushioning and be sanitized on all sides weekly or before use by another child.

G. Cribs shall be used for children under 12 months of age and for children over 12 months of age who are not developmentally ready to sleep on a cot or mat.

H. Cribs shall meet the following requirements:

1. They shall meet the Consumer Product Safety Commission Standards at the time they were manufactured;
2. They shall not have been recalled;
3. There shall be no more than six centimeters or 2-3/8 inches of space between slats;
4. There shall be no more than one inch between the mattress and the crib; and
5. End panel cut-outs in cribs shall be of a size not to cause head entrapment.

I. Cribs shall be placed where objects outside the crib such as cords from blinds or curtains are not within reach of infants or toddlers.

J. There shall be at least:

1. Twelve inches of space between the sides and ends of occupied cribs except where they touch the wall; and
2. Thirty inches of space between service sides of occupied cribs and other furniture where that space is the walkway for staff to gain access to any occupied crib.

K. Crib sides shall be up and the fastenings secured when a child is in the crib, except when a staff member is giving the child immediate attention.

L. Pillows and filled comforters shall not be used by children under two years of age.

M. Use of crib bumper pads shall be prohibited.

N. Toys or objects hung over an infant in a crib and crib gyms that are strung across the crib may not be used for infants over five months of age or infants who are able to push up on their hands and knees.

~~22VAC40-185-450~~ 8VAC20-780-450. **Linens.**

A. Cribs, cots, mats and beds used by children other than infants during the designated rest period or during evening and overnight care shall have linens consisting of a top cover and a bottom cover or a one-piece covering which is open on three edges. Cribs when being used by infants shall have a bottom cover.

B. Linens shall be assigned for individual use.

C. Linens shall be clean and washed at least weekly.

1. Crib sheets shall be clean and washed daily.
2. When centers wash the linens, the water shall be above 140°F or the dryer shall heat the linens above 140°F as verified by the manufacturer or a sanitizer shall be used according to the manufacturer's instructions.

D. Pillows when used shall be assigned for individual use and covered with pillow cases.

E. Mattresses when used shall be covered with a waterproof material which can be cleaned and sanitized.

~~22VAC40-185-460~~ 8VAC20-780-460. **Swimming and wading activities; staff and supervision.**

A. The staff-to-children ratios required by ~~22VAC40-185-350 E~~ 8VAC20-780-350 E, G, and H shall be maintained while children are participating in swimming or wading activities.

1. Notwithstanding the staff-to-children ratios already indicated, at no time shall there be fewer than two staff members supervising the activity.
2. The designated certified lifeguard shall not be counted in the staff-to-children ratios.

B. If a pool, lake, or other swimming area has a water depth of more than two feet, a certified lifeguard holding a current certificate shall be on duty supervising the children participating in swimming or wading activities at all times when one or more children are in the water.

C. The lifeguard certification shall be obtained from an organization such as, but not limited to, the American Red Cross, the YMCA, or the Boy Scouts.

~~22VAC40-185-470~~ 8VAC20-780-470. **Pools and equipment.**

A. When permanent swimming or wading pools are located on the premises of the center, the following shall apply:

1. The manufacturer's specifications for operating the pool shall be followed as well as any local ordinances and any Department of Health requirements for swimming pools;
2. Pools constructed, renovated, or remodeled after April 1, 1986, shall have a statement in writing of their inspection and approval from the local building official when such approval is required;

3. Outdoor swimming pools shall be enclosed by safety fences and gates which are in compliance with the applicable edition of the Virginia USBC (13VAC5-62) and shall be kept locked when the pool is not in use;

4. Entrances to indoor swimming pools shall be locked when the pool is not in use; and

5. A whistle or other audible signaling device, a buoy or a lemon line, a reach pole, and a backboard shall be available at the swimming or wading site.

B. If children are allowed to swim in a lake or other place other than a pool, safe swimming areas shall be clearly marked and there shall be appropriate water safety equipment.

C. Piers, floats, and platforms shall be in good repair and where used for diving, the minimum water depth shall be stated on the deck or planking.

D. If portable wading pools without integral filter systems are used, they shall be emptied after the use of each group of children, rinsed, and filled with clean water, or more frequently as necessary.

E. Children who are not toilet trained may not use portable wading pools.

F. After each day's use, portable wading pools shall be emptied, sanitized, and stored in a position to keep them clean and dry.

~~22VAC40-185-480~~ 8VAC20-780-480. **Swimming and wading; general.**

A. The center shall have emergency procedures and written safety rules for swimming or wading or follow the posted rules of public pools that are:

1. Posted in the swimming area when the pool is located on the premises of the center; and
2. Explained to children participating in swimming or wading activities.

B. The center shall maintain (i) written permission from the parent of each child who participates in swimming or wading and (ii) a statement from the parent advising of a child's swimming skills before the child is allowed in water above the child's shoulder height.

C. Staff shall have a system for accounting for all children in the water.

D. Outdoor swimming activities shall occur only during daylight hours unless underwater and deck lighting is provided.

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Part VII Special Care Provisions and Emergencies

22VAC40-185-490 8VAC20-780-490. Preventing the spread of disease.

A. A child shall not be allowed to attend the center for the day if he has:

1. A temperature over 101°F;
2. Recurrent vomiting or diarrhea; or
3. A communicable disease.

B. If a child needs to be excluded according to subsection A of this section, the following shall apply:

1. Arrangements shall be made for the child to leave the center as soon as possible after the signs or symptoms are noticed; and
2. The child shall remain in the designated quiet area until leaving the center.

C. When children at the center have been exposed to a communicable disease listed in the Department of Health's current communicable disease chart, the parents shall be notified within 24 hours or the next business day of the center's having been informed unless forbidden by law, except for life threatening diseases, which must be reported to parents immediately.

D. The center shall consult the local department of health if there is a question about the communicability of a disease.

E. When any surface has been contaminated with body fluids, it shall be cleaned and sanitized.

22VAC40-185-500 8VAC20-780-500. Hand washing and toileting procedures.

A. Hand washing.

1. Children's hands shall be washed with soap and running water or disposable wipes before and after eating meals or snacks.
2. Children's hands shall be washed with soap and running water after toileting and any contact with blood, feces or urine.
3. Staff shall wash their hands with soap and running water before and after helping a child use the toilet or a diaper change, after the staff member uses the toilet, after any contact with body fluids, and before feeding or helping children with feeding.
4. Exception: If running water is not available, a germicidal cleansing agent administered per manufacturer's instruction may be used.

B. Diapering; soiled clothing.

1. The diapering area shall be accessible and within the building used by children.

2. There shall be sight and sound supervision for all children when a child is being diapered.

3. The diapering area shall be provided with the following:

- a. A sink with running warm water not to exceed 120°F;
- b. Soap, disposable towels and single use gloves such as surgical or examination gloves;
- c. A nonabsorbent surface for diapering or changing shall be used. For children younger than three years, this surface shall be a changing table or countertop designated for changing;
- d. The appropriate disposal container as required by subdivision 5 of this subsection; and
- e. A leakproof covered receptacle for soiled linens.

4. When a child's clothing or diaper becomes wet or soiled, the child shall be cleaned and changed immediately.

5. Disposable diapers shall be used unless the child's skin reacts adversely to disposable diapers.

6. Disposable diapers shall be disposed in a leakproof or plastic-lined storage system that is either foot-operated or used in such a way that neither the staff member's hand nor the soiled diaper touches an exterior surface of the storage system during disposal.

7. When cloth diapers are used, a separate leakproof storage system as specified in this subdivision shall be used.

8. The diapering surface shall be used only for diapering or cleaning children, and it shall be cleaned with soap and at least room temperature water and sanitized after each use. Tables used for children's activities or meals shall not be used for changing diapers.

Exception: Individual disposable barriers may be used between each diaper change. If the changing surface becomes soiled, the surface shall be cleaned and sanitized before another child is diapered.

9. Staff shall ensure the immediate safety of a child during diapering.

C. Toilet training. For every 10 children in the process of being toilet trained, there shall be at least one toilet chair or one child-sized toilet, or at least one adult sized toilet with a platform or steps and adapter seat.

1. The location of these items shall allow for sight and sound supervision of children in the classroom if necessary for the required staff-to-children ratios to be maintained.

2. Toilet chairs shall be emptied promptly and cleaned and sanitized after each use.

~~22VAC40-185-510~~ 8VAC20-780-510. Medication.

A. Prescription and nonprescription medication shall be given to a child:

1. According to the center's written medication policies; and
2. Only with written authorization from the parent.

B. Nonprescription medication shall be administered by a staff member or independent contractor who meets the requirements in ~~22VAC40-185-240 D 1~~ 8VAC20-780-240 D 1 or D 3.

C. The center's procedures for administering medication shall:

1. Include any general restrictions of the center.
2. For nonprescription medication, be consistent with the manufacturer's instructions for age, duration and dosage.
3. Include duration of the parent's authorization for medication, provided that it shall expire or be renewed after 10 work days. Long-term prescription drug use and over-the-counter medication may be allowed with written authorization from the child's physician and parent.
4. Include methods to prevent use of outdated medication.

D. The medication authorization shall be available to staff during the entire time it is effective.

E. Medication shall be labeled with the child's name, the name of the medication, the dosage amount, and the time or times to be given.

F. Nonprescription medication shall be in the original container with the direction label attached.

G. The center may administer prescription medication that would normally be administered by a parent or guardian to a child provided:

1. The medication is administered by a staff member or an independent contractor who meets the requirements in ~~22VAC40-185-240 D 1~~ 8VAC20-780-240 D 1;
2. The center has obtained written authorization from a parent or guardian;
3. The center administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container; and
4. The center administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration.

H. When needed, medication shall be refrigerated.

I. When medication is stored in a refrigerator used for food, the medications shall be stored together in a container or in a clearly defined area away from food.

J. Medication, except for those prescriptions designated otherwise by written physician's order, including refrigerated medication and staff's personal medication, shall be kept in a locked place using a safe locking method that prevents access by children.

K. If a key is used, the key shall not be accessible to the children.

L. Centers shall keep a record of medication given children, which shall include the following:

1. Child to whom medication was administered;
2. Amount and type of medication administered to the child;
3. The day and time the medication was administered to the child;
4. Staff member administering the medication;
5. Any adverse reactions; and
6. Any medication error.

M. Staff shall inform parents immediately of any adverse reactions to medication administered and any medication error.

N. When an authorization for medication expires, the parent shall be notified that the medication needs to be picked up within 14 days or the parent must renew the authorization. Medications that are not picked up by the parent within 14 days will be disposed of by the center by either dissolving the medication down the sink or flushing it down the toilet.

~~22VAC40-185-520~~ 8VAC20-780-520. Over-the-counter skin products.

A. All nonprescription drugs and over-the-counter skin products shall be used in accordance with the manufacturer's recommendations. Nonprescription drugs and over-the-counter skin products shall not be kept or used beyond the expiration date of the product.

B. If sunscreen is used, the following requirements shall be met:

1. Written parent authorization noting any known adverse reactions shall be obtained;
2. Sunscreen shall be in the original container and labeled with the child's name;
3. Sunscreen does not need to be kept locked but shall be inaccessible to children under five years of age or those children in a therapeutic child day program or special needs child day program;
4. Any center-kept sunscreen shall be hypo-allergenic and have a minimum SPF of 15;
5. Staff members without medication administration training may apply sunscreen, unless it is prescription sunscreen, in

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which case the storing and application of sunscreen must meet medication-related requirements; and

6. Children nine years of age and older may administer their own sunscreen if supervised.

C. If diaper ointment or cream is used, the following requirements shall be met:

1. Written parent authorization noting any known adverse reactions shall be obtained;

2. These products shall be in the original container and labeled with the child's name;

3. These products do not need to be kept locked but shall be inaccessible to children;

4. A record shall be kept that includes the child's name, date of use, frequency of application and any adverse reactions; and

5. Staff members without medication administration training may apply diaper ointment, unless it is prescription diaper ointment, in which case the storing and application of diaper ointment must meet medication-related requirements.

D. If insect repellent is used, the following requirements shall be met:

1. Written parent authorization noting any known adverse reactions shall be obtained;

2. Insect repellent shall be in the original container and labeled with the child's name;

3. Insect repellent does not need to be kept locked but shall be inaccessible to children;

4. A record shall be kept that includes the child's name, date of use, frequency of application and any adverse reactions;

5. Manufacturer's instructions for age, duration and dosage shall be followed; and

6. Staff members without medication administration training may apply insect repellent, unless it is prescription insect repellent, in which case the storing and application of insect repellent must meet medication-related requirements.

~~22VAC40-185-530~~ 8VAC20-780-530. First aid training, cardiopulmonary resuscitation (CPR) and rescue breathing.

A. There shall be at least one staff member trained in first aid, cardiopulmonary resuscitation, and rescue breathing as appropriate to the age of the children in care who is on the premises during the center's hours of operation and also one person on field trips and wherever children are in care.

1. This person shall be available to children; and

2. This person shall have current certification by the American Red Cross, American Heart Association, National

Safety Council, or other designated program approved by the Department of ~~Social Services~~ Education.

B. Primitive camps shall have a staff member on the premises during the hours of operation who has at least current certification in first responder training.

~~22VAC40-185-780~~ 8VAC20-780-540. First aid and emergency supplies.

A. A first aid kit shall be:

1. On each floor of each building used by children;

2. Accessible to outdoor play areas;

3. On field trips; and

4. Wherever children are in care.

B. Each first aid kit shall be easily accessible to staff but not to children.

C. The required first aid kits shall include at a minimum:

1. Scissors;

2. Tweezers;

3. Gauze pads;

4. Adhesive tape;

5. Band-aids, assorted types;

6. An antiseptic cleansing solution /pads;

7. Thermometer;

8. Triangular bandages;

9. Single use gloves such as surgical or examination gloves; and

10. The first aid instructional manual.

D. The following emergency supplies shall be required at the center and be available on field trips:

1. Activated charcoal preparation (to be used only on the direction of a physician or the center's local poison control center); and

2. An ice pack or cooling agent.

E. The following nonmedical emergency supplies shall be required:

1. One working, battery-operated flashlight on each floor of each building that is used by children; and

2. One working, battery-operated radio in each building used by children and any camp location without a building.

~~22VAC40-185-550~~ 8VAC20-780-550. Procedures for emergencies.

A. The center shall have an emergency preparedness plan that addresses staff responsibility and facility readiness with respect to emergency evacuation and shelter-in-place. The plan, which shall be developed in consultation with local or state authorities, addresses the most likely to occur emergency scenario or scenarios, including but not limited to natural disaster, chemical spills, intruder, and terrorism specific to the locality.

B. The emergency preparedness plan shall contain procedural components for:

1. Sounding of alarms (intruder, shelter-in-place such as for tornado, or chemical hazard);
2. Emergency communication to include:
 - a. Establishment of center emergency officer and back-up officer to include 24-hour contact telephone number for each;
 - b. Notification of local authorities (fire and rescue, law enforcement, emergency medical services, poison control, health department, etc.), parents, and local media; and
 - c. Availability and primary use of communication tools;
3. Evacuation to include:
 - a. Assembly points, head counts, primary and secondary means of egress, and complete evacuation of the buildings;
 - b. Securing of essential documents (sign-in record, parent contact information, etc.) and special health care supplies to be carried off-site on immediate notice; and
 - c. Method of communication after the evacuation;
4. Shelter-in-place to include:
 - a. Scenario applicability, inside assembly points, head counts, primary and secondary means of access and egress;
 - b. Securing essential documents (sign-in records, parent contact information, etc.) and special health supplies to be carried into the designated assembly points; and
 - c. Method of communication after the shelter-in-place;
5. Facility containment procedures, (e.g., closing of fire doors or other barriers) and shelter-in-place scenario (e.g., intruders, tornado, or chemical spills);
6. Staff training requirement, drill frequency, and plan review and update; and
7. Other special procedures developed with local authorities.

C. Emergency evacuation and shelter-in-place procedures/maps shall be posted in a location conspicuous to staff and children on each floor of each building.

D. The center shall implement a monthly practice evacuation drill and a minimum of two shelter-in-place practice drills per year for the most likely to occur scenarios.

E. The center shall maintain a record of the dates of the practice drills for one year. For centers offering multiple shifts, the simulated drills shall be divided evenly among the various shifts.

F. A 911 or local dial number for police, fire and emergency medical services and the number of the regional poison control center shall be posted in a visible place at each telephone.

G. Each camp location shall have an emergency preparedness plan and warning system.

H. The center shall prepare a document containing local emergency contact information, potential shelters, hospitals, evacuation routes, etc., that pertain to each site frequently visited or of routes frequently driven by center staff for center business (such as field trips, pick-up/drop off of children to or from schools, etc.). This document must be kept in vehicles that centers use to transport children to and from the center.

I. Parents shall be informed of the center's emergency preparedness plan.

J. Based on local authorities and documented normal ambulance operation, if an ambulance service is not readily accessible within 10 to 15 minutes, other transportation shall be available for use in case of emergency.

K. The center or other appropriate official shall notify the parent immediately if a child is lost, requires emergency medical treatment or sustains a serious injury.

L. The center shall notify the parent by the end of the day of any known minor injuries.

M. The center shall maintain a written record of children's serious and minor injuries in which entries are made the day of occurrence. The record shall include the following:

1. Date and time of injury;
2. Name of injured child;
3. Type and circumstance of the injury;
4. Staff present and treatment;
5. Date and time when parents were notified;
6. Any future action to prevent recurrence of the injury;
7. Staff and parent signatures or two staff signatures; and
8. Documentation on how parent was notified.

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Part VIII
Special Services

~~22VAC40-185-560~~ 8VAC20-780-560. **Nutrition and food services.**

A. Centers shall schedule appropriate times for snacks or meals, or both, based on the hours of operation and time of the day (e.g., a center open only for after school care shall schedule an afternoon snack; a center open from 7 a.m. to 1 p.m. shall schedule a morning snack and midday meal).

B. The center shall ensure that children arriving from a half-day, morning program who have not yet eaten lunch receive a lunch.

C. The center shall schedule snacks or meals so there is a period of at least 1-1/2 hours but no more than three hours between each meal or snack unless there is a scheduled rest or sleep period for children between the meals and snacks.

D. Drinking water or other beverage not containing caffeine shall be offered at regular intervals to nonverbal children.

E. In environments of 80°F or above, attention shall be given to the fluid needs of children at regular intervals. Children in such environments shall be encouraged to drink fluids as outlined in subsection D of this section.

F. When centers choose to provide meals or snacks, the following shall apply:

1. Centers shall follow the most recent, age-appropriate nutritional requirements of a recognized authority such as the Child and Adult Care Food Program of the United States Department of Agriculture (USDA).
2. Children shall be allowed second helpings of food listed in the USDA's child and adult care meal patterns.
3. Centers offering both meals and snacks shall serve a variety of nutritious foods and shall serve at least three sources of vitamin A and at least three sources of vitamin C on various days each week.
4. Children three years of age or younger may not be offered foods that are considered to be potential choking hazards.
5. A menu listing foods to be served for meals and snacks during the current one-week period shall:
 - a. Be dated;
 - b. Be posted in a location conspicuous to parents or given to parents;
 - c. List any substituted food; and
 - d. Be kept on file for one week at the center.
6. Powdered milk shall not be used except for cooking.

G. When food is brought from home, the following shall apply:

1. The food container shall be sealed and clearly dated and labeled in a way that identifies the owner;

2. The center shall have extra food or shall have provisions to obtain food to serve to children so they can have an appropriate snack or meal if they forget to bring food from home, bring an inadequate meal or snack, or bring perishable food; and

3. Unused portions of opened food shall be discarded by the end of the day or returned to the parent.

H. If a catering service is used, it shall be approved by the local health department.

I. Food shall be prepared, stored, and transported in a clean and sanitary manner.

J. Contaminated or spoiled food shall not be served to children.

K. Tables and high chair trays shall be:

1. Sanitized before and after each use for feeding; and
2. Cleaned at least daily.

L. Children shall be encouraged to feed themselves.

M. Staff shall sit with children during meal times.

N. No child shall be allowed to drink or eat while walking around.

~~22VAC40-185-570~~ 8VAC20-780-570. **Special feeding needs.**

A. High chairs, infant carrier seats, or feeding tables shall be used for children under 12 months who are not held while being fed.

1. Children using infant seats or high chairs shall be supervised during snacks and meals.
2. When a child is placed in an infant seat or high chair, the protective belt shall be fastened securely.

B. Bottle fed infants who cannot hold their own bottles shall be held when fed. Bottles shall not be propped or used while the child is in his designated sleeping location.

C. The record of each child on formula shall contain:

1. The brand of formula; and
2. The child's feeding schedule.

D. Infants shall be fed on demand or in accordance with parental instructions.

E. Prepared infant formula shall be refrigerated, dated and labeled with the child's name.

F. Heated formula and baby food shall be stirred or shaken and tested for temperature before serving to children.

G. Milk, formula or breast milk shall not be heated or warmed directly in a microwave. Note: Water for warming milk, formula, or breast milk may be heated in a microwave.

H. Prepared baby food not consumed during that feeding by an infant may be used by that same infant later in the same day, provided that the food is not served out of the baby jar and is dated and stored in the refrigerator; otherwise, it shall be discarded or returned to the parent at the end of the day. Formula or breast milk shall not remain unrefrigerated for more than two hours and may not be reheated.

I. A one-day's emergency supply of disposable bottles, nipples, and commercial formulas appropriate for the children in care shall be maintained at the center.

J. Breastfeeding shall be permitted.

K. Staff shall feed semisolid food with a spoon unless written instructions from a physician or physician's designee state differently.

L. For therapeutic child day programs and special needs child day programs, the consistency of food shall be appropriate to a child's special feeding needs. Necessary and adaptive feeding equipment and feeding techniques shall be used for children with special feeding needs.

~~22VAC40-185-580~~ **8VAC20-780-580. Transportation and field trips.**

A. If the center provides transportation, the center shall be responsible from the time the child boards the vehicle until returned to the parents or person designated by the parent.

B. Any vehicle used by the center for the transportation of children shall meet the following requirements:

1. The vehicle shall be manufactured for the purpose of transporting people seated in an enclosed area;
2. The vehicle's seats shall be attached to the floor;
3. The vehicle shall be insured with at least the minimum limits established by Virginia state statutes;
4. The vehicle shall meet the safety standards set by the Department of Motor Vehicles and shall be kept in satisfactory condition to assure the safety of children; and
5. If volunteers supply personal vehicles, the center is responsible for ensuring that the requirements of this subsection are met.

C. The center shall ensure that during transportation of children:

1. Virginia state statutes about safety belts and child restraints are followed and stated maximum number of passengers in a given vehicle shall not be exceeded;
2. The children remain seated and each child's arms, legs, and head remain inside the vehicle;

3. Doors are closed properly and locked unless locks were not installed by the manufacturer of the vehicle;

4. At least one staff member or the driver always remains in the vehicle when children are present;

5. The following information is in transportation vehicles:
- a. Emergency numbers as specified in ~~22VAC40-185-550~~ **8VAC20-780-550** F and H;
 - b. The center's name, address, and phone number; and
 - c. A list of the names of the children being transported.

D. When entering and leaving vehicles, children shall enter and leave the vehicle from the curb side of the vehicle or in a protected parking area or driveway.

E. Children shall cross streets at corners or crosswalks or other designated safe crossing point if no corner or crosswalk is available.

F. The staff-to-children ratios of ~~22VAC40-185-350~~ **8VAC20-780-350** E, G, and H shall be followed on all field trips. The staff-to-children ratios need not be followed during transportation of school age children to and from the center. One staff member or adult is necessary in addition to the driver when 16 or more preschool or younger children are being transported in the vehicle.

G. The center shall make provisions for providing children on field trips with adequate food and water.

H. If perishable food is taken on field trips, the food shall be stored in insulated containers with ice packs to keep the food cold.

I. Before leaving on a field trip, a schedule of the trip's events and locations shall be posted and visible at the center site.

J. There shall be a communication plan between center staff and staff who are transporting children or on a field trip.

K. Staff shall verify that all children have been removed from the vehicle at the conclusion of any trip.

L. Parental permission for transportation and field trips shall be secured before the scheduled activity.

M. If a blanket permission is used instead of a separate written permission, the following shall apply:

1. Parents shall be notified of the field trip; and
2. Parents shall be given the opportunity to withdraw their children from the field trip.

~~22VAC40-185-590~~ **8VAC20-780-590. Transportation for nonambulatory children.**

A. For therapeutic child day programs and special needs child day programs providing transportation, nonambulatory children shall be transported in a vehicle which is equipped with a ramp or hydraulic lift to allow entry and exit.

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B. Wheelchairs shall be equipped with restraining devices and shall be securely fastened to the floor when used to seat children in a vehicle.

C. Arrangements of wheelchairs in a vehicle shall not impede access to exits.

D. For therapeutic child day programs and special needs child day programs, when the center is responsible for providing transportation, the center shall develop a plan based on the needs of the children in care to assure their safe supervision during on-loading, off-loading and transporting.

E. When 16 or more children are being transported, there shall be at least one center aide or adult besides the driver, for each group of 16.

F. For therapeutic child day programs and special needs child day programs, if a child has a known seizure disorder or neurological, genetic or physiological disability causing increased medical risk and that child is being transported, one center aide or adult who is not the driver and who is trained in CPR shall be present in the vehicle.

22VAC40-185-600 8VAC20-780-600. Animals and pets.

A. Animals that are kept on the premises of the center shall be vaccinated, if applicable, against diseases which present a hazard to the health or safety of children.

B. Animals which are, or are suspected of being, ill or infested with external lice, fleas and ticks or internal worms shall be removed from contact with children.

C. If a child is bitten by an animal, an attempt shall be made to confine the animal for observation or laboratory analysis for evidence of rabies.

D. The site of the bite shall be washed with soap and water immediately, and the child's physician or local health department shall be contacted as soon as possible for medical advice.

E. The center shall report the animal bite incident to the local health department.

F. Manure shall be removed from barns, stables and corrals at least once a day and stored and disposed of in a manner to prevent the breeding of flies.

22VAC40-185-610 8VAC20-780-610. Evening and overnight care.

A. For evening care, beds with mattresses or cots with at least one inch of dense padding shall be used by children who sleep longer than two hours and are not required to sleep in cribs.

Exception: Camps providing evening care on an occasional basis are not required to meet the requirements of this subsection if sleeping bags or cots are used.

B. For overnight care, beds with mattresses or cots with at least two inches of dense padding shall be used by children who are not required to sleep in cribs.

Exception: Camps providing overnight care on an occasional basis are not required to meet the requirements of this subsection if sleeping bags or cots are used.

C. For overnight care which occurs for a child on a weekly or more frequent basis, beds with mattresses shall be used.

D. In addition to ~~22VAC40-185-450~~ 8VAC20-780-450 about linens, bedding appropriate to the temperature and other conditions of the rest area shall be provided.

E. For evening and overnight care, separate sleeping areas shall be provided for children of the opposite sex eight years of age or older.

F. If sleeping bags are used, ~~22VAC40-185-440-A~~ 8VAC20-780-440 A through E about rest furnishings shall also apply to the use of sleeping bags.

G. Camps may use bunk beds if children are at least eight years of age.

H. In centers providing overnight care, an operational tub or shower with heated and cold water shall be provided.

Exception: Primitive camps are not required to have a tub or shower.

I. When bath towels are used, they shall be assigned for individual use.

J. Activities for children in evening or overnight care shall include, as time allows, age-appropriate activities as described in ~~22VAC40-185-360~~ 8VAC20-780-360 through ~~22VAC40-185-390~~ 8VAC20-780-390.

K. Quiet activities shall be available immediately before bedtime.

L. For children receiving evening or overnight care, the provider shall offer an evening snack.

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 (8VAC20-780)

[Initial Application for a License to Operate a Child Day Center](#) (eff. 7/1/21)

[Renewal Application for a License to Operate a Child Day Center](#) (eff. 7/1/21)

DOCUMENTS INCORPORATED BY REFERENCE
(8VAC20-780)

F406-02 ASTM Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards, October 2003.

F1292-99 ASTM Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment, August 10, 1999.

"Selecting Playground Surface Materials: Guidelines for Selecting the Best Surface Material for Your Playground," National Program for Playground Safety, University of Northern Iowa, February 2004.

Air Quality Color Code Chart, Virginia Department of Environmental Quality, April 2004.

Chapter 790
Child Care Program

Part I
General Provisions

~~22VAC40-665~~ **8VAC20-790-10. Definitions.**

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

"Administrative disqualification hearing" or "ADH" means an impartial review by a state hearing officer of a recipient's actions involving an alleged intentional program violation for the purpose of determining if the individual did or did not commit an intentional program violation.

"Applicant" means a person who has applied for child care services and the disposition of the application has not yet been determined.

"Assets" means resources owned by a person or company regarded as having value and available to meet debts and commitments.

"Background checks" means the checks for barrier crimes and offenses required under Article ~~3 5~~ (§ ~~63-2-1719~~ 22.1-289.034 et seq.) of Chapter ~~17~~ 14.1 of Title ~~63-2~~ 22.1 of the Code of Virginia, including the sworn statement or affirmation as is required by Article ~~3 5~~; the criminal history record check; and the Child Protective Services Central Registry check.

"Child care subsidy and services" or "Child Care Subsidy Program" means the department program that assists eligible low-income families with the cost of child care and those activities that assist eligible families in the arrangement for or purchase of child care for children for care that is less than a 24-hour day. It also includes activities that promote parental choice, consumer education to help parents make informed choices about child care, activities to enhance health and safety standards established by the state, and activities that increase and enhance child care and early childhood development resources in the community.

"Child experiencing homelessness" means a child who lacks a fixed, regular, and adequate nighttime residence and includes:

1. A child who is living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar settings;
2. A child who is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason (sometimes referred to as "doubled-up");
3. A child who is living in a motel, hotel, trailer park, or camping grounds due to lack of alternative adequate accommodations;
4. A child who is living in congregate, temporary, emergency, or transitional shelters;
5. A child who is abandoned in a hospital;
6. A child who is living in a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; and
7. A child who is a migratory child as defined in § 1309 of the Elementary and Secondary Education Act of 1965, P.L. No. 89-10 (20 USC § 6399) who qualifies as homeless because he is living in circumstances described ~~in subdivisions 1 through 6 of this definition~~ in clauses (i) through (iii) of 42 USC § 11432a(2)(8).

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

"Child with special needs or disability" means (i) a child with a disability as defined in § 602 of the Individuals with Disabilities Education Act (20 USC § 1401); (ii) a child who is eligible for early intervention services under Part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.); (iii) a child who is younger than 13 years of age and who is eligible for services under § 504 of the Rehabilitation Act of 1973 (29 USC § 794); and (iv) a child with a documented developmental disability, intellectual disability, emotional disturbance, sensory or motor impairment, or significant chronic illness who requires special health surveillance or specialized programs, interventions, technologies, or facilities.

"Conditional eligibility" means that eligibility has been approved for a period not to exceed 90 days to allow families with a child experiencing homelessness additional time to obtain required documentation needed to complete a final eligibility determination.

"Copayment" means the amount paid to the provider by the parent to contribute toward the cost of child care. Such amount shall be established by the department in accordance with the current Child Care and Development Fund Plan for Virginia,

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approved by the U.S. Department of Health and Human Services. Copayments do not include charges above the maximum reimbursable rate, or charges for registration, activities, or transportation.

~~"DCSE" means the Division of Child Support Enforcement, the division of the Department of Social Services responsible for locating absent parents; establishing paternity; and establishing, modifying, enforcing, collecting, and disbursing child support or child and spousal support.~~

"Department" means the Virginia Department of ~~Social Services~~ Education.

"Exit eligibility limit" means the maximum gross countable income amount that a family can receive to be considered income eligible at redetermination. Such amount shall be established by the department in the current Child Care and Development Plan for Virginia approved by the U.S. Department of Health and Human Services.

"Family" means any adult or emancipated minor and children related by blood, marriage, adoption, or an expression of kinship who function as a family unit.

"Federal poverty guidelines" means the income levels by family size, determined by the U.S. Department of Health and Human Services, used as guidelines in determining at what level families in the country are living in poverty.

"Fee" means a charge for a service and may include copayments, charges above the maximum reimbursable rate, or charges for registration, activities, or transportation.

"Fee Program" means a category in the child care subsidy program that assists low income, non-TANF families with child care services.

"Fiscal year" means the local department financial calendar that begins in June of each calendar year and runs through May of the following calendar year.

"Graduated phase out" means the period of time for child care subsidy and services to continue as determined by the local department at redetermination for recipients whose income exceeds the initial eligibility limit but is below the exit eligibility limit.

"Head Start" means the comprehensive federal child development programs that serve children from birth through age five years, pregnant women, and their families (as established by the Head Start Act (42 USC § 9801)).

"Income eligible" means that eligibility for assistance under the Child Care Subsidy Program is based on income and family size.

"In-home" means child care provided in the home in which all of the children in care reside and in which the provider does not reside.

"Initial eligibility limit" means the maximum gross countable income amount that a family can receive to be considered income eligible. Such amount shall be established by the department in the current Child Care and Development Plan for Virginia approved by the U.S. Department of Health and Human Services.

"Intentional program violation" or "IPV" means any action by an individual for the purpose of establishing or maintaining the family's eligibility for assistance under the Child Care Subsidy Program or for increasing or preventing a reduction in the amount of the assistance by (i) intentionally giving a false or misleading statement or misrepresenting, concealing, or withholding facts or (ii) any act intended to mislead, to misrepresent, conceal, or withhold facts, or to propound a falsity.

"Level one provider" means a child care provider that is not licensed by the department or is not approved (i) by a licensed family day system, (ii) under a local ordinance in accordance with §§ 15.2-741 and 15.2-914 of the Code of Virginia, or (iii) by the federal government.

"Level two provider" means a child care provider that is licensed by the department or is approved (i) by a licensed family day system, (ii) under local ordinance in accordance with §§ 15.2-741 and 15.2-914 of the Code of Virginia, or (iii) by the federal government.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Maximum reimbursable rate" means the maximum rate paid for child care services through the subsidy program that is established by the department and set out in the current Child Care and Development Fund Plan for Virginia filed with the U.S. Department of Health and Human Services.

"Need for child care" means the parents meet the income eligibility and employment or education requirements set forth in this chapter and require child care services for part of the day.

"Nonfraud overpayment" means an overpayment that is the result of a local department error or an inadvertent household or provider error.

"Parent" means the adult or emancipated minor, as defined in § 16.1-334 of the Code of Virginia, who acts as the primary caretaker or guardian of a child, including an individual acting in loco parentis. A parent may be by blood, marriage, or adoption and also means a legal guardian, person cohabiting with the natural or adoptive parent of a minor child, or other person standing in loco parentis.

"Provider" or "child care provider" means a person, entity, or organization providing child care services.

"Resource and referral" means services that provide information to parents to assist them in choosing a child care

provider and may include assessment of the family's child care needs, collection and maintenance of information about child care needs in the community, and efforts to improve the quality and increase the supply of child care.

"Service plan" means the written, mutually agreed upon activities and responsibilities between the local department and the parent in the provision of assistance for child care services under the Child Care Subsidy Program.

"Superintendent" means Superintendent of Public Instruction or his designee.

"Supplemental Nutrition Assistance Program" or "SNAP" means the program administered by the U.S. Department of Agriculture to reduce hunger and increase food security.

"Supplemental Nutrition Assistance Program Employment and Training" or "SNAPET" means the program that provides job search, job search training, education, training, and work experience to nonpublic assistance SNAP recipients.

"TANF assistance unit" means a household composed of an individual or individuals who meet all categorical requirements and conditions of eligibility for TANF.

"TANF capped child" means a child who the TANF worker has determined ineligible for inclusion in the TANF assistance unit because the child was born more than 10 full months after the mother's initial TANF payment was issued.

"Temporary Assistance for Needy Families" or "TANF" means the program authorized in § 406 of the Social Security Act (42 USC § 606) and administered by the department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Transitional child care" means the program that provides child care subsidy assistance to eligible former TANF recipients after the TANF case closes.

"Vendor" means a legally operating child care provider who is approved by the department to participate in the Child Care Subsidy Program. Multiple facilities or sites operated by the same person, entity, or organization are considered separate vendors.

"Vendor agreement" means the agreement between the department and a child care vendor that must be entered into and signed before child care payments under the Child Care Subsidy Program can be authorized.

"Virginia Initiative for Education and Work" or "VIEW" means the program of employment opportunities to assist individuals receiving Temporary Assistance for Needy Families in attaining the goal of self-sufficiency as implemented in the Commonwealth of Virginia.

~~22VAC40-665-20~~ 8VAC20-790-20. Families and children to be served.

A. For an applicant to be eligible for child care subsidy and services, the applicant must have a child who, at the time of eligibility determination or redetermination:

1. Is younger than 13 years of age or is younger than the age of 18 years and physically or mentally unable to care for himself, or under court supervision;
2. Is a citizen or legal resident of the United States;
3. Is immunized according to requirements of the State Board of Health; however, families of a child experiencing homelessness that cannot provide documentation of their child's immunizations may be conditionally approved for services for a period not to exceed 90 days;
4. Is not eligible to attend public school during the part of the day when public education is available unless there is a documented reason for the child to be out of school;
5. Resides with the applicant or recipient for services;
6. Resides in the locality where application or redetermination for services is made;
7. Resides with a family whose income does not exceed the income limits established by the department in the current Child Care and Development Fund Plan for Virginia approved by the U.S. Department of Health and Human Services;
8. Resides with a family whose family assets do not exceed \$1 million in value, as certified by the applicant; and
9. Resides with a family in which there is a need for child care services, arising from one of the following situations:
 - a. In a two-parent household, there must be a documented reason why one of the parents cannot provide the needed child care.
 - b. Parents who need child care to support the following approved activities:
 - (1) Employment;
 - (2) Education or training leading to employment;
 - (3) Child protective services; or
 - (4) Assigned VIEW or SNAPET activity.

B. At the option of the local department, a child born to a family 10 months or more after the initial date of approval for the Fee Program may receive child care services or be placed on the local department waiting list.

C. A child of an owner or operator of a family day home shall not be eligible to receive a child care subsidy if that child will be cared for in the home of the owner or operator.

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~~22VAC40-665-30~~ 8VAC20-790-30. Child care subsidy program categories.

Assistance under the Child Care Subsidy Program is provided through the following program categories, to the extent that funding is available:

1. TANF. Child care subsidy and services are made available to recipients of TANF. TANF child care includes needed child care for:

- a. A TANF-capped child;
- b. A child who receives Supplemental Security Income (SSI) if the parent is on the TANF grant and if the child would have been in the public assistance unit were it not for the receipt of SSI; and
- c. Children who are not in the TANF assistance unit but who are financially dependent upon the parent who is in the TANF assistance unit.

2. Income eligible programs.

a. Transitional child care. Child care subsidy and services are made available to eligible children of:

(1) Former TANF recipients for up to the 12 months following TANF case closure to support parental employment and

(2) Former VIEW participants when the individual is enrolled in an accredited public institution of higher learning or other postsecondary school licensed or certified by the State Board of Education or the State Council of Higher Education for Virginia and is taking courses as part of a curriculum that leads to a postsecondary credential, such as a degree or an industry-recognized certification, or license, and

If the family is found income eligible, and there is a need for child care.

b. Head Start wrap-around child care. Head Start wrap-around child care subsidy and services are made available to eligible Head Start enrolled children. The program is for extended day and extended year child care beyond times covered by federally funded Head Start programs.

c. SNAP child care. Child care subsidy and services are made available to children of parents in Virginia's SNAP Education and Training (SNAPET) program to allow participation in an approved activity.

d. Fee Program child care. Fee child care subsidy and services are made available to children in eligible low-income families who are not receiving TANF or SNAPET and who meet the eligibility criteria for child care.

~~22VAC40-665-40~~ 8VAC20-790-40. Case management.

A. Applicants for child care subsidy and services must be at least 18 years of age unless they are an emancipated minor ~~or a minor who was receiving services as head of household prior to April 2016.~~

B. Applicants are required to sign an application, to provide verification of identity, and to cooperate with an assessment by the local department of social services.

~~C. In cases where the local department has approved the application of an applicant for the Child Care Subsidy Program and determines that (i) the child has been abandoned by a noncustodial parent, or (ii) a person who has a responsibility for the care, support, or maintenance of the child has failed or neglected to give proper care or support to the child, the local department shall refer the matter to DCSE for the application for child support services. Failure by the applicant or recipient to cooperate with DCSE shall result in denial of the application or case closure at redetermination. "Cooperate with DCSE" means that an applicant or recipient must apply for child support services and participate and provide information, as requested by DCSE, to locate a noncustodial parent, establish paternity, establish or modify a child support order, or enforce a child support order.~~

~~D. At initial eligibility determination, a family with a child experiencing homelessness that cannot provide the required documentation may be conditionally approved for services for a period not to exceed 90 days. The final eligibility determination shall be completed once the 90 days has expired or full documentation is provided. Any payments made prior to the final eligibility determination shall not be considered an error or improper payment. Families with a child experiencing homelessness shall receive priority placement on the waiting list, if applicable.~~

~~E. D.~~ Consumer education, including education on the selection and monitoring of quality child care and how to access information regarding their selected vendor as to the (i) health and safety requirements met by the vendor; (ii) licensing or regulatory requirements met by the vendor; (iii) date the vendor was last inspected and any history of violations; and (iv) any voluntary quality standards met by the vendor, must be provided to parents to assist them in gaining needed information about the availability of child care services and providers. Parents must also be provided information on how to obtain a developmental screening for their child.

~~F. E.~~ The department shall establish scales for determining financial eligibility for the income eligible child care subsidy program categories in subdivision 2 of ~~22VAC40-665-30~~ 8VAC20-790-30.

1. Recipients in the TANF child care program category shall be considered income eligible based on their receipt of TANF; the local department shall not be required to verify their income.

2. At initial eligibility determination, income eligibility shall be determined by measuring the family's countable income and size against the percentage of the federal poverty guidelines for their locality. The family's income cannot exceed 85% of the state median income.

3. At redetermination, if a recipient family's countable income exceeds the initial eligibility limit, they shall be considered income eligible until their countable income meets or exceeds the exit eligibility limit established by the department. The family's income cannot exceed 85% of the state median income.

~~G. F.~~ Families receiving child care subsidy and services shall be required to pay a copayment unless their gross monthly income is at or below the federal poverty guidelines and they are recipients of TANF, participants in the SNAPET program, or families where all children participate in the Head Start program. The copayment amount will be based on a scale set out in the current Child Care and Development Fund Plan for Virginia. Copayments may be increased at redetermination and during graduated phase out if the family's countable income exceeds the initial eligibility limit but is below the exit eligibility limit. Local departments shall be required to act on changes reported by the family that would reduce the family's copayment during the 12-month eligibility period.

~~H. G.~~ Income to be counted in determining income eligibility includes all earned and unearned income received by the family except the following:

1. Supplemental Security Income;
2. TANF benefits;
3. Transitional payments of \$50 per month to former VIEW participants;
4. Diversionary assistance payments;
5. General relief;
6. SNAP benefits;
7. Value of U.S. Department of Agriculture donated food;
8. Benefits received under Title VII, Nutrition Program for the Elderly of the Older Americans Act of 1965;
9. Value of supplemental food assistance under the Child Nutrition Act of 1996 and lunches provided under National School Lunch Act;
10. Earnings of a child younger than the age of 18 years;
11. Earned income tax credit;
12. Lump sum child support arrears payments;
13. Scholarships, loans, or grants for education except any portion specified for child care;
14. Basic allowance for housing for military personnel living on base;
15. Clothing maintenance allowance for military personnel;
16. Payments received by AmeriCorps volunteers;
17. Tax refunds;

18. Lump sum insurance payments;
19. Monetary gifts for one-time occasions or normal annual occasions;
20. Payments made by non-financially responsible third parties for household obligations, unless payment is made in lieu of wages;
21. Loans or money borrowed;
22. Money received from sale of property;
23. Earnings less than \$25 a month;
24. Capital gains;
25. Withdrawals of bank deposits;
26. GI Bill benefits;
27. Reimbursements, such as for mileage;
28. Foreign government restitution payments to Holocaust survivors;
29. Payments from the Agent Orange Settlement Fund or any other fund established for settlement of Agent Orange product liability litigation; and
30. Monetary benefits provided to the children of Vietnam Veterans as described in 38 USC § 1823(c).

The amount of wages subject to garnishment and the amount of child support paid to another household shall be deducted from the family's income.

~~I. H.~~ The eligibility period for TANF (nonVIEW), transitional child care, Fee Program, and Head Start begins with the effective date of the approval of the child care subsidy and services application. The eligibility period for VIEW and SNAPET participants begins with the date of referral from the VIEW or SNAPET program.

~~J. I.~~ Recipients will be eligible for child care subsidy and services for a minimum of 12-months before eligibility is redetermined unless:

1. Their countable income exceeds 85% of state median income. Temporary increases in income will not affect eligibility or family copayments, including monthly income fluctuations, which when taken in isolation, may incorrectly indicate that a recipient's income exceeds 85% of state median income.
2. There is a finding that the recipient committed an intentional program violation.
3. The recipient is no longer a resident of Virginia.
4. The recipient requests that their child care subsidy and services case be closed.
5. The recipient is a family of a child experiencing homelessness that was approved as conditionally eligible

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and failed to provide necessary documentation to the local department within 90 days, or the recipient is determined ineligible after full documentation is provided.

~~K.~~ J. Recipients will retain eligibility despite any change in residency within the state.

~~L.~~ K. Recipients will retain eligibility despite any eligible child turning 13 years of age during the 12-month eligibility period.

~~M.~~ L. The beginning date of service payment for TANF (nonVIEW), transitional child care, Fee Program, and Head Start participants may begin with the date the applicant is determined eligible and a vendor approved by the department is selected. The beginning date of service payment for VIEW or SNAPET participants may begin with the date of referral from the VIEW or SNAPET program if the applicant is determined eligible and a vendor approved by the department is selected.

1. Eligibility must be determined within 30 days of receipt of a signed application or referral from VIEW or SNAPET by the local department.

2. Payment cannot be made to any provider prior to the effective date of their approval by the department as a vendor.

~~N.~~ M. Eligibility will be redetermined in the final month of the 12-month eligibility period described in subsection I of this section, at which time the recipient will be contacted in order to have all eligibility criteria be reevaluated. The local department's contact with the recipient should not unduly disrupt a parent's work schedule. Recipients shall not be required to appear in person for eligibility redetermination.

~~O.~~ N. Child care case managers shall prepare a written service plan for each child care case with the applicant or recipient. The service plan shall state the activities and responsibilities of the local department and the parent in the provision of child care services. The VIEW Activity and Service Plan will serve as the service plan for parents active in VIEW. If the parents are SNAPET participants, the SNAPET Plan of Participation will serve as the service plan.

~~P.~~ O. Recipients shall be required to:

1. Report to the local department the following changes within 10 calendar days of the change:

- a. Countable income that exceeds 85% of the state median income.
- b. Recipient is no longer a resident of Virginia or the county in which they are receiving services.

2. Pay all fees owed to the vendor not paid for under the Child Care Subsidy Program or reimbursements owed to the local department; failure to do so may result in case closure at redetermination.

3. Reimburse the local department for any overpayment made as a result of fraud, intentional program violation, or an inadvertent household error.

The local department shall inform recipients of child care subsidy and services of these responsibilities.

~~Q.~~ P. Adequate documentation supporting the reasons for termination must be filed in the case record. Eligibility in the Fee Program is limited to a total of 72 months per family. Receipt of assistance in any other program category does not count toward the 72-month limitation.

~~R.~~ Q. When sufficient funds are not available, local departments of social services must screen applicants for potential eligibility and place them on the department's waiting list unless the family declines placement.

~~S.~~ R. Applicants and recipients will be afforded due process through timely written notices of any action determining or affecting their eligibility for services or copayment amount. Such written notice shall include the reason for the action and the notice of appeal rights and procedures, including the right to a fair hearing if the applicant or recipient is aggrieved by the local department's action or failure to act on an application. If a recipient requests an appeal prior to the effective date of any proposed action and if the continuation of services is requested by the parent, child care services will continue until a decision is rendered by a hearing officer. If the decision of the local department is upheld by the hearing officer, the recipient must repay the amount of services paid during the appeal process.

~~22VAC40-665-60~~ 8VAC20-790-50. Parental choice.

Families who receive child care subsidy and services shall have the right to choose a provider from among child care providers operating legally and that are approved by the department to participate in the Child Care Subsidy Program as a vendor. Local departments shall not establish any policies that limit parental choice of providers.

~~22VAC40-665-70~~ 8VAC20-790-60. Access to children.

A. Vendors shall allow parents unlimited access to their children when they are in care.

B. Vendors shall allow state and local department staff unlimited access to children in care.

~~22VAC40-665-70~~ 8VAC20-790-70. Vendor requirements.

A. Vendors who participate in the subsidy program must be at least 18 years of age.

B. Vendors shall permit and cooperate with inspections by staff from the department and local departments of social services.

C. Vendors shall comply with the regulations applicable to the vendor's type of child care, including all requirements to conduct background checks.

D. Vendors shall comply with the subsidy program vendor requirements as outlined in Parts II (~~22VAC40-665-120 8VAC20-790-140~~ et seq.) and III (~~22VAC40-665-470 8VAC20-790-490~~ et seq.) of this chapter applicable to the vendor's type of care.

E. All vendors who participate in the Child Care Subsidy Program shall enter into a vendor agreement with the department. The vendor's signature or electronic submission confirms its agreement to comply with the applicable sections of this chapter and the terms of the agreement, including payment processes, electronic submission and tracking of attendance, absences, and vendor requirements. Vendors shall be subject to monitoring inspections to ensure compliance with this chapter and with the vendor agreement.

F. Employees of any division within the department or a local department of social services cannot participate in the subsidy program as a vendor.

G. Vendors shall provide notice to individuals required under this chapter to undergo background checks of the opportunity to challenge the results of the background checks in accordance with the procedures described in this subsection in the case of criminal checks, or by contacting the local department of social services that reported such individual to be named on the Child Protective Services Central Registry.

1. Federal Bureau of Investigation (FBI): If an individual is denied employment or the opportunity to provide volunteer or contractual services because of information appearing on the individual's FBI record and it comes to the individual's attention that he is not the person of the record, the individual may initiate a challenge of the information contained in the record. The facility is required by state and federal laws to provide the individual with a copy of the challenge procedures. The challenge procedures can be found at <https://www.fbi.gov/services/cjis/identity-history-summary-checks>.

2. Virginia State Police: In instances where it comes to an individual's attention that his name or other descriptive information is a matter of record in the Central Criminal Records Exchange, and he is not the person of the record, then the individual may initiate a challenge of the information contained in the record as provided at http://www.vsp.state.va.us/CJIS_CCRCRE.shtm. The individual must report this information to a local sheriff, police, or State Police Headquarters and request to be fingerprinted for the purpose of challenging a criminal record. The individual to be fingerprinted must show personal identification. The official taking the fingerprints must document on letterhead paper that he has reviewed the individual's personal identification and obtained the fingerprints. This letter and the fingerprints are to be mailed to the following address: Manager Central Criminal Records Exchange Virginia Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472. Within five workdays,

the individual who initiated the challenge will receive written confirmation of the fingerprint search results, whether he is or is not the person of the record, and record modifications taken, if applicable.

3. If an individual successfully challenges information on a background check in accordance with these procedures, the vendor may submit a request for a new background investigation in order to obtain an accurate record.

H. Disputes between the vendor and the department regarding the payment for services rendered, enforcement or termination of the vendor agreement, or disqualification from participating in the Child Care Subsidy Program may be appealed by the vendor pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), as provided in this subsection. This shall be the sole remedy for such disputes.

1. Within 30 days of the date of a written notice of department action against a vendor, the vendor may request an appeal in writing with the department.

2. Upon receiving the vendor's notice of appeal, the department shall schedule an informal conference at which the vendor may provide such further information or present any additional facts for the department to reconsider its action. The department shall issue a written decision within 15 business days from the conclusion of the informal conference. The vendor may waive the holding of the informal conference and request the formal hearing described in subdivision 3 of this subsection in its initial request for an appeal to the department.

3. The vendor may appeal the decision from the informal conference by requesting an administrative hearing within 30 days of the date of the decision from the informal conference. The administrative hearing shall be held in accordance with § 2.2-4020 of the Code of Virginia and shall be presided over by a hearing officer designated by the Supreme Court of Virginia pursuant to subsection A of § 2.2-4024 of the Code of Virginia. Within 30 days of the administrative hearing, the hearing officer shall recommend a decision to the ~~Commissioner of the Virginia Department of Social Services~~ Superintendent of Public Instruction of the Virginia Department of Education. The ~~commissioner superintendent~~ shall issue a final decision within 30 days of receipt of the hearing officer's recommended decision in accordance with subsection C of § 2.2-4021 of the Code of Virginia.

4. The vendor may seek court review of the ~~commissioner's superintendent's~~ decision in accordance with Article 3 (§ 2.2-4018 et. seq.) of the Virginia Administrative Process Act.

~~22VAC40-665-80~~ **8VAC20-790-80. Determining payment amount.**

A. Maximum reimbursable rates.

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1. The department will establish maximum reimbursable rates for child care subsidies for all localities in the state by type of care, level of regulatory oversight, age of child, and unit of service. Such rates shall be available in Appendices F and G of the Child Care Subsidy Program Guidance Manual on the department's website at http://www.dss.virginia.gov/files/division/cc/assistance/parents_guardians/guidance_procedures/Child_Care_Subsidy_Guidance_Manual.pdf.

2. For children with special needs or disability, payment over the maximum reimbursable rate is allowed when this is appropriate as determined and documented by the local department. The maximum reimbursable rate for children with special needs may not exceed twice the rate for care of children who do not have special needs.

3. Vendors will be paid for the amount of care approved up to the maximum reimbursable rate of the locality in which the vendor is located. The department will pay the rates providers charge the general public, up to the maximum reimbursable rate. Level two vendors will be paid a higher maximum reimbursable rate established by the department.

4. Parents who choose a vendor that charges a rate higher than the maximum reimbursable rate set by the department shall be responsible for payment of the additional amount, if charged by the vendor, unless the local department elects to pay the additional amount out of local funds.

B. For in-home child care, the payment rate must be at least minimum wage, but not more than the maximum reimbursable rate for the number of children in care.

C. A single annual registration fee, if charged, will be paid to level two vendors only. The registration fee must not exceed \$100 nor be higher than the fee the vendor charges the general public. If the requirement for payment of another registration fee is beyond the control of the recipient or due to extenuating circumstances, an additional registration fee may be paid. The cost of transportation services provided by the vendor, if any, shall be included in the total cost of care. The total cost of care, excluding the single annual registration fee but including other fees and transportation, must not exceed the maximum reimbursable rate.

D. Level two providers may be paid up to 10 holidays on which no child care services are provided as identified in the vendor agreement. Certified preschools, religious exempt centers, and voluntary registered family day homes that are classified as level one providers may be paid for holidays on which no child care services are provided in accordance with the provisions of the vendor agreement. All other level one providers will not receive payment for any holiday unless services are provided on such day.

E. Level two providers may be paid for up to 36 days the child is absent per fiscal year.

~~22VAC40-665-90~~ **8VAC20-790-90. Complaints in the child care setting.**

All complaints regarding possible child abuse or neglect occurring in a child care setting must be referred to the child protective services unit at the local department serving the area where the vendor is located. All other complaints must be referred to the department's hotline, which will be provided to parents during intake at initial eligibility determination and will be available on the department's website (www.dss.virginia.gov).

~~22VAC40-665-100~~ **8VAC20-790-100. Recipient intentional program violation and disqualification.**

A. When it is suspected that there has been a deliberate misrepresentation of facts by a recipient in order to receive benefits, services, or payments, the local department shall investigate whether or not an intentional program violation was committed. If the local department finds clear and convincing evidence that an intentional program violation has occurred, the case will be referred for an administrative disqualification hearing. The local department may also refer the case to the attorney for the Commonwealth for criminal prosecution.

B. Recipients found to have committed an intentional program violation either through an administrative disqualification hearing or by a court of competent jurisdiction shall be ineligible to participate in the Child Care Subsidy Program for a period of three months upon the first finding, 12 months upon the second finding, and permanently upon the third finding.

C. In cases where a nonfraud overpayment occurred due to an inadvertent household error, the parent will not be disqualified from participating in the subsidy program as long as a repayment schedule is entered into with the local department and payments are made according to that schedule.

D. Administrative disqualification hearings shall be held in accordance with the following:

1. Prior to submitting the request for an ADH to the state hearing authority, the local department shall provide written notification to the individual suspected of an intentional program violation that the individual can waive his right to an ADH by signing a waiver request and returning it to the local department within 10 days from the date notification is sent to the individual in order to avoid submission of the request for an ADH.

2. If a signed waiver is received, no ADH is conducted and the disqualification period is imposed.

3. The local department shall request an ADH be scheduled by submitting a written request to the state hearing authority. The form must include the following information:

- a. Identifying information;
- b. Summary of the allegations;

- c. Summary of the evidence; and
- d. Copies of documents supporting the allegations.

The referral is to be signed and dated by the supervisor or local department director.

4. The hearing officer will schedule a date for the ADH and provide written notice to the individual suspected of committing an IPV at least 30 days in advance of the date the ADH has been scheduled. The notice shall contain at a minimum:

- a. The date, time, and place of the hearing;
- b. The charges against the individual;
- c. A summary of the evidence, and how and where the evidence can be examined;
- d. A statement that the decision will be based solely on information provided by the local department of social services if the individual fails to appear at the hearing;
- e. A statement that the individual or representative will, upon receipt of the notice, have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;
- f. A statement that a determination of intentional program violation will result in a disqualification period, and a statement of which penalty is applicable to the case scheduled for a hearing;
- g. A listing of the individual's rights, including the right to:
 - (1) Examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well as during the hearing;
 - (2) At his option, present his case himself or with the aid of an authorized representative;
 - (3) Bring witnesses;
 - (4) Establish all pertinent facts and circumstances;
 - (5) Advance any arguments without undue interference; and
 - (6) Question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses; and
- h. If there is an individual or organization available that provides free legal representation, the notice shall advise the affected individual of the availability of the service.

5. The time and place of the ADH shall be arranged so that the hearing is accessible to the individual suspected of committing an IPV. The individual may request a postponement of the ADH if the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. The ADH shall not be postponed for more than a total of 30 days and the state hearing authority may limit the number of postponements.

6. The ADH can be held even if the individual fails to appear. The individual has 10 days after the date of the scheduled ADH to present reasons indicating a good cause failure to appear.

7. Even though the individual is not present, the hearing officer shall carefully consider the evidence and determine if an IPV was committed, based on clear and convincing evidence.

8. If the recipient is found to have committed an IPV, but a hearing officer later determines there was good cause for not appearing, the previous decision will no longer be valid and a new ADH shall be conducted. The hearing officer who conducted the original hearing may conduct the new hearing. The good cause decision shall be entered into the hearing record by the hearing officer.

9. The hearing officer shall:

- a. Identify those present for the record;
- b. Advise the individual that he may refuse to answer questions during the hearing and that anything said or signed by the individual concerning the charges may be used against him in a court of law;
- c. Explain the purpose of the ADH, the procedure, and how and by whom a decision will be reached and communicated;
- d. Consider all relevant issues and determine if an IPV was committed, based on clear and convincing evidence;
- e. Request, receive, and make part of the record all evidence determined necessary to render a decision;
- f. Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing; and
- g. Advise the local department to obtain a medical assessment at the local department's expense if the hearing officer considers it necessary.

10. The individual alleged to have committed an IPV shall be given adequate opportunity to:

- a. Examine all documents and records to be used at the ADH at a reasonable time prior to the ADH as well as during the ADH. The contents of the case file, including the application form and documents of verification used by the local department to establish the alleged IPV, shall be made available;
- b. Present his case himself or with the aid of an authorized representative;
- c. Bring witnesses;
- d. Establish all pertinent facts and circumstances;
- e. Question or refute any testimony or evidence, including the opportunity to confront and cross-examine witnesses; and
- f. Advance arguments without any undue influence.

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11. The hearing officer shall prepare a written report of the hearing, which shall include findings, conclusions, decisions, and appropriate recommendations. The decision shall specify the reasons for the decision, identify the supporting evidence, identify pertinent regulations, and respond to reasoned arguments made by the individual or representative.

12. If the individual is found to have committed an IPV, the written decision shall advise the individual that disqualification shall occur.

Upon receipt of the notice of a decision from the hearing officer finding that the individual committed an IPV, the local department shall inform the individual of the reason for the disqualification and the date the disqualification will take effect.

~~22VAC40-665-105~~ 8VAC20-790-110. Vendor agreement termination and vendor disqualification.

A. A vendor agreement may be terminated for the following:

1. The vendor's license to operate a child care facility is revoked, suspended, or denied.
2. The vendor's business location changes; ownership of the vendor's business is assigned, sold, or otherwise transferred; the vendor's business structure changes; the vendor's employer identification number changes; or the vendor's legal operating status becomes invalid for any reason.
3. A deliberate misrepresentation of facts to the department or a local department of social services by a vendor in order to receive payments it was not entitled to receive or acceptance by the vendor of payments that the vendor knows, or should reasonably have known, the vendor was not entitled to receive.
4. The vendor fails to notify the department of a change in circumstances that affects payments received by the vendor.
5. The vendor's violation of any term of the vendor agreement, of any requirement under this chapter, or of any state laws and regulations related to the vendor's license or its exemption from licensure, including the requirements for background checks of the vendor's employees, volunteers, and other individuals who come into contact with children.

B. When it is suspected that there has been a deliberate misrepresentation of facts by a vendor in order to receive payments it was not entitled to receive, the local department shall investigate. If there is clear and convincing evidence that such an act has occurred, the case will be referred to the Division of Child Care and Early Childhood Development for termination of the vendor agreement and possible disqualification from participation in the Child Care Subsidy Program. The local department may also refer the case to the attorney for the Commonwealth for criminal prosecution.

C. Vendors will be permanently disqualified from participating in the Child Care Subsidy Program upon the first criminal conviction of fraud or upon a finding by the department or local department that the vendor deliberately misrepresented facts in order to receive payments it was not entitled to receive.

D. Vendors found to be repeatedly in violation of their vendor agreement or of the requirements of this chapter for reasons other than acts by the vendor described in subsection B of this section may be disqualified to participate in the Child Care Subsidy Program for a minimum period of one year.

E. Individuals affiliated with vendors as owners, partners, directors, officers, shareholders, limited liability company members, and managers shall be subject to disqualification under this section.

~~22VAC40-665-110~~ 8VAC20-790-120. Repayment.

A. In addition to any criminal punishment, anyone who causes the local department to make an overpayment to a vendor shall be required to repay the amount of the overpayment.

B. Any overpayment must be refunded to the department by the locality. If an overpayment was made as a result of an error by the local department, the local department will not seek to recoup those funds from the parent or the vendor.

~~22VAC40-665-115~~ 8VAC20-790-130. Required training for local department staff.

Local department staff with responsibilities for implementing the Child Care Subsidy Program shall complete guidance training and other training as required by the department.

Part II

Subsidy Program Vendor Requirements for Family Day Homes

~~22VAC40-665-120~~ 8VAC20-790-140. Definitions; subsidy program requirements for family day home vendors.

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

"Accessible" means capable of being entered, reached, or used.

"Adult" means any individual 18 years of age or older.

"Age and stage appropriate" means the curriculum, environment, equipment, and adult-child interactions are suitable for the ages of the children within a group and the individual needs of any child.

"Assistant" means an individual who helps the provider in the care, protection, supervision, and guidance to children in the home.

"Attendance" means the actual presence of an enrolled child.

"Body fluids" means urine, feces, vomit, saliva, blood, nasal discharge, eye discharge, and injury or tissue discharge.

"Caregiver" means an individual who provides care, protection, supervision, and guidance to children in the home and includes the provider and assistant.

"Child" means any individual less than 18 years of age.

"Child experiencing homelessness" means a child who lacks a fixed, regular, and adequate nighttime residence and includes:

1. A child who is living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar settings;
2. A child who is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason (sometimes referred to as "doubled-up");
3. A child who is living in a motel, hotel, trailer park, or camping grounds due to lack of alternative adequate accommodations;
4. A child who is living in congregate, temporary, emergency, or transitional shelters;
5. A child who is abandoned in a hospital;
6. A child who is living in a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; and
7. A child who is a migratory child as defined in § 1309 of the Elementary and Secondary Education Act of 1965, P.L. No. 89-10 (20 USC § 6399) who qualifies as homeless because he is living in circumstances described in subdivisions 1 through 6 of this definition clauses (i) through (iii) of 42 USC § 11434a(2)(B).

"Child with special needs or disability" means (i) a child with a disability as defined in § 602 of the Individuals with Disabilities Education Act (20 USC § 1401); (ii) a child who is eligible for early intervention services under Part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.); (iii) a child who is less than 13 years of age and who is eligible for services under § 504 of the Rehabilitation Act of 1973 (29 USC § 794); and (iv) a child with a documented developmental disability, intellectual disability, emotional disturbance, sensory or motor impairment, or significant chronic illness who requires special health surveillance or specialized programs, interventions, technologies, or facilities.

"Cleaned" means treated in such a way as to remove dirt and debris by scrubbing and washing with soap and water or detergent solution and rinsing with water or the use of an abrasive cleaner on inanimate surfaces.

"Communicable disease" means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can

be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse or mosquito) or environmental object (such as a table surface). Some communicable diseases are reportable to the local health authority.

"Department" means the Virginia Department of Social Services Education.

"Department representative" means an employee or designee of the Virginia Department of Social Services Education, acting as the authorized agent of the ~~Commissioner of the Virginia Department of Social Services~~ Superintendent of Public Instruction.

"Evacuation" means movement of occupants out of the building to a safe area near the building.

"Evening care" means care provided after 7 p.m. but not through the night.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children less than 13 years of age, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation.

"Inaccessible" means not capable of being entered, reached, or used.

"Infant" means a child from birth to 16 months of age.

"Lockdown" means a situation where children are isolated from a security threat, and access within and to the home is restricted.

"Overnight care" means care provided after 7 p.m. and through the night.

"Over-the-counter or nonprescription medication" means medication that can be purchased without a written prescription. This includes herbal remedies and vitamin and mineral supplements.

"Parent" means a parent by blood, marriage, or adoption and also means a legal guardian or other person standing in loco parentis.

"Preschool" means a child from two years up to the age of eligibility to attend public school, age five years by September 30 of that same year.

"Provider" means a person, entity, or organization providing child care services.

"Residence" means the principal legal dwelling that is occupied for living purposes by the provider or a child in care and contains the facilities necessary for sleeping, eating, cooking, and family living.

"Sanitized" means treated in such a way as to remove bacteria and viruses from inanimate surfaces through first cleaning and

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secondly using a solution of one tablespoon of bleach mixed with one gallon of water and prepared fresh daily or using a sanitizing solution approved by the U.S. Environmental Protection Agency. The surface of the item is sprayed or dipped into the sanitizing solution and then allowed to air dry for a minimum of two minutes or according to the sanitizing solution instructions.

"School age" means eligible to attend public school, age five years or older by September 30 of that same year.

"Serious injury" means a wound or other specific damage to the body, such as unconsciousness; broken bones; dislocation; a deep cut requiring stitches; poisoning; concussion; or a foreign object lodged in eye, nose, ear, or other body orifice.

"Shaken baby syndrome" or "abusive head trauma" means a traumatic injury that has been inflicted upon the brain of an infant or young child. The injury can occur during violent shaking causing the child's head to whip back and forth, the brain to move about, and blood vessels in the skull to stretch and tear.

"Shelter-in-place" means movement of occupants of the building to designated protected spaces within the building.

"Toddler" means a child from 16 months of age up to 24 months of age.

"Vendor" means a legally operating child care provider who is approved by the department to participate in the Child Care Subsidy Program. Multiple facilities or sites operated by the same person, entity, or organization are considered separate vendors.

"Vendor agreement" means the agreement between the department and a vendor that must be entered into and signed before child care payments paid to the vendor under the Child Care Subsidy Program can be authorized.

"Volunteer" means a person who works at the family day home and:

1. Is not paid for services provided in the family day home;
2. Is not counted in the caregiver-to-children ratios; and
3. Is in sight and sound supervision of a caregiver when working with a child.

Any unpaid person not meeting this definition shall be considered a "caregiver" and shall meet caregiver requirements.

~~22VAC40-665-130~~ 8VAC20-790-150. (Reserved).

~~22VAC40-665-140~~ 8VAC20-790-160. **Purpose and applicability.**

The standards in this part apply to family day homes that participate in the Child Care Subsidy Program as a vendor. The purpose of these standards is to protect children who are less than the age of 13 years, less than the age of 18 years and

physically or mentally unable to care for themselves, or under court supervision, and who are separated from their parents during part of the day by:

1. Ensuring that the activities, services, and facilities of family day homes participating in the Child Care Subsidy Program are conducive to the well-being of children; and
2. Reducing risks to the health and safety of such children in the child care environment.

~~22VAC40-665-150~~ 8VAC20-790-170. **Operational responsibilities.**

A. The vendor shall ensure compliance with the standards in this part, the terms of the vendor agreement, and all relevant federal, state, or local laws and regulations.

B. The vendor shall ensure compliance with any of its own policies that have been disclosed to the parents of an enrolled child.

C. The vendor shall ensure that the applicant, household member, and any caregiver who is or will be involved in the day-to-day operations of the family day home or is or will be alone with, in control of, or supervising one or more of the children shall (i) undergo a background check in accordance with § ~~63.2-1725~~ 22.1-289.040 of the Code of Virginia ; (ii) shall not have been convicted of a barrier crime as defined in § 19.2-392.02 of the Code of Virginia; and (iii) is not the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth.

D. The vendor shall ensure that the family day home does not exceed the capacity of children cared for as allowed by law or regulation.

E. When at least one child receives care for compensation, all children who are in care and supervision count in the capacity of children being cared for. When children 13 years or older are enrolled in the program and receive supervision in the program, they shall be counted in the number of children receiving care and the vendor shall comply with the standards in this part for these children.

F. The vendor shall inform all caregivers of children's allergies, sensitivities, and dietary restrictions.

G. The vendor shall maintain, in a way that is accessible to all caregivers, a current written list of all children's allergies, sensitivities, and dietary restrictions. This list shall be dated and kept confidential.

~~22VAC40-665-160~~ 8VAC20-790-180. **General recordkeeping; reports.**

A. Caregiver records and children's information shall be kept confidential.

B. The vendor shall maintain a written hard copy record of daily attendance that documents the arrival and departure of each child in care as it occurs.

C. Children's records shall be made available to a child's parent upon request, unless otherwise ordered by the court.

D. Records, reports, and information required by this part may be kept as hard copy or electronically, except attendance records must be maintained pursuant to subsection B of this section, and shall be maintained in the home and made accessible to department's representative for five years after termination of services or separation from employment unless specified otherwise.

~~22VAC40-665-170~~ 8VAC20-790-190. Children's information.

A. Vendors shall maintain, and keep at the family day home, written or electronic information for each enrolled child, which shall be made available to the department's representative upon request.

B. The child's information shall include the following:

1. Child's full name, nickname (if any), sex, address, and birthdate;
2. Proof of the child's identity;
3. Name, home address, and telephone number for each parent who has custody;
4. Name, address, and telephone number for each custodial parent's place of employment or school attendance, if applicable;
5. Name, address, and telephone number of at least one person designated by the parent to contact in case of an emergency if the parent cannot be reached;
6. If applicable, information on allergies, including food allergies, intolerances to food, medication, or other substances, and actions to be taken in an emergency situation; information on other physical problems; pertinent developmental information; and any special accommodations needed;
7. Names of persons other than the custodial parent who are authorized to pick up the child;
8. Immunization records for the child received on or before the child's first day of attendance, except that children experiencing homelessness may provide such records within 90 days of enrollment;
9. Written authorization for emergency medical care should an emergency occur and the parent cannot be located immediately unless the parent presents a written objection for the provision of medical treatment on religious or other grounds;
10. Written authorization to administer prescription or nonprescription medications if the vendor agrees to administer medication;

11. Special care instructions, including recommendations for the care and activities of a child with special needs, exception to infant being fed on demand, etc.;

12. A written care plan for each child with a diagnosed food allergy, to include instructions from a physician regarding the food to which the child is allergic and the steps to be taken in the event of a suspected or confirmed allergic reaction;

13. Record of any accidents or injuries sustained by the child while in care;

14. Permission to transport child if the vendor provides transportation;

15. Permission for field trips;

16. Permission for swimming or wading activities to include a parent's statement of the child's swimming ability, if applicable;

17. A written statement that the vendor will notify the parent when the child becomes ill and that the parent will arrange to have the child picked up as soon as possible if so requested by the vendor;

18. Any written agreements between the parent and the vendor; and

19. Documentation of the enrollment of a child experiencing homelessness enrolled under provisions of ~~22VAC40-665-240 A-2~~ 8VAC20-790-230 A 2.

~~22VAC40-665-180~~ 8VAC20-790-200. Caregiver records.

The following records shall be kept for each caregiver:

1. Name, address, verification of age, and date of employment or volunteering.
2. Documentation that background checks were completed, including:
 - a. The department's letter indicating eligibility to be hired provided by the department or the department's contractor indicating:
 - (1) Satisfactory results of the fingerprint-based national criminal background check; and
 - (2) Satisfactory results of the Virginia Child Protective Services Central Registry check.
 - b. Satisfactory results of the child abuse and neglect registry from any other state in which the individual has resided in the preceding five years.
 - c. Results of a criminal history record information check and sex offender registry check from any state in which the person has resided in the preceding five years.
 - d. The individual's sworn statement or affirmation as to whether the individual has ever been:

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(1) The subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; or

(2) Convicted of a crime or is the subject of any pending criminal charges with the Commonwealth or any equivalent offense outside the Commonwealth.

e. The vendor shall have such documentation for any individual who begins employment or service after the vendor agreement has been signed in the file within 30 days of the individual's beginning date of employment or service.

f. Documentation of subsequent background checks conducted every five years.

3. Tuberculosis screening results.

4. Certifications for first aid, cardiopulmonary resuscitation, and other certifications as required by the responsibilities held by the caregiver.

5. Documentation that training required by ~~22VAC40-665-230~~ 8VAC20-790-250 has been completed that includes the name and topic of the training, the date completed, the total hours of the session, and the names of the organization that sponsored the training and of the trainer.

6. Date of separation from employment where applicable.

7. Documentation of the health requirements under ~~22VAC40-665-190~~ 8VAC20-790-210.

~~22VAC40-665-190~~ 8VAC20-790-210. Health requirements for caregivers.

A. Each caregiver must be evaluated by a health professional and be issued a statement that the individual is determined to be free of communicable tuberculosis (TB). Documentation of the screening shall be submitted at the time of employment and prior to coming into contact with children. The documentation shall have been completed within the last 30 calendar days of the date of employment and be signed by a physician, physician's designee, or an official of the local health department.

B. Caregivers shall undergo TB screenings at least every two years from the date of the initial screening, or more frequently if recommended by a physician.

C. The vendor or the department's representative may require a report of examination by a licensed physician or mental health professional when there are indications that a caregiver's physical or mental health may endanger the health, safety, or well-being of children in care.

D. A caregiver who is determined by a licensed physician or mental health professional to show an indication of a physical or mental condition that may endanger the health, safety, or well-being of children in care or that would prevent the performance of duties shall be removed immediately from contact with children and food served to children until the

condition is cleared as evidenced by a signed statement from the physician or mental health professional.

~~22VAC40-665-200~~ 8VAC20-790-220. Reports.

A. The vendor shall inform the department's inspector as soon as practicable, but not to exceed one business day, of the following:

1. The death of a child while under the vendor's supervision;
2. A missing child when local authorities have been contacted for help; and
3. The suspension or termination of all child care services for more than 24 hours as a result of an emergency situation and any plans to resume child care.

B. The vendor shall inform the department's representative as soon as practicable, but no more than two business days, of any injury to a child while under the vendor's supervision when a referral is made for treatment from a medical professional.

C. Any suspected incident of child abuse or neglect shall be reported in accordance with § 63.2-1509 of the Code of Virginia.

~~22VAC40-665-210~~ 8VAC20-790-230. Immunizations for children.

A. Before a child may attend the family day home, the vendor shall obtain documentation that the child has been immunized according to the requirements of subsection A of § 32.1-46 of the Code of Virginia and applicable State Board of Health regulations.

1. The vendor may allow a child to attend contingent upon a conditional enrollment. Documentation related to the child's conditional enrollment shall be maintained in the child's record. A conditional enrollment means the enrollment of a child for a period of 90 days contingent upon the child having received at least one dose of each of the required vaccines and the child possessing a plan from a physician or local health department for completing his immunization requirements within the ensuing 90 calendar days. If the child requires more than two doses of the hepatitis B vaccine, the conditional enrollment period, for hepatitis B vaccine only, shall be 180 calendar days.
2. If a child is experiencing homelessness and does not have documentation of the required immunizations, the vendor may allow the child to attend during a grace period of no more than 90 days to allow the parent or guardian time to obtain documentation of required immunizations.

B. The vendor shall obtain documentation of additional immunizations once every six months for children less than the age of two years.

C. Pursuant to subsection C of § 22.1-271.2 of the Code of Virginia and 12VAC5-110-110, documentation of immunizations is not required for any child whose:

1. Parent submits an affidavit to the vendor on the current form approved by the Virginia Department of Health stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices; or

2. Physician or a local health department states on a Department of Health-approved form that one or more of the required immunizations may be detrimental to the child's health, indicating the specific nature and probable duration of the medical condition or circumstance that contraindicates immunization.

22VAC40-665-220 8VAC20-790-240. **General qualifications.**

A. The vendor and any caregivers who are left alone with children shall be capable of communicating effectively both orally and in writing as applicable to the job responsibility and be capable of communicating with emergency personnel.

B. Caregivers must be at least 16 years of age; however no caregiver less than the age of 18 years may administer medication. Caregivers less than the age of 18 years shall be under supervision of an adult caregiver who is present in the home.

22VAC40-665-230 8VAC20-790-250. **Caregiver training and development.**

A. Prior to approval as a subsidy vendor, the perspective vendor shall complete Virginia Preservice Training for Child Care Staff sponsored by the Department of ~~Social Services~~ Education, which shall include the following topics and training modules:

1. Building and physical premises safety;
2. Emergency preparedness and response planning;
3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;
4. Administration of medication, consistent with standards of parental consent;
5. Prevention of shaken baby syndrome and abusive head trauma (AHT);
6. Prevention of and response to emergencies due to food and allergic reactions;
7. Recognizing child abuse and neglect and reporting responsibilities;
8. Preventing the spread of disease, including immunization requirements;
9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;
10. Transportation;
11. Foundations of child development;

12. Inclusion: Exploring the meaning and the mindset;
13. Oral health; and
14. Introduction to the Child Care Subsidy Program.

B. Within the first 90 days of employment or service all caregivers shall complete Virginia Preservice Training for Child Care Staff sponsored by the Department of ~~Social Services~~ Education, which shall include training on the following topics and training modules:

1. Building and physical premises safety;
2. Emergency preparedness and response planning;
3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;
4. Administration of medication, consistent with standards of parental consent;
5. Prevention of shaken baby syndrome and abusive head trauma (AHT);
6. Prevention of and response to emergencies due to food and allergic reactions;
7. Recognizing child abuse and neglect and reporting responsibilities;
8. Preventing the spread of disease, including immunization requirements;
9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;
10. Transportation;
11. Foundations of child development;
12. Inclusion: Exploring the meaning and the mindset;
13. Oral health; and
14. Introduction to the Child Care Subsidy Program.

~~C. All caregivers hired prior to October 17, 2018, shall complete Virginia Preservice Training for Child Care Staff sponsored by the Department of Social Services, to include all of the topics described in subsection B of this section, within January 16, 2019. This training may count for staff annual training requirements in subsection H of this section.~~

~~D.~~ Orientation training for caregivers shall be completed on the following specific topics prior to the caregiver working alone with children and within seven days of the date of employment or the date of subsidy vendor approval:

1. Playground safety procedures;
2. Responsibilities for reporting suspected child abuse or neglect;
3. Confidentiality;

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4. Supervision of children, including arrival and dismissal procedures;
5. Procedures for action in the case of lost or missing children, ill or injured children, medical and general emergencies;
6. Medication administration procedures, if applicable;
7. Emergency preparedness plan as required in ~~22VAC40-665-400 B~~ 8VAC20-790-420 B;
8. Procedures for response to natural and man-made disasters;
9. Prevention of shaken baby syndrome or abusive head trauma including coping with crying babies and fussy or distraught children;
10. Prevention of sudden infant death syndrome and use of safe sleeping practices;
11. Caregivers who work with children who have food allergies shall receive training in preventing exposure to foods to which the child is allergic, preventing cross contamination and recognizing and responding to any allergic reactions; and
12. Transportation.

~~E. D.~~ All caregivers shall have within 90 days of employment or 90 days from subsidy vendor approval:

1. Current certification in cardiopulmonary resuscitation (CPR) appropriate to the ages of children in care. The training shall include an in-person competency demonstration; and
2. Current certification in first aid appropriate to the ages of children in care. However, a caregiver who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification.

During the 90-day period, there must always be at least one caregiver with current cardiopulmonary and first aid training present during operating hours of the family day home.

~~F. Caregivers employed prior to October 17, 2018, must complete CPR and first aid training as required by this section within January 16, 2019. During this 90-day period, there must always be at least one caregiver with current cardiopulmonary and first aid training present during operating hours of the family day home.~~

~~G. E.~~ CPR and first aid training may count toward the annual training hours required in subsection H of this section if documentation for training as required in subdivision 5 of ~~22VAC40-665-180~~ 8VAC20-790-200 is maintained.

~~H. F.~~ Caregivers who work directly with children shall, in addition to preservice and orientation training required in subsections A through D of this section, annually attend at least

16 hours of training, to include the department's health and safety update course. This training shall be related to child safety, child development, health and safety in the family day home environment, and any required department sponsored training.

~~I. G.~~ To safely perform medication administration practices, whenever a vendor agrees to administer prescribed medications, the (i) administration shall be performed by a caregiver who has satisfactorily completed a training program for this purpose developed by the Board of Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist or (ii) administration shall be performed by a caregiver who is licensed by the Commonwealth of Virginia to administer medications.

The vendor may determine by policy what medications, if any, will be administered at its family day home, including prescription medications or over-the-counter or nonprescription medications.

~~J. H.~~ Caregivers required to have the training required in subsection I of this section shall be retrained at three-year intervals.

~~22VAC40-665-240~~ 8VAC20-790-260. **Building or home maintenance.**

A. Areas and equipment of the family day home, inside and outside, shall be maintained in a clean, safe, and operable condition. Unsafe conditions shall include splintered, cracked, or otherwise deteriorating wood; chipped or peeling paint; visible cracks, bending or warping, rusting, or breakage of any equipment; head entrapment hazards; protruding nails, bolts, or other components that entangle clothing or skin; the presence of poisonous plants; tripping hazards; and unstable heavy equipment, furniture, or other items that a child could pull down on himself.

B. Inside areas occupied by children shall be maintained no lower than 65°F and shall not exceed 80°F unless fans or other cooling systems are in use.

C. In areas used by children of preschool age or younger, the following shall apply:

1. Fans, when used shall be out of reach of children, and cords shall be secured so as not to create a hazard.
2. Electrical outlets shall have protective covers that are of a size that cannot be swallowed by children.

D. Sharp kitchen utensils and other sharp objects shall be inaccessible to children unless being used by the caregiver or with children under close supervision.

E. The home shall have an in-service, nonpay telephone.

F. No equipment, materials, or furnishings shall be used if recalled or identified by the U.S. Consumer Product Safety Commission as being hazardous.

G. Radiators, oil and wood burning stoves, floor furnaces, fireplaces, portable electric heaters, and similar heating devices located in areas accessible to children shall have barriers or screens and be located at least three feet from combustible materials.

H. Unvented fuel burning heaters, such as portable oil-burning (kerosene) heaters; portable, unvented liquid or gas fueled heaters; and unvented fireplaces, shall not be used when children are in care.

I. Wood burning stoves and fireplaces and associated chimneys, if used, shall be inspected annually by a knowledgeable inspector to verify that the devices are properly installed, maintained, and cleaned as needed. Documentation of the inspection and cleaning shall be maintained by the vendor.

J. All flammable and combustible materials, including matches, lighters, lighter fluid, kerosene, turpentine, oil and grease products, aerosol cans, and alcohol, shall be stored in an area inaccessible to children.

K. Stairs shall not be accessible to children less than two years of age and children older than two years of age who are not developmentally ready to climb or descend stairs without supervision.

L. Stairs with three or more risers that do not have protective barriers or guardrails on each side shall not be accessible to children over the age of two years.

M. Decks, porches, lofts, or balconies that do not have protective barriers or guardrails shall not be accessible to children.

N. Windows and doors used for ventilation shall be securely screened.

O. Machinery in operation, such as lawnmowers and power tools shall be inaccessible to the children in care.

22VAC40-665-250 8VAC20-790-270. Hazardous substances and other harmful agents.

A. Potentially poisonous substances, materials, and supplies such as, but not limited to, cleaning agents, disinfectants, deodorizers, plant care chemicals, pesticides, and petroleum distillates shall be stored away from food in areas inaccessible to children.

B. Cleaning and sanitizing materials shall not be located above food, food equipment, utensils or single-service articles and stored separately from food.

C. If hazardous substances are not kept in original containers, the substitute container shall clearly indicate their contents.

D. The vendor shall ensure that:

1. No person smokes or uses an electronic smoking device:
 - a. Indoors while children are in care,
 - b. In a vehicle when children are transported, or
 - c. Outdoors in an area occupied by children.
2. No caregiver is under the effects of medication that impairs functioning, alcohol, or illegal drugs.

22VAC40-665-260 8VAC20-790-280. Bathroom area and furnishings.

A. Each bathroom area provided for children shall:

1. Be within a contained area, readily available, and within the home used by the children;
2. Have toilets that are flushable;
3. Have sinks located near the toilets and that are supplied with running warm water that does not exceed 120°F; and
4. Be equipped with soap, toilet paper, and disposable towels or an air dryer within reach of the children.

B. There shall be a toilet chair or an adult-sized toilet with a platform or steps and adapter seat available to a child being toilet trained.

22VAC40-665-270 8VAC20-790-290. Play areas.

A. The vendor shall ensure that all areas of the premises accessible to children are free of obvious injury hazards.

B. A nonclimbable barrier at least four feet high, such as a fence or impenetrable hedge, shall surround outdoor play areas located within 30 feet of hazards including lakes, ponds, railroad tracks, and streets with speed limits in excess of 25 miles per hour or with heavy traffic.

C. Stationary outdoor playground equipment shall not be installed over concrete, asphalt, or any other hard surface.

D. Trampolines shall not be used during the hours children are in care.

22VAC40-665-280 8VAC20-790-300. Supervision and ratio requirements.

A. A caregiver shall be physically present on site and provide direct care and supervision of each child at all times. Direct care and supervision of each child includes:

1. Awareness of and responsibility for each child in care, including being near enough to intervene if needed; and
2. Monitoring of each sleeping infant in one of the following ways:
 - a. By placing each infant for sleep in a location where the infant is within sight and hearing of a caregiver;
 - b. By in-person observation of each sleeping infant at least once every 15 minutes; or

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c. By using a baby monitor.

B. Caregivers shall actively supervise each child during outdoor play to minimize the risk of injury to a child.

C. A caregiver may allow only school age children to play outdoors while the caregiver is indoors if the caregiver can hear the children playing outdoors.

D. No child less than five years of age or a child older than five years who lacks the motor skills and strength to avoid accidental drowning, scalding, or falling while bathing shall be left unattended while in the bathtub.

E. An additional caregiver will be needed to supervise the number of children at a given time when, using the following point system, 16 points is exceeded:

1. Children from birth through 15 months of age count as four points each;
2. Children from 16 months through 23 months of age count as three points each;
3. Children from two years through four years of age count as two points each;
4. Children from five years through nine years of age count as one point each; and
5. Children who are 10 years of age and older count as zero points.

F. A vendor's own children and resident children under eight years of age shall count in point calculations.

G. In accordance with § ~~63.2-100~~ 22.1-289.02 of the Code of Virginia, no family day home shall care for more than four children less than the age of two years, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered.

~~22VAC40-665-290~~ 8VAC20-790-310. **Supervision near water.**

A. Access to the water in aboveground swimming pools shall be prevented by locking and securing the ladder in place or storing the ladder in a place inaccessible to children.

B. A nonclimbable barrier at least four feet high such as, but not limited to, a fence or impenetrable hedge shall surround outdoor play areas located within 30 feet of drowning hazards such as, but not limited to, inground swimming or wading pools, ponds, or fountains not enclosed by safety fences.

C. Portable wading pools without integral filter systems shall:

1. Be emptied after use by each group of children, rinsed, and filled with clean water, or more frequently as necessary; and
2. When not in use during the vendor's hours of operation, be emptied, sanitized, and stored in a position to keep them clean and dry.

D. Portable wading pools shall not be used by children who are not toilet trained.

E. Hot tubs, spas, and whirlpools shall:

1. Not be used by children in care, and
2. Covered with safety covers while children are in care.

F. The level of supervision by caregivers required and the point system as outlined in ~~22VAC40-665-280~~ 8VAC20-790-300 shall be maintained while the children are participating in swimming or wading activities.

G. Caregivers shall have a system for accounting for all children in the water.

H. Outdoor swimming activities shall occur only during daylight hours.

I. When one or more children are in water that is more than two feet deep in a pool, lake, or other swimming area on or off the premises of the family day home:

1. A minimum of least two caregivers shall be present and able to supervise the children; and
2. An individual currently certified in basic water rescue, community water safety, water safety instruction, or lifeguarding shall be on duty supervising the children participating in swimming or wading activities at all times.

~~22VAC40-665-300~~ 8VAC-790-320. **Daily activities.**

A. Infants and toddlers shall be provided with opportunities to:

1. Interact with caregivers and other children in the home in order to stimulate language development;
2. Play with a wide variety of safe, age-appropriate toys;
3. Receive individual attention from caregivers including holding, cuddling, talking, and reading; and
4. Reach, grasp, pull up, creep, crawl, and walk to develop motor skills.

B. Infants and toddlers shall spend no more than 30 continuous minutes during waking hours, with the exception of mealtimes, confined in a crib, play pen, high chair, or other confining piece of equipment. The intervening time period between such confinements shall be at least one hour.

C. Infants shall be placed on their backs when sleeping or napping unless otherwise ordered by a written statement signed by the child's physician.

D. An infant, toddler, or preschool child who falls asleep in a play space other than his own crib, cot, mat, or bed shall be moved promptly to his designated sleeping space if the safety or comfort of the infant, toddler, or preschool child is in question.

E. School age children shall be allowed to nap if needed, but not forced to do so.

F. Infants shall be protected from older children.

~~22VAC40-665-310~~ 8VAC20-790-330. Behavioral guidance.

A. Behavioral guidance shall be constructive in nature, age and stage appropriate, and intended to redirect children to appropriate behavior and resolve conflicts.

B. In order to promote the child's physical, intellectual, emotional, and social well-being and growth, caregivers shall model desired, appropriate behavior and interact with the child and one another to provide needed help, comfort, and support and:

1. Respect personal privacy;
2. Respect differences in cultural, ethnic, and family background;
3. Encourage decision-making abilities;
4. Promote ways of getting along;
5. Encourage independence and self-direction; and
6. Use consistency in applying expectations.

C. If time-out is used as a discipline technique:

1. It shall be used sparingly and shall not exceed one minute for each year of the child's age;
2. It shall not be used with infants or toddlers;
3. The child shall be in a safe, lighted, well-ventilated place and within sight and sound of a caregiver; and
4. The child shall not be left alone inside or outside the home while separated from the group.

~~22VAC40-665-320~~ 8VAC20-790-340. Forbidden actions.

The following actions or threats thereof are forbidden:

1. Physical punishment, including striking a child, roughly handling or shaking a child, restricting movement through binding or tying, forcing a child to assume an uncomfortable position, or using exercise as a punishment;
2. Enclosure in a small, confined space or any space that the child cannot freely exit himself; however this does not apply to the use of equipment such as cribs, play yards, high chairs, and safety gates when used for their intended purpose with children preschool age or younger;
3. Punishment by another child;
4. Withholding or forcing of food, water, or rest;
5. Verbal remarks that are demeaning to the child;
6. Punishment for toileting accidents; and

7. Punishment by applying unpleasant or harmful substances.

~~22VAC40-665-330~~ 8VAC20-790-350. Parental involvement and notifications.

A. The caregiver shall notify the parent immediately if a child is lost, requires emergency medical treatment, sustains a serious injury, or dies.

B. The caregiver shall notify the parent by the end of the day of any known minor injuries.

C. The caregiver shall maintain a written record of children's serious and minor injuries in which entries are made the day of occurrence. The record shall include the following:

1. Date and time of injury;
2. Name of injured child;
3. Type and circumstance of the injury;
4. Caregiver present and treatment;
5. Date and time when parents were notified; and
6. Caregiver and parent signatures.

D. Parents shall be notified immediately of any confirmed or suspected allergic reactions and the ingestion of any food identified in the written care plan required in ~~22VAC40-665-170 B 12~~ 8VAC20-790-190 B 12 even if a reaction did not occur.

E. Parents shall be informed of the vendor's emergency preparedness plan.

F. Caregivers shall promptly inform parents when persistent behavioral problems are observed and identified.

G. Caregivers shall provide information weekly to parents about the child's health, development, behavior, adjustment, or needs.

H. Parents shall be informed of the reason for a child's termination from care.

I. A custodial parent shall be admitted to any child day program. Such right of admission shall apply only while the child is in the care of the vendor, pursuant to § ~~63.2-1813~~ 22.1-289.054 of the Code of Virginia.

J. When children at the family day home have been exposed to a communicable disease listed in the Department of Health's current communicable disease chart, the parents shall be notified within 24 hours or the next business day of the vendor's having been informed unless forbidden by law. Children's exposure to life threatening diseases shall be reported to parents immediately.

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~~22VAC40-665-340~~ 8VAC20-790-360. **Furnishings, equipment, and materials.**

A. Furnishings, materials, and equipment used for child care shall be age and stage appropriate for the children.

B. Children shall be protected from materials that could be swallowed or present a choking hazard. Toys or objects less than 1-1/4 inches in diameter and less than two inches in length shall be kept out of reach of children less than three years of age.

C. If combs, toothbrushes, or other personal articles are used, they shall be individually assigned.

D. Disposable products shall be used once and discarded.

E. If play yards, portable cribs, or mesh-sided cribs are used for sleeping or napping, they shall meet the requirements of subsections H through L of this section.

F. Cribs shall be provided for children from birth through 12 months of age and for children 12 months of age or older who are not developmentally ready to sleep on a cot, rest mat, or bed during the designated rest periods and shall not be occupied by more than one child at a time.

G. Cots, rest mats, or beds shall be provided for children 12 months of age or older and shall not be occupied by more than one child at a time.

H. Full-size cribs shall:

1. Meet the current Consumer Product Safety Commission Standards (16 CFR Part 1219).
2. Have mattresses that fit snugly next to the crib so that no more than two fingers can be inserted between the mattress and the crib.

I. Pillows and filled comforters shall not be used by children less than two years of age while sleeping or resting, including quilts, sheepskins, or stuffed toys.

J. Cribs shall be placed where objects outside the crib such as electrical cords or cords from blinds, curtains, etc. are not within reach of infants or toddlers.

K. Use of bumper pads shall be prohibited.

L. There shall be at least 12 inches of space between occupied cribs, cots, beds, and rest mats.

M. Toys or objects hung over an infant in a crib and crib gyms that are strung across the crib may not be used for infants older than five months of age or infants who are able to push up on their hands and knees.

N. Crib sides shall always be up and the fastenings secured when a child is in the crib.

O. Use of double-deck cribs is prohibited.

~~22VAC40-665-350~~ 8VAC20-790-370. **Bedding and linens for use while sleeping or resting.**

A. Linens shall be assigned for individual use.

B. Pillows when used shall be assigned for individual use and covered with pillow cases.

C. Mattresses when used shall be covered with a waterproof material that can be cleaned and sanitized.

~~22VAC40-665-360~~ 8VAC20-790-380. **Preventing the spread of disease.**

A. A child shall not be allowed to attend the family day home for the day if he has:

1. A temperature over 101°F;
2. Recurrent vomiting or diarrhea; or
3. Symptoms of a communicable disease.

B. If all children in care are from a single family unit, the caregiver may choose not to exclude a child who is ill.

C. If a child needs to be excluded according to subsection A of this section, the following shall apply:

1. Arrangements shall be made for the child to leave the family day home as soon as possible after the signs or symptoms are observed; and
2. The child shall remain in a designated quiet area until leaving the family day home.

D. When any surface has been contaminated with body fluids, it shall be cleaned and sanitized.

~~22VAC40-665-370~~ 8VAC20-790-390. **Hand washing and toileting procedures.**

A. When hand washing, the following shall apply:

1. Children's hands shall be washed with soap and running water or disposable wipes before and after eating meals or snacks.
2. Children's hands shall be washed with soap and running water after toileting and any contact with blood, feces, or urine.
3. Caregivers shall wash their hands with soap and running water before and after helping a child use the toilet or changing a diaper, after the caregiver uses the toilet, after any contact with body fluids, before feeding or helping children with feeding, and before preparing or serving food or beverages.
4. If running water is not available, a germicidal cleansing agent administered per manufacturer's instruction may be used.

B. A child shall not be left unattended on a changing table during diapering.

C. When a child's clothing or diaper becomes wet or soiled, the child shall be cleaned and changed immediately upon discovery.

D. During each diaper change or after toileting accidents, the child's genital area shall be thoroughly cleaned with a moist disposable wipe or a moist, clean individually assigned cloth if the child is allergic to disposable wipes.

E. The diapering surface shall be:

1. Separate from the kitchen, food preparation areas, or surfaces used for children's activities;
2. Nonabsorbent and washable; and
3. Cleaned and sanitized after each use.

F. Soiled disposable diapers and wipes shall be disposed of in a leak-proof or plastic-lined storage system that is either foot operated or used in such a way that neither the caregiver's hand nor the soiled diaper or wipe touches the exterior surface of the storage system during disposal.

G. When cloth diapers are used, a separate leak-proof storage system as specified in subsection F of this section shall be used.

H. Children five years of age and older shall be permitted privacy when toileting.

I. Caregivers shall respond promptly to a child's request for toileting assistance.

J. Toilet chairs, when used, shall be emptied promptly, cleaned, and sanitized after each use.

~~22VAC40-665-380~~ 8VAC20-790-400. General requirements for medication administration.

A. Prescription and nonprescription medications shall be given to a child:

1. According to the home's written medication policies, and
2. Only with written authorization from the parent.

B. The vendor may administer prescription medication that would normally be administered by a parent or guardian to a child provided:

1. The medication is administered by a caregiver who meets the requirements of ~~22VAC40-665-230~~ 8VAC20-790-250 I and J;
2. The caregiver administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container; and
3. The caregiver administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration.

C. The vendor may administer nonprescription medication provided the medication is:

1. Administered by a caregiver 18 years of age or older;
2. Labeled with the child's name;
3. In the original container with the manufacturer's direction label attached; and
4. Given only at the dose, duration, and method of administration specified on the manufacturer's label for the age or weight of the child needing the medication.

D. Nonprescription medication shall not be used beyond the expiration date of the product.

E. Medications for children in care shall be stored separately from medications for household members and caregivers.

F. When needed, medication shall be refrigerated.

G. When medication is stored in a refrigerator used for food, the medications shall be stored together in a container or in a clearly defined area away from food.

H. Medication, except for those prescriptions designated otherwise by written physician's order, including refrigerated medication and medications for caregivers and household members, shall be kept in a locked place using a safe locking method that prevents access by children. If a key is used, the key shall be inaccessible to the children.

I. The vendor shall keep a record of prescription and nonprescription medication given children, which shall include the following:

1. Name of the child to whom medication was administered;
2. Amount and type of medication administered to the child;
3. The day and time the medication was administered to the child;
4. Name of the caregiver administering the medication;
5. Any adverse reactions; and
6. Any medication error.

~~22VAC40-665-390~~ 8VAC20-790-410. First aid and emergency supplies.

A. The following emergency supplies shall be in the family day home, accessible to outdoor play areas, on field trips, in vehicles used for transportation, and wherever children are in care:

1. A first aid kit that contains at a minimum:
 - a. Scissors;
 - b. Tweezers;
 - c. Gauze pads;
 - d. Adhesive tape;
 - e. Bandages, assorted types and sizes;
 - f. An antiseptic cleansing solution and pads;

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- g. Digital thermometer; and
- h. Single-use gloves such as surgical or examination gloves.

2. An ice pack or cooling agent.

B. The following nonmedical emergency supplies shall be required:

- 1. One working, battery-operated flashlight; and
- 2. One working, battery-operated radio.

22VAC40-665-400 8VAC20-790-420. Procedures for emergencies.

A. The vendor shall have a written emergency preparedness plan that addresses caregiver responsibility and home readiness with respect to emergency evacuation, relocation, lockdown, and shelter-in-place procedures. The plan shall address the most likely to occur emergency scenarios, including fire, severe storms, flooding, tornadoes, loss of utilities, earthquakes, intruders, violence on or near the premises, chemical spills, and facility damage or other situations that may require evacuation, lockdown, or shelter-in-place.

B. The emergency preparedness plan shall contain procedural components for:

- 1. Sounding of alarms (evacuation, intruder, shelter-in-place such as for tornado or chemical hazard);
- 2. Emergency communication to include:
 - a. Notification of local authorities (fire and rescue, law enforcement, emergency medical services, poison control, health department, etc.), parents, and local media; and
 - b. Availability and primary use of communication equipment;
- 3. Evacuation and relocation procedures, including:
 - a. Assembly points, designated relocation site, head counts, primary and secondary means of egress, and complete evacuation of the buildings;
 - b. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during evacuation or relocation;
 - c. Securing of essential documents (attendance record, parent contact information, etc.) and special health care supplies to be carried off site on immediate notice;
 - d. Method of communication after the evacuation; and
 - e. Procedure to reunite children with a parent or authorized person designated by the parent to pick up the child;
- 4. Shelter-in-place, including:
 - a. Scenario applicability, inside assembly points, head counts, and primary and secondary means of access and egress;

b. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during evacuation or relocation;

c. Securing essential documents (attendance record, parent contact information, etc.) and special health supplies to be carried into the designated assembly points;

d. Method of communication after the shelter-in-place; and

e. Procedure to reunite children with a parent or authorized person designated by the parent to pick up the child;

5. Lockdown procedures, including:

a. Methods to alert caregivers and emergency responders;

b. Methods to secure the family day home and designated lockdown locations;

c. Methods to account for all children in the lockdown locations;

d. Methods of communication with parents and emergency responders;

e. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during lockdown; and

f. Procedure to reunite children with a parent or authorized person designated by the parent to pick up the child;

6. Caregiver training requirements, drill frequency, and plan review and update; and

7. Continuity of operations procedures to ensure that essential functions are maintained during an emergency.

C. A 911 or local dial number for police, fire, and emergency medical services and the number of the regional poison control center shall be posted in a visible and conspicuous place.

22VAC40-665-410 8VAC20-790-430. Emergency response drills.

A. The emergency response drills shall be practiced as follows:

- 1. Evacuation procedures shall be practiced at least monthly;
- 2. Shelter-in-place procedures shall be practiced twice a year; and
- 3. Lockdown procedures shall be practiced at least annually.

B. The vendor shall maintain a record of the dates of the practice drills for one year. For vendors offering multiple shifts, the simulated drills shall be divided evenly among the various shifts.

22VAC40-665-420 8VAC20-790-440. Nutrition and food services.

A. Vendors shall schedule appropriate times for snacks or meals, or both, depending on the hours of operation and time of the day.

B. Drinking water shall be accessible to all children.

C. When meals or snacks are provided by the vendor, the following shall apply:

1. Vendors offering both meals and snacks shall serve a variety of nutritious foods and in sufficient portions.
2. Children three years of age or younger shall not be offered foods that are considered to be potential choking hazards.

D. When food is brought from home, the following shall apply:

1. The food container shall be clearly labeled in a way that identifies the owner;
2. The vendor shall have extra food or provisions to obtain food to serve to children so they can have an appropriate snack or meal if they forget to bring food from home, bring an inadequate meal or snack, or bring perishable food; and
3. Unused portions of opened food shall be discarded by the end of the day or returned to the parent.

E. Tables and high chair trays shall be cleaned and sanitized daily and before and after each use for feeding.

F. Food shall be prepared, stored, served, and transported in a clean and sanitary manner.

G. When food is prepared to which a child is allergic, the caregiver shall take steps to avoid cross contamination in order to prevent an allergic reaction.

H. A child with a diagnosed food allergy shall not be served any food identified in the written care plan required in ~~22VAC40-665-170 B 12~~ 8VAC20-790-190 B 12.

~~22VAC40-665-430~~ 8VAC20-790-450. **Special feeding needs.**

A. High chairs, infant carrier seats, or feeding tables shall be used for children less than 12 months who are not held while being fed.

B. When a child is placed in an infant seat, high chair, or feeding table, the protective belt shall be fastened securely.

C. Bottle fed infants who cannot hold their own bottles shall be held when fed. Bottles shall not be propped or used while the child is in his designated sleeping location.

D. Infants shall be fed on demand or in accordance with parental instructions.

E. Prepared infant formula shall be refrigerated, dated, and labeled with the child's name if more than one infant is in care.

F. Heated formula and baby food shall be stirred or shaken and tested for temperature before serving to children.

G. Milk, formula, or breast milk shall not be heated or warmed directly in a microwave. Water for warming milk, formula, or breast milk may be heated in a microwave.

H. Prepared baby food not consumed during that feeding by an infant may be used by that same infant later in the same day, provided that the food is not served out of the baby food jar and is labeled with the child's name, dated, and stored in the refrigerator; otherwise, it shall be discarded or returned to the parent at the end of the day. Formula or breast milk shall not remain unrefrigerated for more than two hours and may not be reheated.

I. Caregivers shall feed semisolid food with a spoon unless written instructions from a physician or physician's designee state differently.

~~22VAC40-665-440~~ 8VAC20-790-460. **Transportation and field trips.**

A. If the vendor provides transportation, the vendor shall be responsible for the care of the child from the time the child boards the vehicle until returned to the parent or person designated by the parent.

B. Drivers must be 18 years of age or older and possess a valid driver's license to operate the vehicle being driven.

C. Any vehicle used by the vendor for the transportation of children shall meet the following requirements:

1. The vehicle shall be manufactured for the purpose of transporting people seated in an enclosed area;
2. The vehicle's seats shall be attached to the floor;
3. The vehicle shall be insured with at least the minimum limits established by Virginia state statutes as required by § 46.2-472 of the Code of Virginia;
4. The vehicle shall meet the safety standards set by the Department of Motor Vehicles and shall be kept in satisfactory condition to assure the safety of children; and
5. If volunteers supply personal vehicles, the vendor is responsible for ensuring that the requirements of this subsection are met.

D. The vendor shall ensure that during transportation of children:

1. Virginia state statutes about safety belts and child restraints are followed as required by §§ 46.2-1095 through 46.2-1100 of the Code of Virginia, and the stated maximum number of passengers in a given vehicle is not exceeded;
2. The children remain seated and each child's arms, legs, and head remain inside the vehicle;
3. Doors are closed properly and locked unless locks were not installed by the manufacturer of the vehicle;
4. At least one caregiver or the driver always remains in the vehicle when children are present;
5. The caregiver has a list of the names of the children being transported;

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6. The caregiver has a copy of each child's emergency contact information; and

7. An allergy care plan and information as specified in ~~22VAC40-665-170 B-12~~ 8VAC20-790-190 B 12 shall be carried.

E. When entering and leaving vehicles, children shall enter and leave the vehicle from the curb side of the vehicle or in a protected parking area or driveway.

F. Caregivers shall verify that all children have been removed from the vehicle at the conclusion of any trip.

~~22VAC40-665-450~~ 8VAC20-790-470. **Animals and pets.**

A. Animals shall not be allowed on any surfaces where food is prepared or served.

B. A pet or animal present at the home, indoors or outdoors, shall be in good health and show no evidence of carrying any disease.

C. Dogs or cats, where allowed, shall be vaccinated for rabies and shall be treated for fleas, ticks, or worms as needed.

D. The vendor shall maintain documentation of the current rabies vaccination for dogs and cats.

E. Caregiver shall closely supervise children when children are exposed to animals.

F. Children shall be instructed on safe procedures to follow when in close proximity to animals, for example, not to provoke or startle them or remove their food.

G. Monkeys, ferrets, reptiles, psittacine birds (birds of the parrot family), or wild or dangerous animals shall not be in areas accessible to children during the hours children are in care.

H. Animal litter boxes, toys, food dishes, and water dishes shall be inaccessible to children.

~~22VAC40-665-460~~ 8VAC20-790-480. **Evening and overnight care.**

A. Caregivers shall remain awake until all children are asleep and shall sleep on the same floor level as the children in care.

B. For evening care, beds with mattresses or cots with at least one inch of dense padding shall be used by children who sleep longer than two hours and are not required to sleep in cribs.

C. For overnight, beds with mattresses or cots with at least two inches of dense padding shall be used by children who are not required to sleep in cribs.

D. In addition to requirements in ~~22VAC40-665-350~~ 8VAC20-790-370 about linens, bedding appropriate to the temperature and other conditions of the rest area shall be provided.

E. When children are six years of age or older, boys and girls shall have separate sleeping areas.

F. For vendors providing overnight care, an operational tub or shower with heated and cold water shall be provided.

G. When bath towels are used, they shall be assigned for individual use.

H. Quiet activities shall be available immediately before bedtime.

Part III

Subsidy Program Vendor Requirements for Child Day Centers

~~22VAC40-665-470~~ 8VAC20-790-490. **Definitions; subsidy program requirements for child day center vendors.**

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

"Accessible" means capable of being entered, reached, or used.

"Adult" means any individual 18 years of age or older.

"Age and stage appropriate" means the curriculum, environment, equipment, and adult-child interactions are suitable for the ages of the children within a group and the individual needs of any child.

"Age groups":

1. "Infant" means a child from birth to 16 months.

2. "Toddler" means a child from 16 months up to two years.

3. "Preschool" means a child from two years up to the age of eligibility to attend public school, five years by September 30.

4. "School age" means a child eligible to attend public school, age five or older by September 30 of that same year. Four-year-old or five-year-old children included in a group of school children may be considered school age during the summer months if the children will be entering kindergarten that year.

"Attendance" means the actual presence of an enrolled child.

"Body fluids" means urine, feces, vomit, saliva, blood, nasal discharge, eye discharge, and injury or tissue discharge.

"Center" means a child day center.

"Child" means any individual less than 18 years of age.

"Child day center" means a child day program offered to (i) two or more children less than 13 years of age in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

"Child experiencing homelessness" means a child who lacks a fixed, regular, and adequate nighttime residence and includes:

1. A child who is living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar settings;
2. A child who is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason (sometimes referred to as "doubled-up");
3. A child who is living in a motel, hotel, trailer park, or camping grounds due to lack of alternative adequate accommodations;
4. A child who is living in congregate, temporary, emergency, or transitional shelters;
5. A child who is abandoned in a hospital;
6. A child who is living in a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; and
7. A child who is a migratory child as defined in § 1309 of the Elementary and Secondary Education Act of 1965, P.L. No. 89-10 (20 USC § 6399) who qualifies as homeless because he is living in circumstances described in ~~subdivisions 1 through 6 of this definition~~ clauses (i) through (iii) of 42 U.S.C. § 11434a(2)(B).

"Child with special needs or disability" means (i) a child with a disability as defined in § 602 of the Individuals with Disabilities Education Act (20 USC § 1401); (ii) a child who is eligible for early intervention services under Part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.); (iii) a child who is less than 13 years of age and who is eligible for services under § 504 of the Rehabilitation Act of 1973 (29 USC § 794); and (iv) a child with a documented developmental disability, intellectual disability, emotional disturbance, sensory or motor impairment, or significant chronic illness who requires special health surveillance or specialized programs, interventions, technologies, or facilities.

"Cleaned" means treated in such a way as to remove dirt and debris by scrubbing and washing with soap and water or detergent solution and rinsing with water or the use of an abrasive cleaner on inanimate surfaces.

"Communicable disease" means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse or mosquito) or environmental object (such as a table surface). Some communicable diseases are reportable to the local health authority.

"Department" means the Virginia Department of ~~Social Services~~ Education.

"Department representative" means an employee or designee of the Virginia Department of ~~Social Services~~ Education, acting as the authorized agent of the ~~Commissioner of the Virginia Department of Social Services~~ Superintendent of Public Instruction.

"Evacuation" means movement of occupants out of the building to a safe area near the building.

"Evening care" means care provided after 7 p.m. but not through the night.

"Group size" means the number of children assigned to a staff member or team of staff members occupying an individual room or area.

"Inaccessible" means not capable of being entered, reached, or used.

"Lockdown" means a situation where children are isolated from a security threat and access within and to the center is restricted.

"Overnight care" means care provided after 7 p.m. and through the night.

"Over-the-counter or nonprescription medication" means medication that can be purchased without a written prescription. This includes herbal remedies and vitamins and mineral supplements.

"Parent" means a parent by blood, marriage, or adoption and also means a legal guardian or other person standing in loco parentis.

"Sanitized" means treated in such a way as to remove bacteria and viruses from inanimate surfaces through first cleaning and secondly using a solution of one tablespoon of bleach mixed with one gallon of water and prepared fresh daily or using a sanitizing solution approved by the U.S. Environmental Protection Agency. The surface of the item is sprayed or dipped into the sanitizing solution and then allowed to air dry for a minimum of two minutes or according to the sanitizing solution instructions.

"Serious injury" means a wound or other specific damage to the body, such as unconsciousness; broken bones; dislocation; a deep cut requiring stitches; poisoning; concussion; or a foreign object lodged in eye, nose, ear, or other body orifice.

"Shaken baby syndrome" or "abusive head trauma" means a traumatic injury that has been inflicted upon the brain of an infant or young child. The injury can occur during violent shaking causing the child's head to whip back and forth, the brain to move about, and blood vessels in the skull to stretch and tear.

"Shelter-in-place" means movement of occupants of the building to designated protected spaces within the building.

"Staff" means administrative, activity, and service personnel, including the vendor when the vendor is an individual who

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works in the center, any persons counted in the staff-to-children ratios, or any persons working with a child without sight and sound supervision of a staff member.

"Vendor" means a legally operating child care provider who is approved by the department to participate in the Child Care Subsidy Program. Multiple facilities or sites operated by the same person, entity, or organization are considered separate vendors.

"Vendor agreement" means the agreement between the department and a vendor that must be entered into and signed by all vendors before child care payments paid to the vendor under the Child Care Subsidy Program can be authorized.

"Volunteer" means a person who works at the center and:

1. Is not paid for services provided to the center;
2. Is not counted in the staff-to-children ratios; and
3. Is in sight and sound supervision of a staff member when working with a child.

Any unpaid person not meeting this definition shall be considered "staff" and shall meet staff requirements.

~~22VAC40-665-480~~ 8VAC20-790-500. (Reserved).

~~22VAC40-665-490~~ 8VAC20-790-510. **Purpose and applicability.**

The standards in this part apply to child day centers that are applying to participate in the Child Care Subsidy Program. The purpose of these standards is to protect children who are less than the age of 13 years, less than the age of 18 years and physically or mentally unable to care for themselves, or are under court supervision and who are separated from their parents during part of the day by:

1. Ensuring that the activities, services, and facilities of centers participating in the Child Care Subsidy Program are conducive to the well-being of children; and
2. Reducing risks to the health and safety of such children in the child care environment.

~~22VAC40-665-500~~ 8VAC20-790-520. **Operational responsibilities.**

A. The vendor shall ensure compliance with the standards in this part, the terms of the vendor agreement, and all relevant federal, state, or local laws and regulations.

B. Pursuant to § ~~63.2-1725~~ 22.1-289.040 of the Code of Virginia, the vendor shall ensure that the applicant and any staff who is or will be involved in the day-to-day operations of the center or is or will be alone with, in control of, or supervising one or more of the children (i) has not been convicted of any barrier crime as defined in § 19.2-392.02 of the Code of Virginia and (ii) is not the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth.

C. The vendor shall ensure that the center does not exceed the capacity of children cared for as allowed by law or regulation.

D. When at least one child receives care for compensation, all children who are in care and supervision count in the capacity of children being cared for. When children 13 years or older are enrolled in the program and receive supervision in the program, they shall be counted in the number of children receiving care, and the vendor shall comply with the standards in this part for these children.

E. The vendor shall inform all staff who work with children of children's allergies, sensitivities, and dietary restrictions.

F. The vendor shall maintain, in a way that is accessible to all staff who work with children, a current written list of all children's allergies, sensitivities, and dietary restrictions. This list shall be dated and kept confidential in each room or area where children are present.

G. Religious exempt child day centers that are exempt from licensure in accordance with § ~~63.2-1716~~ 22.1-289.031 of the Code of Virginia shall be in compliance with all requirements of § ~~63.2-1716~~ 22.1-289.031.

~~22VAC40-665-510~~ 8VAC20-790-530. **General recordkeeping; reports.**

A. Staff records and children's information shall be treated confidentially.

B. For each group of children, the vendor shall maintain a written hard copy record of daily attendance that documents the arrival and departure of each child in care as it occurs.

C. Records, reports, and information required by this part may be kept as hard copy or electronically, except attendance records must be maintained pursuant to subsection B of this section, and shall be maintained and made accessible to department representatives for five years after termination of services or separation from employment unless specified otherwise.

~~22VAC40-665-520~~ 8VAC20-790-540. **Children's records.**

A. The vendor shall maintain and keep at the center a record for each enrolled child, which shall be made accessible to the department's representative upon request.

B. The child's record shall include the following:

1. Child's full name, nickname (if any), sex, address, and birthdate;
2. Name, home address, and telephone number for each parent who has custody;
3. Name, address, and telephone number for each custodial parent's place of employment or school attendance, if applicable;

4. Name, address, and telephone number of at least one person designated by the parent to contact in case of an emergency and the parent cannot be reached;
5. Information on allergies, including food allergies, intolerances to food, medication, or other substances, and actions to be taken in an emergency situation; information on other physical problems; pertinent developmental information; and any special accommodations needed, if applicable;
6. Names of persons other than the custodial parent who are authorized to pick up the child;
7. Immunization records for the child received on or before the child's first day of attendance, except that children experiencing homelessness may provide such records within 90 days of enrollment;
8. Written authorization for emergency medical care should an emergency occur and the parent cannot be located immediately unless the parent presents a written objection for the provision of medical treatment on religious or other grounds;
9. Written authorization to administer prescription or nonprescription medications if the vendor administers medication;
10. Special care instructions, including recommendations for the care and activities of a child with special needs, exception to infant being fed on demand, etc.;
11. A written allergy care plan for each child with a diagnosed food allergy, to include instructions from a physician regarding the food to which the child is allergic and steps to be taken in the event of a suspected or confirmed allergic reaction;
12. Proof of a child's identity and age as stated in § ~~63.2-1809~~ 22.1-289.049 of the Code of Virginia;
13. Permission to transport child if the vendor provides transportation;
14. Permission for field trips;
15. Permission for swimming or wading activities to include a parent's statement of the child's swimming ability, if applicable;
16. A written statement that the vendor will notify the parent when the child becomes ill and that the parent will arrange to have the child picked up as soon as possible if so requested by the vendor;
17. Any written agreements between the parent and the vendor; and
18. Documentation of the enrollment of a child experiencing homelessness enrolled under provisions of ~~22VAC40-665-560 A 2~~ 8VAC20-790-580 A 2.

~~22VAC40-665-530~~ 8VAC20-790-550. **Staff records.**

The following records shall be kept for each staff person:

1. Name, address, verification of age, and date of employment or volunteering.
2. Documentation that background checks were completed, including:
 - a. The department's letter indicating eligibility to be hired provided by the department or the department's contractor indicating:
 - (1) Satisfactory results of the fingerprint-based national criminal background check; and
 - (2) Satisfactory results of the Virginia Child Protective Services Central Registry check.
 - b. Satisfactory results of the child abuse and neglect registry from any other state in which the individual has resided in the preceding five years.
 - c. Results of a criminal history record information check and sex offender registry check from any state in which the person has resided in the preceding five years.
 - d. The individual's sworn statement or affirmation as to whether the individual has ever been:
 - (1) The subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; or
 - (2) Convicted of a crime or is the subject of any pending criminal charges within the Commonwealth or any equivalent offense outside the Commonwealth.
 - e. The vendor shall have documentation for any individual who begins employment or service after the vendor agreement has been signed in the file within 30 days of the individual's beginning date of employment or service.
 - f. Documentation of subsequent background checks conducted every five years.
3. Tuberculosis screening results.
4. Certifications of first aid and cardiopulmonary resuscitation and other certifications as required by the responsibilities held by the staff member.
5. Documentation that training required in ~~22VAC40-665-580~~ 8VAC20-790-600 has been completed, including the date completed, the total hours of the session, and the names of the trainer and of any sponsoring organization.
6. Date of separation from employment where applicable.
7. Documentation of the health requirements under ~~22VAC40-665-540~~ 8VAC20-790-560.

~~22VAC40-665-540~~ 8VAC20-790-560. **Health requirements for staff.**

A. Staff shall be evaluated by a health professional and be issued a statement that the individual is determined to be free of communicable tuberculosis (TB). Documentation of the

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screening shall be submitted at the time of employment and prior to coming into contact with children. The documentation shall have been completed within the last 30 calendar days of the date of employment and be signed by a physician, physician's designee, or an official of the local health department.

B. Subsequent TB screenings are required at least every two years from the date of the initial screening, or more frequently if recommended by a physician.

C. The vendor or the department's representative may require a report of examination by a licensed physician or mental health professional if there are indications that a staff member's physical or mental health may endanger the health, safety, or well-being of children in care.

D. A staff who is determined by a licensed physician or mental health professional to show an indication of a physical or mental condition that may endanger the health, safety, or well-being of children in care or that would prevent the performance of duties shall be removed immediately from contact with children and food served to children until the condition is cleared as evidenced by a signed statement from the physician or mental health professional.

22VAC40-665-550 8VAC20-790-570. Reports.

Reports shall be filed and maintained as follows:

1. The vendor shall inform the department's inspector as soon as practicable, but not more than one business day, of the following:
 - a. The death of a child while under the vendor's supervision;
 - b. A missing child when local authorities have been contacted for help; and
 - c. The suspension or termination of all child care services for more than 24 hours as a result of an emergency situation and any plans to resume child care.
2. The vendor shall inform the department's representative as soon as practicable, but not more than two business days, of any injury to a child while under the vendor's supervision when a referral is made for treatment from a medical professional.
3. Any suspected incident of child abuse or neglect shall be reported in accordance with § 63.2-1509 of the Code of Virginia.

22VAC40-665-560 8VAC20-790-580. Immunizations for children.

A. The vendor shall obtain documentation that each child has received the immunizations required by the State Board of Health before the child can attend the center.

1. The vendor may allow a child to attend contingent upon a conditional enrollment. Documentation related to the child's

conditional enrollment shall be maintained in the child's record.

"Conditional enrollment" means the enrollment of a child for a period of 90 days contingent upon the child having received at least one dose of each of the required vaccines and the child possessing a plan from a physician or local health department for completing his immunization requirements within the ensuing 90 calendar days. If the child requires more than two doses of the hepatitis B vaccine, the conditional enrollment period, for hepatitis B vaccine only, shall be 180 calendar days.

2. If a child is experiencing homelessness and does not have documentation of the required immunizations, the vendor may allow the child to attend during a grace period of no more than 90 days to allow the parent or guardian time to obtain documentation of the required immunizations.

B. The vendor shall obtain documentation of additional immunizations once every six months for children less than two years of age.

C. Pursuant to subsection C of § 22.1-271.2 of the Code of Virginia and 12VAC5-110-110, documentation of immunizations is not required for any child whose:

1. Parent submits an affidavit to the vendor, on the form entitled "Certification of Religious Exemption," stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices, or
2. A physician or a local health department states on a Department of Health-approved form that one or more of the required immunizations may be detrimental to the child's health, indicating the specific nature and probable duration of the medical condition or circumstance that contraindicates immunization.

22VAC40-665-570 8VAC20-790-590. **General qualifications.**

- A. The vendor must be at least 18 years of age.
- B. The vendor, and any staff who are left alone with children, shall be capable of communicating effectively both orally and in writing as applicable to the job responsibility and be capable of communicating with emergency personnel.
- C. Staff must be at least 16 years of age; however no staff person less than 18 years of age may administer medication.

1. Staff members less than 18 years of age shall be under supervision of an adult staff member who is present in the facility.
2. Adult staff members shall supervise no more than two volunteers or staff members less than 18 years of age at any given time.

~~22VAC40-665-580~~ 8VAC20-790-600. Staff training and development.

A. Prior to approval as a subsidy vendor, the vendor or designee shall complete the Virginia Preservice Training for Child Care Staff, which shall include training on the following topics and training modules:

1. Building and physical premises safety;
2. Emergency preparedness and response planning;
3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;
4. Administration of medication, consistent with standards of parental consent;
5. Prevention of shaken baby syndrome and abusive head trauma (AHT);
6. Prevention of and response to emergencies due to food and allergic reactions;
7. Recognizing child abuse and neglect and reporting responsibilities;
8. Preventing the spread of disease, including immunization requirements;
9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;
10. Transportation;
11. Foundations of child development;
12. Inclusion: Exploring the meaning and the mindset;
13. Oral health; and
14. Introduction to the Child Care Subsidy Program.

B. Within the first 90 days of employment or subsidy vendor approval all staff who work directly with children shall complete Virginia Preservice Training for Child Care Staff, which shall include training on the following topics and training modules:

1. Building and physical premises safety;
2. Emergency preparedness and response planning;
3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;
4. Administration of medication, consistent with standards of parental consent;
5. Prevention of shaken baby syndrome and abusive head trauma (AHT);
6. Prevention of and response to emergencies due to food and allergic reactions;

7. Recognizing child abuse and neglect and reporting responsibilities;
8. Preventing the spread of disease, including immunization requirements;
9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;
10. Transportation;
11. Foundations of child development;
12. Inclusion: Exploring the meaning and mindset;
13. Oral health; and
14. Introduction to the Child Care Subsidy Program.

~~C. All staff who work directly with children and who are employed prior to October 17, 2018, shall complete Virginia Preservice Training for Child Care Staff sponsored by the Department of Social Services, to include all of the topics applicable to new staff, within January 16, 2019. This training may count for staff annual training requirements in subsection H of this section.~~

~~D. Orientation training for staff shall be completed on the following facility specific topics prior to the staff member working alone with children and within seven days of the date of employment or the date of subsidy vendor approval:~~

1. Playground safety procedures;
2. Responsibilities for reporting suspected child abuse or neglect;
3. Confidentiality;
4. Supervision of children, including arrival and dismissal procedures;
5. Procedures for action in the case of lost or missing children, ill or injured children, and medical and general emergencies;
6. Medication administration procedures, if applicable;
7. Emergency preparedness plan as required in ~~22VAC40-665-770~~ 8VAC20-790-790 B;
8. Prevention of shaken baby syndrome and abusive head trauma including coping with crying babies and fussy or distraught children;
9. Prevention of sudden infant death syndrome and use of safe sleeping practices;
10. Staff who work with children that have food allergies shall receive training in preventing exposure to foods to which the child is allergic, preventing cross contamination, and recognizing and responding to any allergic reactions; and

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11. Transportation.

~~E. D.~~ All staff who work directly with children shall have within 90 days of the date of employment or 90 days from subsidy vendor approval:

1. Current certification in cardiopulmonary resuscitation (CPR) appropriate to the ages of children in care. The training shall include an in-person competency demonstration; and
2. Current certification in first aid appropriate to the ages of children in care. However, staff who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification.

During the 90-day period, there must always be at least one staff with current CPR and first aid training present during operating hours of the center.

~~F. All staff who work directly with children and who are employed by an approved vendor prior to October 17, 2018, must complete CPR and first aid training as required by this section within January 16, 2019. During this 90 days, there must always be at least one staff with current CPR and first aid training present during operating hours of the center.~~

~~G. E.~~ CPR and First Aid training may count toward the annual training hours required in subsection H of this section if documentation for training as required in subdivision 5 of ~~22VAC40-665-530~~ 8VAC20-790-550 is maintained.

~~H. F.~~ Staff who work directly with children shall, in addition to preservice and orientation training required in subsections A through D of this section, annually attend at least 16 hours of training and staff development activities, to include the department's health and safety update course. Training shall be related to child safety, child development, the function of the center, and any required department sponsored training.

~~I. G.~~ To safely perform medication administration practices, whenever a vendor agrees to administer prescribed medications, the (i) administration shall be performed by a staff member who has satisfactorily completed a training program for this purpose developed by the Board of Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist; or (ii) administration shall be performed by a staff member who is licensed by the Commonwealth of Virginia to administer medications.

The administration of medicines by a vendor may be limited by policy to:

1. Prescription medications;
2. Over-the-counter or nonprescription medications; or
3. No medications.

~~J. H.~~ Staff required to have the training specified in subsection I of this section shall be retrained at three-year intervals.

~~K. I.~~ There shall be at least one staff on duty who has obtained within the last three years instruction in performing a daily health observation of children. Daily health observation training shall include:

1. Components of daily health check for children;
2. Inclusion and exclusion of a child when the child is exhibiting symptoms that indicate possible illness;
3. Description of how diseases are spread and procedures and methods for reducing the spread of disease;
4. Information concerning the Virginia Department of Health Notification of Reportable Diseases pursuant to 12VAC5-90-80 and 12VAC5-90-90, also available from the local health department and the website of the Virginia Department of Health; and
5. Staff occupational health and safety practices in accordance with Occupational Safety and Health Administration's bloodborne pathogens regulation (29 CFR 1910.1030).

~~22VAC40-665-590~~ **8VAC20-790-610. Certifications by other agencies; requirements prior to initial approval.**

Before approval of a vendor agreement and before use of newly constructed, renovated, remodeled, or altered buildings or sections or buildings, written documentation of the following shall be provided by the vendor to the department representative:

1. Certification by the authority having jurisdiction that each building meets building and fire codes or that a plan of correction has been approved; and
2. Certification from the local health department, or approval of a plan of correction, for meeting requirements for:
 - a. Water supply;
 - b. Sewage disposal system; and
 - c. Food service, if applicable.
3. Any building that is currently zoned or certified for school occupancy and houses a public or private school during the school year shall be considered to have met the requirements of subdivision 1 of this section when housing a center serving only children two and a half years of age or older.

~~22VAC40-665-600~~ **8VAC20-790-620. Certifications by other agencies; requirements subsequent to initial approval.**

A. The vendor shall provide the department representative an annual fire inspection report from the appropriate fire official having jurisdiction. If a center is located in a building currently housing a public or private school, the school's annual fire inspection report shall be accepted.

B. The vendor shall provide the department representative an annual certification from the Health Department, or approvals of a plan of correction, for meeting requirements for:

1. Water supply;
2. Sewage disposal system; and
3. Food service, if applicable.

~~22VAC40-665-610~~ 8VAC20-790-630. **Building or facility maintenance.**

A. Areas and equipment of the center, inside and outside, shall be maintained in a clean, safe, and operable condition. Unsafe conditions shall include splintered, cracked or otherwise deteriorating wood; chipped or peeling paint; visible cracks, bending or warping, rusting, or breakage of any equipment; head entrapment hazards; protruding nails, bolts, or other components that entangle clothing or skin; and unstable heavy equipment, furniture, or other items that a child could pull down on himself.

B. Inside areas occupied by children shall be maintained no lower than 68°F and shall not exceed 80°F unless fans or other cooling systems are in use.

C. In areas used by children of preschool age or younger, the following shall apply:

1. Fans, when used shall be out of reach of children and cords shall be secured so as not to create a hazard.
2. Electrical outlets shall have protective covers that are of a size that cannot be swallowed by children.

D. Building equipment shall include an in-service, nonpay telephone.

~~22VAC40-665-620~~ 8VAC20-790-640. **Hazardous substances and other harmful agents.**

A. Hazardous substances such as cleaning materials, insecticides, and pesticides shall be kept in a locked place using a safe locking method that prevents access by children. If a key is used, the key shall not be accessible to children. Cleaning supplies to clean and sanitize the diapering area or toilet chairs do not need to be kept locked during diapering or toilet training time as long as they are inaccessible to children.

B. Pesticides or insecticides shall not be stored in areas used by children or in areas used for food preparation or storage.

C. Cleaning and sanitizing materials shall not be located above food, food equipment, utensils, or single-use articles and shall be stored separate from food.

D. If hazardous substances are not kept in original containers, the substitute container shall clearly indicate its contents.

E. Smoking and the use of electronic smoking devices shall be prohibited in the interior of a center, in vehicles when

children are being transported, and if permitted outside, shall be prohibited in the presence of children.

~~22VAC40-665-630~~ 8VAC20-790-650. **Restroom area and furnishings.**

A. The facility shall have at least two toilets and two sinks.

B. The facility shall have at least one toilet and one sink for every 30 children.

C. Each restroom area provided for children shall:

1. Be within a contained area, readily available, and within the building used by the children;
2. Have toilets that are flushable;
3. Have sinks located near the toilets and that are supplied with running warm water that does not exceed 120°F;
4. Be equipped with soap, toilet paper, and disposable towels or an air dryer within reach of the children; and
5. A restroom for school age children that contains more than one toilet shall have at least one toilet enclosed.

~~22VAC40-665-640~~ 8VAC20-790-660. **Play areas.**

The vendor shall ensure that all areas of the premises accessible to children are free of obvious injury hazards, including providing and maintaining sand or other cushioning material under playground equipment. The requirements of this section shall not prohibit child day center programs providing care to school age children at a location that is currently approved by the Department of Education or recognized as a private school by the State Board of Education for school occupancy and that houses a public or private school during the school years from permitting school age children to use outdoor play equipment and areas approved for use by students of the school during school hours.

~~22VAC40-665-650~~ 8VAC20-790-670. **Supervision, ratio, and group size requirements.**

A. The vendor, except those exempt from licensure operated by or under the auspices of a religious institution, shall ensure that the following ratio requirements are maintained:

1. For children from birth to the age of 16 months: one staff member for every four children;
2. For children 16 months to two years: one staff member for every five children;
3. For two-year-old children: one staff member for every eight children;
4. For children from three years to the age of eligibility to attend public school, five years by September 30: one staff member for every 10 children;

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5. For children from age of eligibility to attend public school through eight years: one staff member for every 18 children; and

6. For children from nine years through 12 years of age: one staff member for every 20 children.

B. Except during meals or snacks, the designated rest period, evening and overnight sleep time, outdoor play, field trips, special group activities, or during the first and last hour of operation when the vendor operates more than six hours per day, the vendor, except those exempt from licensure operated by or under the auspices of a religious institution, shall ensure that the following group size requirements are maintained at all times:

1. For children from birth to the age of 16 months: the maximum group size is 12 children;
2. For children 16 months to two years: the maximum group size is 15 children;
3. For two-year-old children: the maximum group size is 24 children; and
4. For children from three years to the age of eligibility to attend public school, five years by September 30: the maximum group size is 30 children.

Group size requirements in this section do not apply to children school age eligible through 12 years of age or when a variance has been granted by the Division of Licensing Programs.

C. Facilities operated by, or under the auspices of, a religious institution and exempt from licensure shall employ supervisory personnel as set forth in § ~~63.2-1716~~ 22.1-289.031 of the Code of Virginia and shall ensure the following ratio requirements are maintained:

1. One staff member to four children from ages zero to 16 months;
2. One staff member to five children from ages 16 months to 24 months;
3. One staff member to eight children from ages 24 months to 36 months;
4. One staff member to 10 children from ages 36 months to five years;
5. One staff member to 20 children from ages five years to nine years; and
6. One staff member to 25 children from ages nine years to 12 years.

When a group of children receiving care includes children from different age brackets, the age of the youngest child in the group shall be used to determine the staff-to-children ratio that applies to that group.

D. With the exception of when meals or snacks are served, the designated rest period, evening and overnight sleep time, outdoor play, and field trips, special group activities, or during the first and last hour of operation when the vendor operates more than six hours per day, facilities operated by, or under the auspices, of a religious institution and are exempt from licensure shall ensure the following group size requirements are maintained at all times:

1. For children from birth to two years of age: the maximum group size is 12 children;
2. For children from two years to six years of age: the maximum group size is 30 children; and
3. For children who are six years up to 12 years of age: group size requirements in this section do not apply.

E. The vendor shall develop and implement a written policy and procedure that describes how the vendor will ensure that each group of children receives care by consistent staff or team of staff members.

F. Staff shall be counted in the required staff-to-children ratios only when they are directly supervising children.

G. When children are in ongoing mixed age groups, the staff-to-children ratio and group size applicable to the youngest child in the group shall apply to the entire group.

H. Children less than 10 years of age shall always be within actual sight and sound supervision of staff, except that staff need only be able to hear a child who is using the restroom provided that:

1. There is a system to ensure that individuals who are not staff members or persons allowed to pick up a child in care do not enter the restroom area while in use by children; and
2. Staff checks on a child who has not returned from the restroom after five minutes. Depending on the location and layout of the restroom, staff may need to provide intermittent sight supervision of the children in the restroom area during this five-minute period to assure the safety of children and to provide assistance to children as needed.

I. Children 10 years of age and older shall be within actual sight and sound supervision of staff except when the following requirements are met:

1. Staff can hear or see the children (video equipment, intercom systems, or other technological devices shall not substitute for staff being able to directly see or hear children);
2. Staff are nearby so that they can provide immediate intervention if needed;
3. There is a system to ensure that staff know where the children are and what they are doing;

4. There is a system to ensure that individuals who are not staff members or persons allowed to pick up children in care do not enter the areas where children are not under sight supervision; and

5. Staff provides sight and sound supervision of the children at variable and unpredictable intervals not to exceed 15 minutes.

J. When the outdoor activity area is not adjacent to the center, there shall be at least two staff members in the outdoor activity area whenever one or more children are present.

K. Staff shall not allow a child to leave the center unsupervised.

L. For vendors operated by, or under the auspices of, a religious institution and exempt from licensure, during designated rest periods and the designated sleep period of evening and overnight care programs, the ratio of staff to children over 16 months of age may be double the number of children to each staff required by subsection C of this section if:

1. The staff person shall be present in the same space as sleeping children;
2. Staff counted in the overall rest period ratio are on the same floor as the sleeping or resting children and available in case of emergency; and
3. An additional person is present to help.

Once at least half of the children in the resting room or area are awake and off their mats or cots, the staff-to-child ratio shall meet the ratios as required in subsection C of this section.

M. For vendors not operated by, or under the auspices of, a religious institution, during designated rest periods and the designated sleep period of evening and overnight care programs, the ratio of staff to children over 16 months of age may be double the number of children to each staff required by subsection A of this section if:

1. The staff person shall be present in the same space as sleeping children;
2. Staff counted in the overall rest period ratio are on the same floor as the sleeping or resting children and available in case of emergency; and
3. An additional person is present to help.

Once at least half of the children in the resting room or area are awake and off their mats or cots, the staff-to-child ratio shall meet the ratios as required in subsection A of this section.

~~22VAC40-665-660~~ 8VAC20-790-680. Supervision near water.

A. Indoor swimming pools on the center premises shall be kept locked when the pool is not in use. Outdoor swimming pools located on the center premises shall be enclosed by safety

fences and gates that are in compliance with the applicable edition of the Virginia Uniform Statewide Building Code (13VAC5-63) and shall be kept locked when the pool is not in use.

B. The staff-to-children ratios required by ~~22VAC40-665-650~~ 8VAC20-790-670 shall be maintained while children are participating in swimming or wading activities.

1. Notwithstanding the staff-to-children ratios already indicated, at no time shall there be fewer than two staff members supervising the activity.
2. The designated certified lifeguard shall not be counted in the staff-to-children ratios.

C. If a pool, lake, or other swimming area has a water depth of more than two feet, a certified lifeguard holding a current certificate shall be on duty supervising the children participating in swimming or wading activities at all times when one or more children are in the water.

D. The vendor shall have emergency procedures and written safety rules for swimming or wading or follow the posted rules of public pools that are:

1. Posted in the swimming area when the pool is located on the premises of the center; and
2. Explained to children participating in swimming or wading activities.

E. Staff shall have a system for accounting for all children in the water.

~~22VAC40-665-670~~ 8VAC20-790-690. Daily activities.

A. The variety of daily activities for all age groups shall be age and stage appropriate and provide opportunities for teacher-directed, self-directed, and self-chosen tasks and activities, a balance of active and quiet activities, indoor and outdoor activities, individual and group activities, and curiosity and exploration.

B. For a child who cannot move without help, staff shall offer to change the place and position of the child at least every 30 minutes or more frequently depending on the child's individual needs. For an awake infant not playing on the floor or ground a change in play space shall be provided by staff at least every 30 minutes or more often as determined by the individual infant's needs.

C. There shall be a flexible daily schedule for infants based on their individual needs.

D. Infants shall be allowed to sleep when needed.

1. When an infant is placed in his crib, he shall be placed on his back (supine).
2. When an infant is able to easily turn over from the back (supine) to the belly (prone) position and is placed in his crib, he shall still be put on his back but allowed to adopt whatever

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position he prefers. This applies unless otherwise directed by the infant's physician or health care provider in writing.

3. Resting or sleeping infants shall be individually checked every 15 to 20 minutes.

E. Infants shall be provided comfort when needed.

F. Staff shall provide frequent opportunities for infants to creep, crawl, toddle, and walk.

G. Infants who cannot turn themselves over and are awake shall be placed on their stomachs for at least 30 minutes each day to facilitate upper body strength and to address misshapen head concerns.

H. Infants shall be protected from older children.

~~22VAC40-665-680~~ 8VAC20-790-700. Behavioral guidance.

A. Behavioral guidance shall be constructive in nature and age and stage appropriate and shall be intended to redirect children to appropriate behavior and resolve conflicts.

B. In order to promote the child's physical, intellectual, emotional, and social well-being and growth, staff shall model desired, appropriate behavior and interact with the child and one another to provide needed help, comfort, support and:

1. Respect personal privacy;
2. Respect differences in cultural, ethnic, and family background;
3. Encourage decision-making abilities;
4. Promote ways of getting along;
5. Encourage independence and self-direction; and
6. Use consistency in applying expectations.

C. If time-out is used as a discipline technique:

1. It shall be used sparingly and shall not exceed one minute for each year of the child's age;
2. It shall not be used with infants or toddlers;
3. The child shall be in a safe, lighted, well-ventilated place and within sight and sound of staff; and
4. The child shall not be left alone inside or outside the center while separated from the group.

~~22VAC40-665-690~~ 8VAC20-790-710. Forbidden actions.

The following actions or threats thereof are forbidden:

1. Physical punishment, including striking a child, roughly handling or shaking a child, restricting movement through binding or tying, forcing a child to assume an uncomfortable position, or using exercise as a punishment;
2. Enclosure in a small, confined space or any space that the child cannot freely exit himself; however this does not apply to the use of equipment such as cribs, play yards, high chairs,

and safety gates when used for their intended purpose with children preschool age or younger;

3. Punishment by another child;

4. Withholding or forcing of food, water, or rest;

5. Verbal remarks that are demeaning to the child;

6. Punishment for toileting accidents; and

7. Punishment by applying unpleasant or harmful substances.

~~22VAC40-665-700~~ 8VAC20-790-720. Parental involvement and notifications.

A. The vendor shall notify the parent immediately if a child is lost, requires emergency medical treatment or sustains a serious injury, or dies.

B. The vendor shall notify the parent by the end of the day of any known minor injuries.

C. The vendor shall maintain a written record of children's serious and minor injuries in which entries are made the day of occurrence. The record shall include the following:

1. Date and time of injury;
2. Name of injured child;
3. Type and circumstance of the injury;
4. Staff present and treatment;
5. Date and time when parents were notified; and
6. Staff and parent signatures or two staff signatures.

D. Parents shall be notified immediately of any confirmed or suspected allergic reactions and the ingestion of or contact with any food identified in the written care plan required in ~~22VAC40-665-520 B 11~~ 8VAC20-790-540 B 11 even if a reaction did not occur.

E. Staff shall promptly inform parents when persistent behavioral problems are observed and identified.

F. Parents shall be provided at least semiannually in writing information on their child's behavior, development, adjustment, and needs. This requirement does not apply to programs that operate 12 weeks or less a year.

G. Parents shall be informed of the reason for a child's termination from care.

H. A custodial parent shall be admitted to any child day program. Such right of admission shall apply only while the child is in the child day program, in accordance with § ~~63-2-413~~ 22.1-289.054 of the Code of Virginia.

I. When children at the center have been exposed to a communicable disease listed in the Department of Health's current communicable disease chart, the parents shall be notified within 24 hours or the next business day of the vendor

having been informed unless forbidden by law. Children's exposure to life threatening diseases shall be reported to parents immediately.

J. Parents shall be informed of the vendor's emergency preparedness plan.

~~22VAC40-665-710~~ 8VAC20-790-730. Furnishings, equipment, and materials.

A. Furnishings, materials, and equipment shall be age and stage appropriate for the children.

B. Children shall be protected from materials that could be swallowed or present a choking hazard. Toys or objects less than 1-1/4 inches in diameter and less than two inches in length shall be kept out of reach of children less than three years of age.

C. If combs, toothbrushes, or other personal articles are used, they shall be individually assigned.

D. Disposable products shall be used once and discarded.

E. Play yards and portable cribs where used shall meet the Juvenile Products Manufacturers Association (JPMA) and the American Society for Testing and Materials (ASTM) requirements and shall not be used after recalled.

F. Cribs, cots, rest mats, or beds shall be provided for children during the designated rest periods and shall not be occupied by more than one child at a time.

1. Cribs shall be provided for children from birth through 12 months of age and for children older than 12 months of age who are not developmentally ready to sleep on a cot, rest mat, or bed during the designated rest periods.

2. Cots, rest mats, or beds shall be provided for children older than 12 months of age.

G. There shall be at least 12 inches of space between occupied cribs, cots, beds, and rest mats.

H. Full-size cribs shall:

1. Meet the current Consumer Product Safety Commission Standards (16 CFR Part 1219).

2. Have mattresses that fit snugly next to the crib so that no more than two fingers can be inserted between the mattress and the crib.

I. Pillows and filled comforters shall not be used by children less than 12 months of age while sleeping or resting including quilts, sheepskins, or stuffed toys.

J. Cribs shall be placed where objects outside the crib such as electrical cords or cords from blinds, curtains, etc. are not within reach of infants or toddlers.

K. Use of bumper pads shall be prohibited.

L. Toys or objects hung over an infant in a crib and crib gyms that are strung across the crib may not be used for infants older than five months of age or infants who are able to push up on their hands and knees.

M. Crib sides shall always be up, and the fastenings secured when a child is in the crib.

N. Double decker cribs shall not be used.

~~22VAC40-665-720~~ 8VAC20-790-740. Bedding and linens for use while sleeping or resting.

A. Linens shall be assigned for individual use.

B. Pillows when used shall be assigned for individual use and covered with pillow cases.

C. Mattresses when used shall be covered with a waterproof material which can be cleaned and sanitized.

~~22VAC40-665-730~~ 8VAC20-790-750. Preventing the spread of disease.

A. A child shall not be allowed to attend the center for the day if he has:

1. A temperature over 101°F;
2. Recurrent vomiting or diarrhea; or
3. Symptoms of a communicable disease.

B. If a child needs to be excluded according to subsection A of this section, the following shall apply:

1. Arrangements shall be made for the child to leave the center as soon as possible after the signs or symptoms are observed; and
2. The child shall remain in a designated quiet area until leaving the center.

C. When any surface has been contaminated with body fluids, it shall be cleaned and sanitized.

~~22VAC40-665-740~~ 8VAC20-790-760. Hand washing and toileting procedures.

A. When hand washing, the following shall apply.

1. Children's hands shall be washed with soap and running water or disposable wipes before and after eating meals or snacks.
2. Children's hands shall be washed with soap and running water after toileting and any contact with blood, feces, or urine.
3. Staff shall wash their hands with soap and running water before and after helping a child use the toilet or changing a diaper, after the staff member uses the toilet, after any contact with body fluids, and before feeding or helping children with feeding, and before preparing or serving food or beverages.

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4. If running water is not available, a germicidal cleansing agent administered per manufacturer's instruction may be used.

B. Diapering requirements are as follows:

1. The diapering area shall be accessible and within the building used by children.

2. There shall be sight and sound supervision for all children when a child is being diapered.

3. The diapering area shall have:

- a. Access to a sink with running warm water not to exceed 120°F;
- b. Soap, disposable towels, and single-use gloves such as surgical or examination gloves;
- c. A nonabsorbent surface for diapering or changing shall be used. For children younger than three years, this surface shall be a changing table or countertop designated for changing;
- d. The appropriate disposal container as required by subdivision 6 of this subsection; and
- e. A leak-proof covered receptacle for soiled linens.

4. When a child's clothing or diaper becomes wet or soiled, the child shall be cleaned and changed immediately upon discovery.

5. Disposable diapers shall be used unless the child's skin reacts adversely to disposable diapers.

6. Disposable diapers shall be disposed in a leak-proof or plastic-lined storage system that is either foot-operated or used in such a way that neither the staff member's hand nor the soiled diaper touches an exterior surface of the storage system during disposal.

7. When cloth diapers are used, a separate leak-proof storage system as specified in subdivision 6 of this subsection shall be used.

8. The diapering surface shall be used only for diapering or cleaning children, and it shall be cleaned with soap and at least room temperature water and sanitized after each use. Tables used for children's activities or meals shall not be used for changing diapers. Individual disposable barriers may be used between each diaper change. If the changing surface becomes soiled, the surface shall be cleaned and sanitized before another child is diapered.

9. Staff shall ensure the immediate safety of a child during diapering.

C. For every 10 children in the process of being toilet trained, there shall be at least one toilet chair or one child-sized toilet, or at least one adult sized toilet with a platform or steps and adapter seat.

1. The location of these items shall allow for sight and sound supervision of children in the classroom if necessary for the required staff-to-children ratios to be maintained.

2. Toilet chairs shall be emptied promptly and cleaned and sanitized after each use.

~~22VAC40-665-750~~ 8VAC20-790-770. Medication.

A. The vendor may administer prescription medication to a child with written permission of the parent, provided:

1. The medication is administered by a staff who meets the requirements of ~~22VAC40-665-580~~ 8VAC20-790-600 I and J;
2. The staff administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container; and
3. The staff administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration.

B. The vendor may administer over-the-counter or nonprescription medication to a child with written permission from the parent, provided the medication is:

1. Administered by a staff 18 years of age or older;
2. Labeled with the child's name;
3. In the original container with the manufacturer's direction label attached; and
4. Given only at the dose, duration, and method of administration specified on the manufacturer's label for the age or weight of the child needing the medication.

C. When needed, medication shall be refrigerated.

D. Medication, except for those prescriptions designated otherwise by written physician's order, including refrigerated medication and staff's personal medication, shall be kept in a locked place using a safe locking method that prevents access by children.

E. The vendor shall keep a record of prescription and nonprescription medication given to children, which shall include the following:

1. Name of the child to whom medication was administered;
2. Amount and name of medication administered to the child;
3. The day and time the medication was administered to the child;
4. Name of staff administering the medication;
5. Any adverse reaction; and
6. Any medication error.

~~22VAC40-665-760~~ 8VAC20-790-780. First aid and emergency supplies.

A. The following emergency supplies shall be on each floor of each building used by children, accessible to outdoor play areas, on field trips, in vehicles used for transportation, and wherever children are in care:

1. A first aid kit that contains at a minimum:
 - a. Scissors;
 - b. Tweezers;
 - c. Gauze pads;
 - d. Adhesive tape;
 - e. Bandages, assorted types and sizes;
 - f. An antiseptic cleansing solution and pads;
 - g. Digital thermometer; and
 - h. Single-use gloves such as surgical or examination gloves.

2. An ice pack or cooling agent.

B. Each first aid kit shall be easily accessible to staff but not to children.

C. The following nonmedical emergency supplies shall be required:

1. One working, battery-operated flashlight; and
2. One working, battery-operated radio.

~~22VAC40-665-770~~ 8VAC20-790-790. Procedures for emergencies.

A. The vendor shall have a written emergency preparedness plan that addresses staff responsibility and facility readiness with respect to emergency evacuation, relocation, lockdown and shelter-in-place procedures. The plan shall address the most likely to occur emergency scenarios, including severe storms, loss of utilities, natural disaster, chemical spills, intruder, and violence on or near the facility, and facility damage or other situations that may require evacuation, lockdown, or shelter-in-place.

B. The emergency preparedness plan shall contain procedural components for:

1. Evacuation procedures, including:
 - a. Scenario applicability;
 - b. Methods to alert staff and emergency responders;
 - c. Designated primary and secondary routes out of the building;
 - d. Designated assembly points away from the building;
 - e. Designated relocation site;
 - f. Methods to ensure all children are evacuated from the building, and if necessary, moved to a relocation site;

- g. Methods to account for all children at the assembly point and relocation site;
- h. Method of communication with parents after the evacuation or relocation;
- i. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during evacuation or relocation;
- j. Method to ensure essential documents, including emergency contact information, attendance records, medications, and supplies are taken to the assembly point and relocation site; and
- k. Procedures to address reuniting children with a parent or an authorized person designated by the parent to pick up the child.

2. Shelter-in-place procedures, including:
 - a. Scenario applicability, inside assembly points, primary and secondary means of access and egress;
 - b. Method to account for all children at the safe locations;
 - c. Method to ensure essential documents (attendance records, emergency contact information, etc.) and special health supplies are carried into the designated assembly points;
 - d. Method of communication after the shelter-in-place;
 - e. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during shelter-in-place; and
 - f. Procedures to address reuniting children with a parent or an authorized person designated by the parent to pick up the child.

3. Lockdown procedures, to include facility containment, including:
 - a. Methods to alert staff and emergency responders;
 - b. Methods to secure the facility and designated lockdown locations;
 - c. Methods to account for all children in the lockdown locations;
 - d. Methods of communication with parents and emergency responders;
 - e. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during lockdown; and
 - f. Procedures to address reuniting children with a parent or an authorized person designated by the parent to pick up the child.

4. Staff training requirements, drill frequency, and plan review and update.

5. Continuity of operations procedures to ensure that essential functions are maintained during an emergency.

6. Other special procedures developed with local authorities.

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C. Emergency evacuation and shelter-in-place procedures or maps shall be posted in a location conspicuous to staff and children on each floor of each building.

D. A 911 or local dial number for police, fire, and emergency medical services and the number of the regional poison control center shall be posted in a visible and conspicuous place.

E. The vendor shall ensure that all staff receives training regarding emergency evacuation, relocation, shelter-in-place, and lockdown procedures on an annual basis and at the end of each plan update.

F. The vendor shall ensure that the emergency plans are reviewed with any volunteers who work more than six hours per week prior to volunteering and on an annual basis.

~~22VAC40-665-780~~ **8VAC20-790-800**. **Emergency response drills.**

A. The emergency response drills shall be practiced, at a minimum:

1. Evacuation procedures shall be practiced at least monthly;
2. Shelter-in-place procedures shall be practiced twice a year; and
3. Lockdown procedures shall be practiced at least annually.

B. The vendor shall maintain a record of the dates of the practice drills for one year. For vendors offering multiple shifts, the simulated drills shall be divided evenly among the various shifts.

~~22VAC40-665-790~~ **8VAC20-790-810**. **Nutrition and food services.**

A. Drinking water shall be accessible to all children.

B. When vendors provide meals or snacks, the following shall apply:

1. Vendors offering both meals and snacks shall serve a variety of nutritious foods and sufficient portions.
2. Children three years of age or younger shall not be offered foods that are considered to be potential choking hazards.

C. When food is brought from home, the following shall apply:

1. The food container shall be clearly labeled in a way that identifies the owner;
2. The vendor shall have extra food or shall have provisions to obtain food to serve to children so that they can have an appropriate snack or meal if they forget to bring food from home, bring an inadequate meal or snack, or bring perishable food; and
3. Unused portions of opened food shall be discarded by the end of the day or returned to the parent.

D. Food shall be prepared, stored, transported, and served in a clean and sanitary manner.

E. When food is prepared to which a child in care is allergic, staff shall take steps to avoid cross contamination in order to prevent an allergic reaction.

F. A child with a diagnosed food allergy shall not be served any food identified in the written care plan required in ~~22VAC40-665-520 B 11~~ **8VAC20-790-540 B 11**.

G. Tables and high chair trays shall be sanitized before and after each use for feeding and cleaned at least daily.

~~22VAC40-665-800~~ **8VAC20-790-820**. **Special feeding needs.**

A. High chairs, infant carrier seats, or feeding tables shall be used for children less than 12 months who are not held while being fed.

B. When a child is placed in an infant seat, high chair, or feeding table, the protective belt shall be fastened securely.

C. Bottle fed infants who cannot hold their own bottles shall be held when fed. Bottles shall not be propped or used while the child is in his designated sleeping location.

D. Infants shall be fed on demand or in accordance with parental instructions.

E. Prepared infant formula shall be refrigerated, dated, and labeled with the child's name if more than one infant is in care.

F. Heated formula and baby food shall be stirred or shaken and tested for temperature before serving to children.

G. Milk, formula, or breast milk shall not be heated or warmed directly in a microwave. Water for warming milk, formula, or breast milk may be heated in a microwave.

H. Formula or breast milk shall not remain unrefrigerated for more than two hours and may not be reheated.

I. Prepared baby food not consumed during that feeding by an infant may be used by that same infant later in the same day, provided that the food is not served out of the baby jar and is labeled with the child's name, dated, and stored in the refrigerator; otherwise, it shall be discarded or returned to the parent at the end of the day.

~~22VAC40-665-810~~ **8VAC20-790-830**. **Transportation and field trips.**

A. If the vendor provides transportation, the vendor shall be responsible for care of the child from the time the child boards the vehicle until returned to the parent or person designated by the parent.

B. Drivers must be 18 years of age or older and possess a valid driver's license to operate the vehicle being driven.

C. Any vehicle used by the vendor for the transportation of children shall meet the following requirements:

1. The vehicle shall be manufactured for the purpose of transporting people seated in an enclosed area;
2. The vehicle's seats shall be attached to the floor;
3. The vehicle shall be insured with at least the minimum limits established by Virginia state statutes as required by § 46.2-472 of the Code of Virginia;
4. The vehicle shall meet the safety standards set by the Department of Motor Vehicles and shall be kept in satisfactory condition to assure the safety of children; and
5. If volunteers supply personal vehicles, the vendor is responsible for ensuring that the requirements of this subsection are met.

D. The vendor shall ensure that during transportation of children:

1. Virginia state statutes about safety belts and child restraints are followed as required by §§ 46.2-1095 through 46.2-1100 of the Code of Virginia, and the stated maximum number of passengers in a given vehicle is not exceeded;
2. The children remain seated and each child's arms, legs, and head remain inside the vehicle;
3. Doors are closed properly and locked unless locks were not installed by the manufacturer of the vehicle;
4. At least one staff member or the driver always remains in the vehicle when children are present; and
5. Staff has a list of the names of the children being transported and allergy care plans, if necessary.

E. When entering and leaving vehicles, children shall enter and leave the vehicle from the curb side of the vehicle or in a protected parking area or driveway.

F. Children shall cross streets at corners or crosswalks or other designated safe crossing points if no corner or crosswalk is available.

G. Staff shall verify that all children have been removed from the vehicle at the conclusion of any trip.

~~22VAC40-665-820~~ **8VAC20-790-840. Animals and pets.**

Animals that are kept on the premises of the center shall be vaccinated, if applicable, against diseases that present a hazard to the health or safety of children.

~~22VAC40-665-830~~ **8VAC20-790-850. Evening and overnight care.**

A. All supervision requirements apply during evening and overnight care.

B. For evening care, beds with mattresses or cots with at least one inch of dense padding shall be used by children who sleep longer than two hours and are not required to sleep in cribs.

C. For overnight care, beds with mattresses or cots with at least two inches of dense padding shall be used by children who are not required to sleep in cribs.

D. In addition to ~~22VAC40-665-720~~ 8VAC20-790-740 about linens, bedding appropriate to the temperature and other conditions of the rest area shall be provided.

E. When children are eight years of age or older, boys and girls shall have separate sleeping areas.

F. For vendors providing overnight care, an operational tub or shower with heated and cold water shall be provided.

G. When bath towels are used, they shall be assigned for individual use.

H. For children in evening and overnight care, quiet activities and experiences shall be available immediately before bedtime.

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 (8VAC20-790)

[Commonwealth of Virginia Certificate of Religious Exemption, Form CRE1 \(rev. 1992\)](#)

[Commonwealth of Virginia School Entrance Health Form, MCH 213G \(rev. 10/2020\)](#)

DOCUMENTS INCORPORATED BY REFERENCE (8VAC20-790)

[Child Care and Development Fund \(CCDF\) Plan for Virginia FFY 20162018, effective October 1, 2015](#)

Chapter 800

Standards for Licensed Family Day Homes

Part I

General Provisions

~~22VAC40-111-10~~ **8VAC20-800-10. Definitions.**

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

"Accessible" means capable of being entered, reached, or used.

"Adult" means any individual 18 years of age or older.

"Age-appropriate" means suitable to the chronological age and individual needs of a child.

"Assistant" means an individual who helps the provider or substitute provider in the care, protection, supervision, and guidance to children in the home.

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"Body fluids" means urine, feces, vomit, blood, saliva, nasal discharge, and tissue discharge.

"Caregiver" means an individual who provides care, protection, supervision, and guidance to children in the home and includes the provider, substitute provider, and assistant.

"Child" means an individual under 18 years of age.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

"Child with special needs" means a child with developmental disabilities, intellectual disabilities, emotional disturbance, sensory or motor impairment, or significant chronic illness who requires special health surveillance or specialized programs, interventions, technologies, or facilities.

"Cleaned" means treated in such a way as to remove dirt and debris by scrubbing and washing with soap and water or detergent solution and rinsing with water.

~~"Commissioner" means the Commissioner of the Virginia Department of Social Services.~~

"Department" means the Virginia Department of ~~Social Services~~ Education.

"Department's representative" means an employee or designee of the Virginia Department of ~~Social Services~~ Education, acting as the authorized agent of the ~~commissioner~~ superintendent.

"Evacuation" means movement of occupants out of the building to a safe area near the building.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. A family day home serving five through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. A family day home caring for more than four children under the age of two years, including the provider's own children and any children who reside in the home, shall be licensed or voluntarily registered. A family day home where the children in care are all related to the provider by blood or marriage shall not be required to be licensed.

"Good character and reputation" means knowledgeable and objective people agree that the individual (i) maintains business, professional, family, and community relationships that are characterized by honesty, fairness, and truthfulness; and (ii) demonstrates a concern for the well-being of others to the extent that the individual is considered suitable to be entrusted with the care, guidance, and protection of children.

Relatives by blood or marriage, and people who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

"High school program completion or the equivalent" means an individual has earned a high school diploma or General Education Development (G.E.D.) certificate, or has completed a program of home instruction equivalent to high school completion.

"Inaccessible" means not capable of being entered, reached, or used.

"Infant" means a child from birth up to 16 months of age.

"Nighttime care" means care provided between 7 p.m. and 6 a.m.

"Parent" means the biological, foster or adoptive parent, legal guardian, or any individual with responsibility for or custody of a child enrolled in or in the process of being enrolled in a family day home.

"Physician" means an individual licensed to practice medicine in any of the 50 states or the District of Columbia.

"Preschool" means children from two years up to the age of eligibility to attend public school, age five by September 30 of that same year.

"Programmatic experience" means time spent working directly with children in a group that is located away from the child's home. Work time shall be computed on the basis of full-time work experience during the period prescribed or equivalent work time over a longer period. Experience settings may include, but not be limited to, a child day program, family day home, child day center, boys and girls club, field placement, elementary school, or a faith-based organization.

"Provider" means an individual who is issued the family day home license by the Department of ~~Social Services~~ Education and who has primary responsibility in providing care, protection, supervision, and guidance of children in the family home.

"Relocation" means movement of occupants of the building to a safe location away from the vicinity of the building.

"Residence" means principal legal dwelling or abode that is occupied for living purposes by the provider and contains the facilities necessary for sleeping, eating, cooking, and family living.

"Sanitized" means treated in such a way as to remove bacteria and viruses from inanimate surfaces through first cleaning and secondly using a solution of one tablespoon of bleach mixed with one gallon of water and prepared fresh daily or using a sanitizing solution approved by the U.S. Environmental Protection Agency. The surface of the item is sprayed or dipped into the sanitizing solution and then allowed to air dry.

"School age" means eligible to attend public school, age five or older by September 30 of that same year.

"Serious injury" means a wound or other specific damage to the body such as, but not limited to, unconsciousness; broken bones; dislocation; deep cut requiring stitches; poisoning; concussion; and a foreign object lodged in eye, nose, ear, or other body orifice.

"Shelter-in-place" means movement of occupants of the building to designated protected spaces within the building.

"Substitute provider" means an individual who meets the qualifications of a provider; is designated by the provider; and who provides care, protection, supervision, and guidance for children in the family day home when the provider is absent from the home for more than two hours.

"Superintendent" means Superintendent of Public Instruction or the superintendent's designee.

"Time out" means a discipline technique in which a child is moved for a brief time away from the stimulation and reinforcement of ongoing activities and other children in the group to allow the child who is losing self-control to regain composure.

"Toddler" means a child from 16 months of age up to 24 months of age.

~~22VAC40-111-20~~ 8VAC20-800-20. (Reserved).

**Part II
Administration**

~~22VAC40-111-30~~ 8VAC20-800-30. **Operational responsibilities.**

A. The provider shall ensure compliance with these standards and the terms of the current license issued by the department and with relevant federal, state or local laws, and other relevant regulations.

B. The provider will ensure compliance with the home's policies that have been disclosed to the parents as required by ~~22VAC 40-111-70~~ 8VAC20-800-70.

C. The provider shall be of good character and reputation. Character and reputation investigation includes, but is not limited to, background checks as required by §§ ~~63.2-1702 and 63.2-1721~~ 22.1-289.034 et seq. of the Code of Virginia.

D. The provider shall meet the requirements specified in ~~22VAC40-191~~ 8VAC20-770, Background Checks for ~~Child Welfare Agencies~~ Child Day Programs and Family Day Systems.

E. The provider shall ensure that the home's activities, services, and facilities are conducive to the welfare of children in care.

F. The provider shall be responsible for the home's day-to-day operation.

G. The provider shall ensure that any advertising is not misleading or deceptive as required by § ~~63.2-1713~~ 22.1-289.027 of the Code of Virginia.

H. The provider shall meet the requirements specified in ~~22VAC40-80~~ 8VAC20-820, General Procedures and Information for Licensure.

~~22VAC40-111-40~~ 8VAC20-800-40. **Capacity.**

A. The provider shall ensure that the total number of children receiving care at any one time does not exceed the maximum licensed capacity of the home.

B. When at least one child receives care for compensation, all children, exclusive of the provider's own children and children who reside in the home, who are in the care and supervision of a provider, count in the licensed capacity.

C. The department will establish the home's maximum capacity based on the following factors:

1. The availability of adequate space to allow each child free movement and active play indoors and outdoors as required by ~~22VAC40-111-380~~ 8VAC20-800-380;

2. The provider's responsibility to care for another individual who may require special attention or care, including but not limited to ~~an elderly resident~~ or a child with a serious physical, emotional, or behavioral condition; or

3. The issuance of a special order to limit capacity pursuant to § ~~63.2-1709.2~~ 22.1-289.023 of the Code of Virginia.

~~22VAC40-111-50~~ 8VAC20-800-50. **General recordkeeping.**

A. The family day home shall keep a written record of children in attendance each day.

B. The provider's records shall be maintained in the home and made accessible to the department's representative.

C. Information contained in a child's record shall be privileged and confidential. The provider shall not distribute or release information in a child's record to any unauthorized person without the written consent of the child's parent.

D. Children's records shall be made available to a child's parent upon request, unless otherwise ordered by the court.

E. Records and reports on children, caregivers, and household members required by this chapter shall be maintained and made accessible to the department's representative for two years from the date of termination of services for a child, date of separation from employment for caregivers, or date of termination of residence for a household member, or unless specified otherwise.

~~22VAC40-111-60~~ 8VAC20-800-60. **Children's records.**

A. The provider shall maintain an up-to-date record at the family day home for each enrolled child.

B. A child's record shall contain the following information:

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1. Child's full name, nickname (if any), sex, address, and birth date;
2. Emergency contact information including:
 - a. Name, home address, and telephone number of each parent who has custody;
 - b. Name, address and telephone number of each custodial parent's place of employment;
 - c. Name, office address and telephone number of the child's physician;
 - d. Name, address and telephone number of two designated persons to contact in case of an emergency if the parent cannot be reached;
 - e. Information on allergies and intolerance to food, medication, or any other substances, and actions to take in an emergency situation;
 - f. Name and policy number of the child's medical insurance, if applicable;
 - g. Names of persons other than the custodial parents who are authorized to pick up the child;
 - h. Appropriate legal paperwork when a custodial parent does not authorize the provider to release the child to the other parent; and
 - i. Chronic physical problems, pertinent developmental information, and any special accommodations needed;
3. First and last dates of attendance;
4. Parent's signed acknowledgement of the receipt of the information required by ~~22VAC40-111-70~~ 8VAC20-800-70;
5. Proof of the child's age and identity and the names and addresses of previously attended child day care and schools as required by ~~22VAC40-111-80~~ 8VAC20-800-80;
6. Immunization records for the child as required by ~~22VAC40-111-90~~ 8VAC20-800-90;
7. Results of the health examination for the child as required by ~~22VAC40-111-100~~ 8VAC20-800-100;
8. Written authorization for emergency medical care should an emergency occur and the parent cannot be located immediately unless the parent presents a written objection to provision of medical treatment on religious or other grounds;
9. Written authorization if a caregiver is to administer prescription or nonprescription medication to the child as required by ~~22VAC40-111-700~~ 8VAC20-800-700 A 2;
10. Written authorization if the child is to participate in swimming or wading activities as required by ~~22VAC40-111-660~~ 8VAC20-800-660 B;
11. Written authorization if the child is taken off the premises of the family day home as required by ~~22VAC40-111-980~~ 8VAC20-800-980;

12. Special instructions to the provider including, but not limited to, exception to an infant's sleeping position as required in ~~22VAC40-111-590~~ 8VAC20-800-590 A, recommendations for the care and activities of a child with special needs as required in ~~22VAC40-111-620~~ 8VAC20-800-620 A, and exception to an infant's being fed on demand as required in ~~22VAC40-111-960~~ 8VAC20-800-960 A;
13. Record of any accidents or injuries sustained by the child while at the family day home as required by ~~22VAC40-111-840~~ 8VAC20-800-840; and
14. Documentation of the review of the child's emergency contact information as required by ~~22VAC40-111-780~~ 8VAC20-800-780 B.

~~22VAC40-111-70~~ 8VAC20-800-70. Written information for parents.

A. Before the child's first day of attendance, parents shall be provided in writing the following information:

1. Operating information including the hours and days of operation, holidays or other times closed, and the telephone number where a message can be left for a caregiver;
2. Schedule of fees and payment plans;
3. Check in and check out procedures;
4. Policies for the administration of medications;
5. Whether or not there is liability insurance of at least \$100,000 per occurrence and \$300,000 aggregate in force on the family day home operation as required by § ~~63.2-1809.1~~ 22.1-289.050 of the Code of Virginia;
6. Requirement for the family day home to notify the parent when the child becomes ill and for the parent to arrange to have the child picked up as soon as possible if so requested by the home;
7. Requirement for the parent to inform the family day home within 24 hours or the next business day after his child or any member of the immediate household has developed any reportable communicable disease, as defined by the State Board of Health, except for life-threatening diseases, which must be reported immediately;
8. Requirement for the child to be adequately immunized as required by ~~22VAC-40-111-90~~ 8VAC20-800-90;
9. Requirement for paid caregivers to report suspected child abuse or neglect according to § 63.2-1509 of the Code of Virginia;
10. Custodial parent's right to be admitted to the family day home any time the child is in care as required by § ~~63.2-1813~~ 22.1-289.054 of the Code of Virginia;
11. General daily schedule that is appropriate for the age of the enrolling child;

12. Policies for the provision of food;
13. Presence of a pet or animal in the home;
14. Discipline policies including acceptable and unacceptable discipline measures;
15. Amount of time per week that an adult assistant or substitute provider instead of the provider is scheduled to care for the child and the name of the adult assistant or substitute provider;
16. Provisions of the family day home's emergency preparedness and response plan;
17. Parental notifications required in ~~22VAC40-111-650~~ 8VAC20-800-650;
18. Policies for termination of care; and
19. Address of the website of the department, with a note that a copy of this ~~regulation~~ chapter and additional information about the family day home may be obtained from the website, including compliance history that includes information after July 1, 2003.

B. The provider shall obtain the parent's written acknowledgement of the receipt of the information in this section.

~~22VAC40-111-80~~ 8VAC20-800-80. **Proof of age and identity; record of child care and schools.**

A. Within seven business days of the child's first day of attendance at the family day home, the provider shall obtain from the parent:

1. Verification of the identity and age of the child; and
2. Name and location of previous day care programs and schools the child has attended.

B. The provider shall verify the identity and age of a child by viewing one of the following:

1. Certified birth certificate;
2. Birth registration card;
3. Notification of birth, i.e., hospital, physician, or midwife record;
4. Passport;
5. Copy of the placement agreement or other proof of the child's identity from a child placing agency;
6. Original or copy of a record or report card from a public school in Virginia;
7. Signed statement on letterhead stationery from a public school principal or other designated official that assures the child is or was enrolled in the school; or
8. Child identification card issued by the Virginia Department of Motor Vehicles.

C. The provider shall document in the child's record:

1. The method of verification of the child's age and identity; and
2. The names and locations of the previous child care programs and schools the child has attended.

D. The provider shall notify the local law-enforcement agency if the parent does not provide the information required in ~~22VAC40-111-80~~ 8VAC20-800-80 A within seven business days of the child's first day of attendance at the family day home.

E. The proof of identity, if reproduced or retained by the family day home, shall be destroyed two years after termination of services to the child. The procedures for the disposal, physical destruction, or other disposition of the proof of identity containing social security numbers shall include all reasonable steps to destroy such documents by:

1. Shredding;
2. Erasing; or
3. Otherwise modifying the social security numbers in those records to make them unreadable or indecipherable by any means.

~~22VAC40-111-90~~ 8VAC20-800-90. **Immunizations for children.**

A. Before a child may attend the family day home, the provider shall obtain documentation that the child has been adequately immunized according to the requirements of § 32.1-46 A of the Code of Virginia and applicable State Board of Health regulations.

B. Pursuant to subsection C of § 22.1-271.2 of the Code of Virginia, documentation of immunizations is not required for any child whose:

1. Parent submits an affidavit to the family day home on the current form approved by the Virginia Department of Health stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices; or
2. Physician or a local health department states on a Department of Health-approved form that one or more of the required immunizations may be detrimental to the child's health, indicating the specific nature and probable duration of the medical condition or circumstance that contraindicates immunization.

C. The family day home shall obtain documentation of additional immunizations for a child who is not exempt from the immunization requirements according to subsection B of this section:

1. Once every six months for children under the age of two years; and

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2. Once between each child's fourth and sixth birthdays.

~~22VAC40-111-100~~ 8VAC20-800-100. Physical examinations for children.

A. The provider shall obtain documentation of a physical examination by or under the direction of a physician prior to a child's attendance or within 30 days after the first day of attendance.

B. The physical examination prior to attendance shall have been conducted within:

1. Two months prior to attendance for children six months of age or younger;
2. Three months prior to attendance for children seven months through 18 months;
3. Six months prior to attendance for children age 19 months through 24 months;
4. Twelve months prior to attendance for children two years of age through five years of age; or
5. Twenty-four months prior to attendance for children six years of age and above.

EXCEPTIONS:

1. A new physical examination is not required if a copy of the physical examination is available to the admitting family day home for a child transferring from a facility licensed by the Virginia Department of ~~Social Services~~ Education, approved by a licensed family day system, voluntarily registered by the Virginia Department of ~~Social Services~~ Education or by a contract agency of the Virginia Department of ~~Social Services~~ Education, or transferring from a Virginia Department of Education-approved child care program .

2. Pursuant to subsection D of § 22.1-270 of the Code of Virginia, physical examinations are not required for any child whose parent objects on religious grounds. The parent must submit a signed statement noting that the parent objects on religious grounds and certifying that to the best of the parent's knowledge the child is in good health and free from communicable or contagious disease.

3. For a school age child, a copy of the physical examination required for his entry into a Virginia public kindergarten or elementary school is acceptable documentation.

~~22VAC40-111-110~~ 8VAC20-800-110. Form and content of immunization and physical examination reports for children.

A. The current form approved by the Virginia Department of Health or a physician's form shall be used to record immunizations received and the results of the required physical examination.

B. Each report shall include the date of the physical examination and dates immunizations were received and shall be signed by a licensed physician, the physician's designee, or an official of a local health department.

~~22VAC40-111-120~~ 8VAC20-800-120. Caregiver records.

A. The provider shall maintain a record for each caregiver.

B. Assistants' and substitute providers' records shall contain the following:

1. Name;
2. Address;
3. Verification of age;
4. Job title;
5. Date of employment or volunteering;
6. Name address and telephone number of a person to be notified in an emergency;
7. For assistants and substitute providers who are not the spouse, parent, sibling, or child of the provider and are hired after June 30, 2010, documentation that two or more references as to character and reputation as well as competency were checked before employment. If a reference check is taken over the telephone, documentation shall include:

- a. Dates of contact,
- b. Names of persons contacted,
- c. Firms contacted,
- d. Results, and
- e. Signature of person making call;

8. Background checks as required by ~~22VAC40-111-130~~ 8VAC20-770;

9. Documentation of tuberculosis screening as required by ~~22VAC40-111-170~~ 8VAC20-800-170 and ~~22VAC40-111-180~~ 8VAC20-800-180 A; and

10. Documentation of the education and training as required by ~~22VAC40-111-230~~ 8VAC20-800-230.

C. Substitute providers' records shall also contain documentation of the time of arrivals and departures as required by ~~22VAC40-111-140~~ 8VAC20-800-140 D.

D. Providers' records shall contain the following:

1. Background checks as required by ~~22VAC40-111-130~~ 8VAC20-770;

2. Documentation of tuberculosis screening as required by ~~22VAC40-111-170~~ 8VAC20-800-170 and ~~22VAC40-111-180~~ 8VAC20-800-180 A; and

3. Documentation of the education and training as required by ~~22VAC40-111-230~~ 8VAC20-800-230.

Part III
Personnel

~~22VAC40-111-130~~ 8VAC20-800-130. General qualifications for caregivers.

Caregivers shall:

1. Be of good character and reputation;
2. Be physically and mentally capable of carrying out assigned responsibilities;
3. Be courteous, respectful, patient, and affectionate toward the children in care;
4. Be able to speak, read, and write in English as necessary to:
 - a. Carry out assigned job responsibilities, and
 - b. Communicate effectively with emergency responders; and
5. Meet the requirements specified in ~~22VAC40-191-8VAC20-770~~, Background Checks for Child Welfare Agencies Day Programs and Family Day Systems.

~~22VAC40-111-140~~ 8VAC20-800-140. Qualifications and requirements for providers and substitute providers.

A. Providers and substitute providers shall be 18 years of age or older.

B. Providers licensed after and substitute providers employed after June 30, 2010, shall have:

1. (i) A high school program completion or the equivalent or (ii) evidence of having met the requirements for admission to an accredited college or university;
2. Three months of programmatic experience;
3. Current certification in cardiopulmonary resuscitation (CPR), as appropriate to the age of the children in care, from the American Red Cross, American Heart Association, American Safety and Health Institute, or the National Safety Council, or current CPR certification issued within the past two years by a community college, a hospital, a rescue squad, or a fire department; and
4. Current certification in first aid from the American Red Cross, American Heart Association, American Safety and Health Institute, or the National Safety Council, or current first aid certification issued within the past three years by a community college, a hospital, a rescue squad, or a fire department.

EXCEPTION: A provider or substitute provider who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification.

C. Use of a substitute provider shall be limited to no more than a total of 240 hours per calendar year.

D. A substitute provider shall record and sign the time of arrivals and departures on each day that the substitute provider works.

~~22VAC40-111-150~~ 8VAC20-800-150. Qualifications and requirements for assistants.

A. Assistants shall be 16 years of age or older.

B. An assistant under the age of 18 years of age shall always work under the direct supervision of the provider or substitute provider. Direct supervision means being able to hear or see the assistant and children at all times.

C. An assistant 18 years of age or older shall not be left alone with children in care for more than two hours per day.

D. An assistant 18 years of age or older who is left alone with children in care shall have:

1. Current certification in cardiopulmonary resuscitation (CPR), as appropriate to the age of the children in care, from the American Red Cross, American Heart Association, American Safety and Health Institute, or National Safety Council, or current CPR certification issued within the past two years by a community college, a hospital, a rescue squad, or a fire department; and
2. Current certification in first aid from the American Red Cross, American Heart Association, American Safety and Health Institute, or National Safety Council, or current first aid certification issued within the past three years by a community college, a hospital, a rescue squad, or a fire department.

EXCEPTION: An assistant who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification.

E. An assistant 18 years of age or older who meets the requirements for a substitute provider may act as the substitute provider when the provider is absent from the home for more than two hours.

Part IV
Household Members

~~22VAC40-111-160~~ 8VAC20-800-160. Attributes for household members.

Individuals 14 years of age and older who reside in the family day home shall:

1. Display behavior that demonstrates emotional stability;
2. Be of good character and reputation; and
3. Meet the requirements specified in ~~22VAC40-191-8VAC20-770~~, Background Checks for Child Welfare Agencies Day Programs and Family Day Systems.

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Part V

Physical Health of Caregivers and Household Members

~~22VAC40-111-170~~ 8VAC20-800-170. Initial tuberculosis screening for caregivers and household members.

A. The provider shall obtain from each caregiver at the time of hire and each adult household member prior to coming into contact with children a current Report of Tuberculosis Screening form published by the Virginia Department of Health or a form consistent with it documenting the absence of tuberculosis in a communicable form.

B. The form shall have been completed within the last 30 days and be signed by a physician, physicians' designee, or an official of the local health department.

~~22VAC40-111-180~~ 8VAC20-800-180. Subsequent tuberculosis screening for caregivers and household members.

A. The provider shall obtain for each caregiver and adult household member a current Report of Tuberculosis Screening form, in accordance with the requirements in ~~22VAC40-111-170~~ 8VAC20-800-170, every two years from the date of the first screening or more frequently as recommended by a physician or the local health department.

B. Within 30 days of a caregiver's or adult household member's coming into contact with a known case of infectious tuberculosis, the provider shall obtain for the individual a new Report of Tuberculosis Screening form in accordance with the requirements in ~~22VAC40-111-170~~ 8VAC20-800-170. Until a new screening form is issued that documents the absence of tuberculosis in a communicable form, the caregiver or adult household member shall not have contact with children.

C. The provider shall immediately obtain a new Report of Tuberculosis Screening form in accordance with the requirements in ~~22VAC40-111-170~~ 8VAC20-800-170 for any caregiver or adult household member who develops chronic respiratory symptoms of three weeks duration. Until a new screening form is issued that documents the absence of tuberculosis in a communicable form, the caregiver or adult household member shall not have contact with children.

~~22VAC40-111-190~~ 8VAC20-800-190. Physical and mental health examinations for caregivers and household members.

A. The provider or the department's representative may require a report of examination by a licensed physician or mental health professional when there are indications that a caregiver's or household member's physical or mental health may endanger the health, safety, or well-being of children in care.

B. A caregiver or household member who is determined by a licensed physician or mental health professional to show an indication of a physical or mental condition that may endanger

the health, safety, or well-being of children in care or that would prevent the performance of duties shall be removed immediately from contact with children and food served to children until the condition is cleared as evidenced by a signed statement from the physician or mental health professional.

Part VI

Caregiver Training

~~22VAC40-111-200~~ 8VAC20-800-200. Orientation.

A. The provider shall orient the substitute provider and assistant by the end of their first week of assuming job responsibilities.

B. The orientation shall cover the following topics:

1. Job responsibilities;
2. Requirements for parental notifications listed in ~~22VAC40-111-650~~ 8VAC20-800-650;
3. Standards in this chapter that relate to the substitute provider's or assistant's responsibilities;
4. Emergency evacuation, relocation, and shelter-in-place procedures;
5. Location of emergency numbers, first aid kit, and emergency supplies;
6. Confidential treatment of information about children in care and their families; and
7. Requirement for reporting suspected child abuse and neglect.

C. Documentation of the orientation shall be signed and dated by the provider and substitute provider or by the provider and assistant.

~~22VAC40-111-210~~ 8VAC20-800-210. Annual training.

A. In addition to satisfactory completion of first aid training and CPR training, caregivers shall obtain a minimum of ~~eight~~ sixteen clock hours of training annually in areas relevant to their job responsibilities.

- ~~1. Effective July 1, 2011, caregivers shall obtain 12 clock hours of training annually.~~
- ~~2. Effective July 1, 2012, caregivers shall obtain 14 clock hours of training annually.~~
- ~~3. Effective July 1, 2013, caregivers shall obtain 16 clock hours of training annually.~~

B. The annual training shall cover areas such as, but not limited to:

1. Physical, intellectual, social, and emotional child development;
2. Behavior management and discipline techniques;
3. Health and safety in the family day home environment;

4. Art and music activities for children;
5. Child nutrition;
6. Recognition and prevention of child abuse and neglect;
7. Emergency preparedness as required by ~~22 VAC 40-111-800~~ 8VAC20-800-800 C; or
8. Recognition and prevention of the spread of communicable diseases.

~~22VAC40-111-220~~ 8VAC20-800-220. **Medication administration training.**

A. To safely perform medication administration practices listed in ~~22VAC40-111-710~~ 8VAC20-800-710 whenever the family day home has agreed to administer prescription medications or nonprescription medications, the administration shall be performed by a caregiver who:

1. Has satisfactorily completed a training program for this purpose developed or approved by the Board of Nursing and taught by a registered nurse, licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist; or
2. Is licensed by the Commonwealth of Virginia to administer medications.

B. Caregivers required to have the training in subdivision A 1 of this section shall be retrained at three-year intervals.

~~22VAC40-111-230~~ 8VAC20-800-230. **Documentation of education and training.**

A. The provider shall maintain written documentation of each caregiver's applicable education and programmatic experience, applicable first aid and CPR certification, orientation, annual training, and applicable medication administration training.

B. Written documentation of annual training shall include:

1. Name of the caregiver;
2. Name of the training session;
3. Date and total hours of the session; and
4. Name of the organization that sponsored the training and the trainer.

Part VII
Physical Equipment and Environment

~~22VAC40-111-240~~ 8VAC20-800-240. **Home maintenance.**

A. Areas and furnishings of the family day home, inside and outside, shall be maintained in a clean, safe, and operable condition. Unsafe conditions shall include, but not be limited to, the presence of poisonous plants; tripping hazards; unstable heavy equipment, furniture, or other items that a child could pull down on himself; splintered, cracked, or otherwise deteriorating wood; chipped or peeling paint; visible cracks, bending or warping, rusting, or breakage of any equipment;

head entrapment hazards; and protruding nails, bolts, or other components that could entangle or could snag skin.

B. No equipment, materials, or furnishings shall be used if recalled or identified by the U.S. Consumer Product Safety Commission as being hazardous.

~~22VAC40-111-250~~ 8VAC20-800-250. **Hanging, suffocation, and strangulation hazards.**

A. Hanging items including, ~~but not limited to,~~ window blind or curtain cords, appliance cords, and ropes shall be out of reach of children under five years of age.

B. Children shall be protected from materials that could be swallowed or present a choking hazard. Toys or objects less than 1-1/4 inches in diameter and less than two inches in length shall be kept out of reach of children under the age of three years.

C. Items tied across the top or corner of a crib or playpen or toys hung from the sides with strings or cords shall be removed when the child begins to push up on hands and knees or is five months of age, whichever occurs first.

D. Hood or neck drawstrings shall be removed from a child's clothing prior to a child's using climbing play equipment.

E. Latex gloves, balloons, and empty plastic bags large enough for a child's head to fit inside shall be inaccessible to children under five years of age.

~~22VAC40-111-260~~ 8VAC20-800-260. **Drowning hazards.**

A. Access to the water in aboveground swimming pools shall be prevented by locking and securing the ladder in place or storing the ladder in a place inaccessible to children.

B. A nonclimbable barrier at least four feet high such as, but not limited to, a fence or impenetrable hedge shall surround outdoor play areas located within 30 feet of drowning hazards such as, but not limited to, inground swimming or wading pools, ponds, or fountains not enclosed by safety fences. ~~Facilities licensed prior to July 1, 2010, must comply fully with the requirement of this subsection by July 1, 2011.~~

C. Portable wading pools without integral filter systems shall:

1. Be emptied after use by each group of children, rinsed, and filled with clean water, or more frequently as necessary; and
2. When not in use during the family day home's hours of operation, be emptied, sanitized, and stored in a position to keep them clean and dry.

D. Portable wading pools shall not be used by children who are not potty trained.

E. Bathtubs, buckets, and other containers of liquid accessible to children shall be emptied immediately after use.

F. Hot tubs, spas, and whirlpools shall:

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1. Not be used by children in care, and
2. Covered with safety covers while children are in care.

22VAC40-111-270 8VAC20-800-270. Firearms and ammunition.

A. Firearms of every type and purpose shall be stored unloaded in a locked container, compartment, or cabinet, and apart from ammunition.

B. Ammunition shall be stored in a locked container, compartment, or cabinet during the family day home's hours of operation.

C. If a key is used to lock the container, compartment, or cabinet, the key shall be inaccessible to children.

22VAC40-111-280 8VAC20-800-280. Poisonous materials.

Potentially poisonous substances, materials and supplies such as, but not limited to, cleaning agents, disinfectants, deodorizers, plant care chemicals, pesticides, and petroleum distillates shall be stored away from food in areas inaccessible to children.

22VAC40-111-290 8VAC20-800-290. Sharp objects.

Sharp kitchen utensils and other sharp objects shall be inaccessible to children unless being used by the caregiver or with children under close supervision.

22VAC40-111-300 8VAC20-800-300. Body fluids contamination.

When any surface has been contaminated with body fluids, it shall be cleaned and sanitized.

22VAC40-111-310 8VAC20-800-310. Machinery.

Machinery in operation such as lawnmowers and power tools shall be inaccessible to the children in care.

22VAC40-111-320 8VAC20-800-320. Fire safety and shock prevention.

A. Small electrical appliances such as, but not limited to, curling irons, toasters, blenders, can openers, and irons shall be unplugged unless being used by the caregiver or with children under close supervision.

B. Child-resistant protective covers larger than 1-1/4 inches in diameter shall be installed on all unused electrical outlets and surge protectors accessible to children under five years of age.

C. No electrical device accessible to children shall be placed so that it could be plugged into an electrical outlet while in contact with a water source, such as a sink, tub, shower area, toilet, or swimming or wading pool.

D. Electrical cords and electrical appliances and equipment with cords that are frayed and have exposed wires shall not be used.

E. Radiators, oil and wood burning stoves, floor furnaces, fireplaces, portable electric heaters, and similar heating devices located in areas accessible to children shall have barriers or screens and be located at least three feet from combustible materials.

F. Unvented fuel burning heaters shall not be used when children are in care. Unvented fuel burning heaters include, but are not limited to, portable oil-burning (kerosene) heaters; portable, unvented liquid or gas fueled heaters; and unvented fireplaces.

G. Wood burning stoves and fireplaces and associated chimneys shall be inspected annually by a knowledgeable inspector to verify that the devices are properly installed, maintained, and cleaned as needed. Documentation of the inspection and cleaning shall be maintained by the provider.

H. All flammable and combustible materials such as, but not limited to, matches, lighters, lighter fluid, kerosene, turpentine, oil and grease products, aerosol cans, and alcohol shall be stored in an area inaccessible to children.

I. If there are open and obvious fire hazards, including the absence of fire extinguishers or smoke detectors as required by the Uniform Statewide Building Code and the Statewide Fire Prevention Code, the local fire prevention or building officials, or the State Fire Marshal's office shall be contacted by the department's representative. The provider shall comply with the requirements or recommendations made by the fire prevention or building officials to eliminate fire hazards.

22VAC40-111-330 8VAC20-800-330. Telephones.

A. A landline telephone, excluding a cordless or cell phone, shall be available, operable, and accessible during the family day home's hours of operation. An operable landline telephone is one that does not require electricity to operate. Cordless or cell phones may be used in addition to the landline telephone.

B. If the telephone number is unlisted, the provider shall ensure that parents and the department have been given the unlisted number in writing.

C. The provider shall inform the department within 48 hours and parents within 24 hours of a change of the telephone number.

22VAC40-111-340 8VAC20-800-340. Bathrooms.

A. The home shall have an indoor bathroom.

B. The bathroom shall be easily accessible to children two years of age and older.

C. The bathroom shall be kept clean and contain a working toilet and sink, toilet tissue, liquid soap, and paper towels.

22VAC40-111-350 8VAC20-800-350. Water supply.

A. The home shall have indoor running water.

B. When water is not obtained from a municipal supply, and the house is not connected to a municipal sewer line, the water supply and septic system of the family day home shall be inspected and approved by the local health official or a private laboratory if there are open and obvious symptoms of water or sewage system problems, such as evidence of cloudy, murky, or muddy water, or sewage back up.

C. Family day homes connected to a municipal water supply and sewer line that have open and obvious symptoms of water or sewage system problems shall have the problems corrected within a time frame established by the local public utility department.

D. There shall be an ample supply of hot and cold water available to children and caregivers for hand washing.

E. Hot water at taps available to children shall be maintained within a range of 105°F to 120°F.

22VAC40-111-360 8VAC20-800-360. Garbage.

A. Garbage shall be removed on a daily basis from rooms occupied by children and removed from the premises at least once weekly or more often as needed.

B. There shall be a sufficient number of garbage and diaper containers.

C. Children shall not be allowed access to garbage storage areas.

D. Garbage storage areas shall be free of litter, odor, and uncontained trash.

22VAC40-111-370 8VAC20-800-370. Rodents and insects.

A. The home shall be kept free from rodents and insect infestation.

B. No home shall maintain any receptacle or pool, whether natural or artificial, containing water in such condition that insects breeding therein may become a menace to public health.

22VAC40-111-380 8VAC20-800-380. Space.

The home shall provide each child with adequate space to allow free movement and active play indoors and out.

22VAC40-111-390 8VAC20-800-390. Individual location.

A. Each child who is two years of age and older shall have access to an individual location in which to keep clothing, toys, and belongings.

B. Each child who is under the age of two shall have an individual location in which to keep clothing, toys, and belongings that is accessible to the caregiver and parent.

22VAC40-111-400 8VAC20-800-400. Heating and cooling.

A. The temperature in all inside areas occupied by children shall be maintained no lower than 65°F.

B. Fans or other cooling systems shall be used when the temperature of inside areas occupied by children exceeds 80°F.

22VAC40-111-410 8VAC20-800-410. Electric fans.

Portable electric fans shall be securely mounted out of the reach of children and shall be equipped with a mesh guard.

22VAC40-111-420 8VAC20-800-420. Lighting.

A. Rooms, halls, and stairways used by children in care shall be lighted with natural or electric lighting for the children's safety and comfort.

B. Entrance and exit ways shall be unobstructed and be lighted with natural or electric lighting.

22VAC40-111-430 8VAC20-800-430. Stairs.

A. Children under two years of age and children over two years of age who are not developmentally ready to climb or descend stairs without supervision shall not have access to stairs.

B. Accordion expansion gates and pressure mounted gates shall not be used as protective barriers at stair openings.

C. Children over the age of two shall not have access to stairs with three or more risers that do not have protective barriers or guardrails on each side.

D. Protective barriers or guardrails on sides of stairs shall be constructed to prevent a child from climbing over, crawling or falling through, or becoming entrapped.

22VAC40-111-440 8VAC20-800-440. Decks and porches.

A. Children shall not have access to decks, porches, lofts, or balconies that do not have protective barriers or guardrails.

B. Protective barriers or guardrails shall be constructed to prevent a child from climbing over, crawling or falling through, or becoming entrapped.

22VAC40-111-450 8VAC20-800-450. Doors and windows.

A. Doors with clear glass panels that reach within 18 inches of the floor shall be clearly marked with decorative objects such as pictures, art work, or decals at the eye level of children in care.

B. Closet doors with latches shall be such that children can open the door from inside the closet.

C. Bathroom doors with locks shall be designed to permit opening of the locked door from the outside with a readily accessible opening device.

D. Windows and doors used for ventilation shall be securely screened.

22VAC40-111-460 8VAC20-800-460. Animals.

A. Family pets shall not be allowed on any surfaces where food is prepared or served.

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B. A pet or animal present at the home, indoors or outdoors, shall be in good health and show no evidence of carrying any disease.

C. Dogs or cats, where allowed, shall be vaccinated for rabies and shall be treated for fleas, ticks, or worms as needed.

D. The provider shall maintain documentation of the current rabies vaccination.

E. Caregivers shall closely supervise children when children are exposed to animals.

F. Children shall be instructed on safe procedures to follow when in close proximity to animals, e.g., not to provoke or startle them or remove their food.

G. Animals that have shown aggressive behavior shall not be kept in the home or on the grounds.

H. Monkeys, ferrets, reptiles, psittacine birds (birds of the parrot family), or wild or dangerous animals shall not be in areas accessible to children during the hours children are in care.

I. Animal litter boxes, toys, food dishes, and water dishes shall be inaccessible to children.

J. All animal excrement shall be removed promptly, disposed of properly, and, if indoors, the soiled area cleaned.

~~22VAC40-111-470~~ 8VAC20-800-470. Smoking and prohibited substances.

The provider shall ensure that:

1. No person smokes:
 - a. Indoors while children are in care;
 - b. In a vehicle when children are transported; or
 - c. Outdoors in an area occupied by children.
2. No caregiver is under the effects of medication that impairs functioning, alcohol, or illegal drugs.

~~22VAC40-111-480~~ 8VAC20-800-480. Play equipment and materials.

A. The family day home shall provide a sufficient quantity and variety of play materials and equipment that shall be readily accessible to children.

B. Equipment and materials used by a child shall be appropriate to the age, size, ability, and interest of the child.

C. Materials and equipment available shall include, but not be limited to, arts and crafts materials, texture materials, construction materials, music and sound materials, books, social living equipment, and manipulative equipment.

D. Equipment used by children shall be assembled, maintained, and used in accordance with the manufacturer's instructions.

E. Equipment and materials used by children shall be clean, nontoxic, and free from hazards such as lead paint, sharp edges or points, loose parts, and rust.

F. Toys mouthed by children shall be cleaned and sanitized daily.

~~22VAC40-111-490~~ 8VAC20-800-490. Indoor slides and play equipment.

The climbing portions of indoor slides and climbing equipment over 18 inches high shall not be over bare floor.

~~22VAC40-111-500~~ 8VAC20-800-500. Outdoor play area and equipment.

A. A nonclimbable barrier at least four feet high such as, but not limited to, a fence or impenetrable hedge shall surround outdoor play areas located within 30 feet of hazards such as, but not limited to, streets with speed limits in excess of 25 miles per hour or with heavy traffic, or railroad tracks. ~~Facilities licensed prior to July 1, 2010, must comply fully with the requirement of this subsection by July 1, 2011.~~

B. The highest climbing rung or platform on outdoor climbing equipment or top of a slide shall not exceed six feet for school age children and four feet for preschool children.

C. Stationary outdoor playground equipment shall:

1. Not be installed over concrete, asphalt, or any other hard surface;
2. Be placed at least six feet from the perimeter of other play structures or obstacles; and
3. Be firmly anchored with ground supports that are covered with materials to protect children from injury.

D. Outdoor play equipment shall meet the following requirements:

1. "S" hooks shall be tightly closed;
2. Swings shall have flexible seats of rubber, canvas, or nylon;
3. Nonflexible-molded seats shall be used only when a caregiver stays within arm's length of any hard-molded swing in use and is positioned to see and protect other children who might walk into the path of the swing;
4. Openings above the ground that are closed on all sides shall be smaller than 3-1/2 inches or larger than nine inches to prevent head entrapment hazards;
5. Ropes, loops, or any hanging apparatus that might entrap, close, or tighten upon a child shall not be used;
6. Equipment with moving parts that might pinch or crush children's hands or fingers shall not be used unless they have guards or covers; and

7. Equipment with platforms and ramps over 30 inches high shall have been designed with guardrails or barriers to prevent falls.

E. Sandboxes shall be covered when not in use.

F. Trampolines shall not be used during the hours children are in care.

22VAC40-111-510 8VAC20-800-510. Rest areas.

A. A child shall be provided with an individual crib, cot, rest mat, or bed for resting or napping.

B. Upper levels of double-deck beds shall not be used.

C. Occupied cribs, cots, rest mats, and beds shall be:

1. At least three feet from any heat-producing appliance; and
2. At least 12 inches from each other.

D. Rest mats that are used must have at least an inch of cushioning.

E. Rest mats shall be cleaned and sanitized on all sides at least weekly and as needed.

22VAC40-111-520 8VAC20-800-520. Cribs.

A. Cribs shall be provided for children from birth through 12 months of age and for children over 12 months of age who are not developmentally ready to sleep on a cot, rest mat, or bed.

B. Cribs shall not be used as a play space for infants.

C. Cribs shall:

1. Meet the U.S. Consumer Product Safety Commission standards at the time they were manufactured;
2. Not have been recalled;
3. Have no more than six centimeters or 2-3/8 inches of space between slats;
4. Have mattresses that fit snugly next to the crib so that no more than two fingers can be inserted between the mattress and the crib;
5. Not have end panel cutouts of a size to cause head entrapment; and
6. Not have mesh sides.

D. Double-deck cribs shall not be used.

E. Crib bumper pads shall not be used.

F. Crib sides shall always be up and the fastenings secured when a child is in the crib, except when the caregiver is giving the child immediate attention.

22VAC40-111-530 8VAC20-800-530. Linens.

A. Cribs, cots, rest mats, and beds when being used for sleeping or napping by children other than infants shall have

linens consisting of a top cover and a bottom cover or a one-piece covering that is open on three edges.

B. Cribs when being used by infants shall have a tight-fitting bottom cover.

C. Linens shall be assigned for individual use.

D. Linens shall be clean and washed at least weekly or when soiled.

E. Clean linens shall be used each time a child rests on the bed of a family member.

F. No soft bedding of any kind shall be used under or around infants including, but not limited to, pillows, quilts, comforters, sheepskins, or stuffed toys.

G. Children under two years of age shall not use pillows or filled comforters.

H. Pillows, when used for children over two years of age, shall be assigned for individual use and covered with pillowcases.

I. Mattresses, when used, shall be covered with a waterproof material that can be cleaned and sanitized.

22VAC40-111-540 8VAC20-800-540. Infant and toddler equipment.

A. Infant carrier seats, swings, strollers, feeding or activity tables, and high chairs shall be used according to the manufacturer's instructions and when occupied by a child, a safety strap shall be used and securely fastened.

B. Infant walkers shall not be used.

22VAC40-111-550 8VAC20-800-550. Play pens.

A play pen where used shall:

1. Have either mesh netting with mesh holes smaller than 1/4 inch or slats no more than 2-3/8 inches apart;
2. Have a firm floor with a secured, waterproof pad that is not more than one-inch thick;
3. Have the sides up and the fastenings secured when a child is in the play pen, except when the caregiver is giving the child immediate attention;
4. Be cleaned and sanitized each day of use or more often as needed;
5. Not be occupied by more than one child;
6. Not be used for the designated sleeping area;
7. Not have torn mesh sides or vinyl-covered or fabric-covered rails, protruding rivets on the rails, or broken hinges;
8. Not contain any pillows or filled comforters;

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9. Not contain large toys and other objects that can serve as a stepping stool for climbing out when a child can pull to a standing position;
10. Not be used by children who weigh 30 pounds or more; and
11. Not be used by children who are 35 inches tall or taller.

Part VIII Care of Children

22VAC40-111-560 8VAC20-800-560. Supervision.

A. A caregiver shall be physically present on site and provide direct care and supervision of each child at all times. Direct care and supervision of each child includes:

1. Awareness of and responsibility for each child in care, including being near enough to intervene if needed; and
2. Monitoring of each sleeping infant in one of the following ways:
 - a. By placing each infant for sleep in a location where the infant is within sight and hearing of a caregiver;
 - b. By in-person observation of each sleeping infant at least once every 15 minutes; or
 - c. By using a baby monitor.

B. Caregivers shall actively supervise each child during outdoor play to minimize the risk of injury to a child.

C. A caregiver may allow only school age children to play outdoors while the caregiver is indoors if the caregiver can hear the children playing outdoors.

D. Infants shall be protected from older children.

E. No child under five years of age or a child older than five who lacks the motor skills and strength to avoid accidental drowning, scalding, or falling while bathing shall be left unattended while in the bathtub.

22VAC40-111-570 8VAC20-800-570. Determining need for additional caregiver.

A. The provider shall ensure that a caregiver does not exceed 16 points by using the following point system to determine if an additional caregiver is needed:

1. Children from birth through 15 months of age count as four points each;
2. Children from 16 months through 23 months of age count as three points each;
3. Children from two through four years of age count as two points each;
4. Children from five years through nine years of age count as one point each; and
5. Children who are 10 years of age and older count as zero points.

B. A caregiver's own children and resident children under eight years of age count in point maximums.

22VAC40-111-580 8VAC20-800-580. General requirements for programs.

A. In order to promote the child's physical, intellectual, emotional, and social well-being and growth, caregivers shall:

1. Talk to the child;
2. Provide needed help, comfort, and support;
3. Respect personal privacy;
4. Respect differences in cultural, ethnic, and family backgrounds;
5. Encourage decision-making abilities;
6. Promote ways of getting along;
7. Encourage independence and self-direction; and
8. Use consistency in applying expectations.

B. Caregivers shall provide age-appropriate activities for children in care throughout the day that:

1. Are based on the physical, social, emotional, and intellectual needs of the children;
2. Reflect the diversity of enrolled children's families, culture, and ethnic backgrounds; and
3. Enhance the total development of children.

C. Daily age-appropriate activities shall include:

1. Opportunities for alternating periods of indoor active and quiet play depending on the ages of the children;
2. Opportunities for vigorous outdoor play daily, depending upon the weather, the ages, and the health of the children;
3. Opportunities for one or more regularly scheduled rest or nap periods. Children unable to sleep shall be provided time and space for quiet play;
4. Opportunities for children to learn about themselves, others, and the world around them;
5. Opportunities for children to exercise initiative and develop independence in accordance with their ages; and
6. Opportunities for structured and unstructured play time and provider-directed and child-initiated learning activities.

22VAC40-111-590 8VAC20-800-590. Requirements for sleeping and resting.

A. Infants shall be placed on their backs when sleeping or napping unless otherwise ordered by a written statement signed by the child's physician.

B. An infant, toddler, or preschool child who falls asleep in a play space other than his own crib, cot, mat, or bed shall be

moved promptly to his designated sleeping space if the safety or comfort of the infant, toddler, or preschool child is in question.

C. School age children shall be allowed to nap if needed, but not forced to do so.

22VAC40-111-600 8VAC20-800-600. Daily activities for infants and toddlers.

A. Infants and toddlers shall be provided with opportunities to:

1. Interact with caregivers and other children in the home in order to stimulate language development;
2. Play with a wide variety of safe, age-appropriate toys;
3. Receive individual attention from caregivers including, but not limited to, holding, cuddling, talking, and reading; and
4. Reach, grasp, pull up, creep, crawl, and walk to develop motor skills.

B. Infants and toddlers shall spend no more than 30 minutes of consecutive time during waking hours, with the exception of mealtimes, confined in a crib, play pen, high chair or other confining piece of equipment. The intervening time period between confinements shall be at least one hour.

22VAC40-111-610 8VAC20-800-610. Television, computers, videos, and video games.

A. Use of media such as, but not limited to, television, videos, video games, and computers shall be:

1. Limited to not more than a total of two hours per day; and
2. Limited to programs, tapes, websites, and software that are produced for children or are suitable for children.

B. Other activities shall be available to children during television or video viewing.

22VAC40-111-620 8VAC20-800-620. Care of a child with special needs.

A. Caregivers shall provide a child with special needs with the care and activities recommended in writing by a physician, psychologist, or other professional who has evaluated or treated the child.

B. The written recommendation shall:

1. Include instructions for any special treatment, diet, or restrictions in activities that are necessary for the health of the child; and
2. Be maintained in the child's record.

C. The provider shall ensure the environment is appropriate for the child based on the plan of care and shall instruct other caregivers in the proper techniques of care.

D. A caregiver shall perform only those procedures and treatments for which he has the necessary training, experience, credentials, or license to perform.

E. Staffing shall be appropriate and adequate to meet the specific physical and developmental needs of a child with special needs in care.

F. The provider and the parent of the child with special needs shall mutually determine a recommendation for the level of staffing necessary to care for and supervise the child based on the child's chronological and functional age and degree of disability.

G. Within 30 days of the child's enrollment, the provider shall provide the department's representative a written recommendation for the level of staffing necessary to care for and supervise the child.

H. The department shall make the final decision regarding level of staffing or any capacity limitations necessary to care for, supervise, and protect all children in care when a child with special needs is receiving care.

I. The parent, provider, and department's representative shall review the staffing requirements annually.

J. A separate area shall be provided for the purpose of privacy for diapering, dressing, and other personal care procedures for a child above age three with special needs who requires assistance in these activities.

22VAC40-111-630 8VAC20-800-630. Behavioral guidance.

A. Caregivers shall use positive methods of discipline. Discipline shall be constructive in nature and include techniques such as:

1. Using limits that are fair, consistently applied, appropriate, and understandable for the child's level of development;
2. Providing children with reasons for limits;
3. Giving positively worded direction;
4. Modeling and redirecting children to acceptable behavior;
5. Helping children to constructively express their feelings and frustration to resolve conflict; and
6. Arranging equipment, materials, activities, and schedules in a way that promotes desirable behavior.

B. When time out is used as a discipline technique:

1. It shall be used sparingly and shall not exceed one minute for each year of the child's age;
2. It shall be appropriate to the child's developmental level and circumstances;
3. It shall not be used with infants or toddlers;

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4. The child shall be in a safe, lighted, well-ventilated place, and within sight and sound of a caregiver; and
5. The child shall not be left alone inside or outside the home while separated from the group.

~~22VAC40-111-640~~ 8VAC20-800-640. **Forbidden actions.**

The following acts or threats thereof are forbidden:

1. Physical punishment including, but not limited to, striking a child, roughly handling or shaking a child, biting, pinching, restricting movement through binding or tying, forcing a child to assume an uncomfortable position, or exercise as punishment;
2. Enclosure in a small, confined space or any space that the child cannot freely exit himself; however, this does not apply to the use of equipment such as cribs, play pens, high chairs, and safety gates when used for their intended purpose with children preschool age or younger;
3. Punishment by another child;
4. Withholding or forcing of food, water, or rest;
5. Verbal remarks that are demeaning to the child;
6. Punishment for toileting accidents; and
7. Punishment by applying unpleasant or harmful substances.

~~22VAC40-111-650~~ 8VAC20-800-650. **Parent notifications.**

A. The provider shall provide written notification to the parent within 10 business days after the effective date of the change when there is no longer liability insurance in force on the family day home operation.

1. The provider shall obtain the parent's written acknowledgement of the receipt of this notification, and
2. A copy of the parent's written acknowledgement of the receipt of this notification shall be maintained in the child's record.

B. Caregivers shall provide information daily to parents about the child's health, development, behavior, adjustment, or needs.

C. The provider shall give parents prior notice when a substitute provider will be caring for the children.

D. Caregivers shall notify parents when persistent behavioral problems are identified and such notification shall include any disciplinary steps taken in response.

E. The provider shall notify the parent immediately when the child:

1. Has a head injury or any serious injury that requires emergency medical or dental treatment;
2. Has an adverse reaction to medication administered;

3. Has been administered medication incorrectly;
4. Is lost or missing; or
5. Has died.

F. The provider shall notify a parent the same day whenever first aid is administered to the child.

G. When a child has been exposed to a communicable disease listed in the Department of Health's current communicable disease chart, the provider shall notify the parent within 24 hours or the next business day of the home's having been informed, unless forbidden by law, except for life-threatening diseases, which must be reported to parents immediately. The provider shall consult the local health department if there is a question about the communicability of a disease.

H. Parents shall be informed of any changes in the home's emergency preparedness and response plan.

I. Except in emergency evacuation or relocation situations, the provider shall inform the parent and have written permission as required by ~~22VAC40-111-980~~ 8VAC20-800-980 whenever the child will be taken off the premises of the family day home, before such occasion.

J. If an emergency evacuation or relocation is necessary, the parent shall be informed of the child's whereabouts as soon as possible.

~~22VAC40-111-660~~ 8VAC20-800-660. **Swimming and wading activities.**

A. The level of supervision by caregivers required in ~~22VAC40-111-560~~ 8VAC20-800-560 and the point system as outlined in ~~22VAC40-111-570~~ 8VAC20-800-570 shall be maintained while the children are participating in swimming or wading activities.

B. The family day home shall annually obtain:

1. Written permission from the parent of each child who participates in swimming or wading activities, and
2. A written statement from the parent advising of a child's swimming skills before the child is allowed in water above the child's shoulder height.

C. Caregivers shall have a system for accounting for all children in the water.

D. Outdoor swimming activities shall occur only during daylight hours.

E. When one or more children are in water that is more than two feet deep in a pool, lake, or other swimming area on or off the premises of the family day home:

1. A minimum of least two caregivers shall be present and able to supervise the children; and
2. An individual currently certified in basic water rescue, community water safety, water safety instruction, or

lifeguarding shall be on duty supervising the children participating in swimming or wading activities at all times. The certification shall be obtained from an organization such as, but not limited to, the American Red Cross, the YMCA, or the Boy Scouts.

Part IX
Preventing the Spread of Disease

22VAC40-111-670 8VAC20-800-670. Exclusion of sick children.

A. Unless otherwise approved by a child's health care professional, a child shall be excluded from the family day home if he has:

1. Both fever and behavior change. A fever means oral temperature over 101°F or armpit temperature over 100°F;
2. Diarrhea (more watery, less formed, more frequent stools not associated with a diet change or medication). Children in diapers who develop diarrhea shall be excluded, and children who have learned to use the toilet, but cannot make it to the toilet in time, shall also be excluded;
3. Recurrent vomiting (vomiting two or more times in 24 hours); or
4. Symptoms of a communicable disease listed in the Virginia Department of Health's current communicable disease chart.

B. If a child needs to be excluded according to subsection A of this section, the following shall apply:

1. The parents or designated emergency contact shall be contacted immediately so that arrangements can be made to remove the child from the home as soon as possible; and
2. The child shall remain in a quiet, designated area and the caregiver shall respond immediately to the child until the child leaves the home.

22VAC40-111-680 8VAC20-800-680. Hand washing

A. Caregivers shall wash their hands with liquid soap and warm running water:

1. When their hands are dirty;
2. After toileting;
3. Before preparing and serving food;
4. Before feeding or helping children with feeding;
5. After contact with any body fluids;
6. After handling or caring for animals;
7. After handling raw eggs or meat; and
8. After diapering a child or assisting a child with toileting.

B. Caregivers shall ensure that children's hands are washed with liquid soap and warm running water:

1. When their hands are dirty;
2. Before eating;
3. After toileting or diapering;
4. After handling or caring for animals; and
5. After contact with any body fluids.

22VAC40-111-690 8VAC20-800-690. Diapering and toileting.

A. A child shall not be left unattended on a changing table during diapering.

B. When a child's clothing or diaper becomes wet or soiled, the child shall be cleaned and changed immediately.

C. During each diaper change or after toileting accidents, the child's genital area shall be thoroughly cleaned with a moist disposable wipe or a moist, clean individually assigned cloth, if the child is allergic to disposable wipes.

D. The diapering surface shall be:

1. Separate from the kitchen, food preparation areas, or surfaces used for children's activities;
2. Nonabsorbent and washable; and
3. Cleaned and sanitized after each use.

E. Soiled disposable diapers and wipes shall be disposed of in a leak-proof or plastic-lined storage system that is either foot operated or used in such a way that neither the caregiver's hand nor the soiled diaper or wipe touches the exterior surface of the storage system during disposal.

F. When cloth diapers are used, a separate leak-proof storage system as specified in subsection E of this section shall be used.

G. Children five years of age and older shall be permitted privacy when toileting.

H. Caregivers shall respond promptly to a child's request for toileting assistance.

I. The provider shall consult with the parent before toilet training is initiated.

J. Toilet training shall be relaxed and pressure free.

K. There shall be a toilet chair or an adult-sized toilet with a platform or steps and adapter seat available to a child being toilet trained.

L. Toilet chairs, when used, shall be emptied promptly, cleaned and sanitized after each use.

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Part X
Medication Administration

22VAC40-111-700 8VAC20-800-700. **General requirements for medication administration.**

A. Prescription and nonprescription medications shall be given to a child:

1. According to the home's written medication policies; and
2. Only with written authorization from the parent.

B. The parent's written authorization for medication shall expire or be renewed after 10 working days.

EXCEPTION: Long-term prescription and nonprescription drug use may be allowed with written authorization from the child's physician and parent.

C. When an authorization for medication expires, the parent shall be notified that the medication needs to be picked up within 14 days or the parent must renew the authorization. Medications that are not picked up by the parent within 14 days shall be taken to a pharmacy for proper disposal.

22VAC40-111-710 8VAC20-800-710. **Prescription medication.**

The family day home may administer prescription medication that would normally be administered by a parent or guardian to a child provided:

1. The medication is administered by a caregiver who meets the requirements in ~~22VAC40-111-220~~ 8VAC20-800-220 A;
2. The caregiver administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container; and
3. The caregiver administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration.

22VAC40-111-720 8VAC20-800-720. **Nonprescription medication.**

A. The family day home may administer nonprescription medication provided the medication is:

1. Administered by a caregiver 18 years of age or older who meets the requirements in ~~22VAC40-111-220~~ 8VAC20-800-220 A;
2. Labeled with the child's name;
3. In the original container with the manufacturer's direction label attached; and
4. Given only at the dose, duration, and method of administration specified on the manufacturer's label for the age or weight of the child needing the medication.

B. Nonprescription medication shall not be used beyond the expiration date of the product.

22VAC40-111-730 8VAC20-800-730. **Storage of medication.**

A. Medications for children in care shall be stored separately from medications for household members and caregivers.

B. When needed, medication shall be refrigerated.

C. When medication is stored in a refrigerator used for food, the medications shall be stored together in a container or in a clearly defined area away from food.

D. Medication, except for those prescriptions designated otherwise by a written physician's order, including refrigerated medication and medications for caregivers and household members, shall be kept in a locked place using a safe locking method that prevents access by children.

E. If a key is used, the key shall be inaccessible to the children.

22VAC40-111-740 8VAC20-800-740. **Medication records.**

The provider shall keep a record of prescription and nonprescription medication given children, which shall include the following:

1. Name of the child to whom medication was administered;
2. Amount and type of medication administered to the child;
3. The day and time the medication was administered to the child;
4. Name of the caregiver administering the medication;
5. Any adverse reactions; and
6. Any medication administration error.

22VAC40-111-750 8VAC20-800-750. **Topical skin products.**

A. When topical skin products such as sunscreen, diaper ointment and lotion, oral teething medicine, and insect repellent are used, the following requirements shall be met:

1. Written parent authorization noting any known adverse reactions shall be obtained at least annually;
2. The product shall be in the original container and, if provided by the parent, labeled with the child's name;
3. Manufacturer's instructions for application shall be followed; and
4. Parents shall be informed immediately of any adverse reaction.

B. The product does not need to be kept locked, but shall be inaccessible to children.

C. Caregivers without medication administration training may apply the product unless it is a prescription medication, in which case the storing and administration must meet prescription medication requirements of this chapter.

D. The product shall not be used beyond the expiration date of the product.

E. Sunscreen shall have a minimum sunburn protection factor (SPF) of 15.

Part XI
Emergencies

~~22VAC40-111-760~~ 8VAC20-800-760. First aid and emergency medical supplies.

A. The following emergency supplies shall be in the family day home, accessible to outdoor play areas, on field trips, in vehicles used for transportation and wherever children are in care:

1. A first aid kit that contains at a minimum:
 - a. Scissors;
 - b. Tweezers;
 - c. Gauze pads;
 - d. Adhesive tape;
 - e. Adhesive bandages, assorted sizes;
 - f. Antiseptic cleaning solution or pads;
 - g. Digital thermometer;
 - h. Triangular bandages;
 - i. Single use gloves such as surgical or examination gloves;
 - j. In homes located more than one hour's travel time from a health care facility, activated charcoal preparation (to be used only on the direction of a physician or the home's local poison control center); and
 - k. First aid instructional manual.
2. An ice pack or cooling agent.

B. The first aid kit shall be readily accessible to caregivers and inaccessible to children.

~~22VAC40-111-770~~ 8VAC20-800-770. Emergency flashlights and radios.

A working battery-operated flashlight, a working portable battery-operated weather band radio, and extra batteries shall be kept in a designated area and be available to caregivers at all times.

~~22VAC40-111-780~~ 8VAC20-800-780. Emergency information.

A. The emergency contact information listed in ~~22VAC40-111-60~~ 8VAC20-800-60 B 2 and the parent's written authorization for emergency medical care as required by ~~22VAC40-111-60~~ 8VAC20-800-60 B 8 shall be made

available to a physician, hospital, or emergency responders in the event of a child's illness or injury.

B. Annually, the provider shall:

1. Review with the parent the emergency contact information required in ~~22VAC40-111-60~~ 8VAC20-800-60 B 2 to ensure the information is correct, and
2. Obtain the parent's signed acknowledgment of the review.

~~22VAC40-111-790~~ 8VAC20-800-790. Posted telephone numbers.

The following telephone numbers shall be posted in a visible area close to the telephone:

1. A 911 or local dial number for police, fire, and emergency medical responders;
2. The responsible person for emergency backup care as required in ~~22VAC40-111-800~~ 8VAC20-800-800 A 3; and
3. The regional poison control center.

~~22VAC40-111-800~~ 8VAC20-800-800. Emergency preparedness and response plan.

A. The family day home shall have a written emergency preparedness and response plan that:

1. Includes emergency evacuation, emergency relocation, and shelter-in-place procedures;
2. Addresses the most likely to occur scenarios, including but not limited to fire, severe storms, flooding, tornadoes, and loss of utilities; and
3. Includes provisions for a responsible person who is 18 years of age or older and is able to arrive at the family day home within 10 minutes for emergency backup care until the children can be picked up by their parents.

B. The provider shall review the emergency plan at least annually and update the plan as needed. The provider shall document in writing each review and update to the emergency plan.

C. The provider shall ensure that each caregiver receives training regarding the emergency evacuation, emergency relocation, and shelter-in-place procedures by the end of his first week of assuming job responsibilities, on an annual basis, and at the time of each plan update.

~~22VAC40-111-810~~ 8VAC20-800-810. Emergency preparedness and response plan.

Evacuation procedures shall include:

1. Methods to alert caregivers and emergency responders;
2. Designated primary and secondary routes out of the building;
3. Designated assembly point away from the building;

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4. Designated relocation site;
5. Methods to ensure all children are evacuated from the building and, if necessary, moved to a relocation site;
6. Methods to account for all children at the assembly point and relocation site;
7. Methods to ensure essential documents, including emergency contact information, medications, and supplies are taken to the assembly point and relocation site;
8. Method of communication with parents and emergency responders after the evacuation; and
9. Method of communication with parents after the relocation.

22VAC40-111-820 8VAC20-800-820. Shelter-in-place procedures.

Shelter-in-place procedures shall include:

1. Methods to alert caregivers and emergency responders;
2. Designated safe location within the home;
3. Designated primary and secondary routes to the safe location;
4. Methods to ensure all children are moved to the safe location;
5. Methods to account for all children at the safe location;
6. Methods to ensure essential documents, including emergency contact information, and supplies are taken to the safe location; and
7. Method of communication with parents and emergency responders.

22VAC40-111-830 8VAC20-800-830. Emergency response drills.

A. The emergency evacuation procedures shall be practiced monthly with all caregivers and children in care during all shifts that children are in care.

B. Shelter-in-place procedures shall be practiced a minimum of twice per year.

C. Documentation shall be maintained of emergency evacuation and shelter-in-place drills that includes:

1. Identity of the person conducting the drill;
2. The date and time of the drill;
3. The method used for notification of the drill;
4. The number of caregivers participating;
5. The number of children participating;
6. Any special conditions simulated;

7. The time it took to complete the drill;
 8. Problems encountered, if any; and
 9. For emergency evacuation drills only, weather conditions.
- D. Records of emergency evacuation and shelter-in-place drills shall be maintained for one year.

22VAC40-111-840 8VAC20-800-840. Injury records.

A. The provider shall record in the child's record an injury or accident sustained by a child while at the family day home that requires first aid or emergency medical or dental treatment.

B. The information recorded shall include the following:

1. Date and time of injury;
2. Name of injured child;
3. Type and circumstance of the injury;
4. Caregiver present and action taken;
5. Date and time when parents were notified;
6. Any future action to prevent recurrence of the injury;
7. Caregiver and parent signatures or two caregiver signatures; and
8. Documentation on how the parent was notified.

22VAC40-111-850 8VAC20-800-850. Reports to department.

A. The provider shall report to the department within 24 hours of the circumstances surrounding the following incidents:

1. Lost or missing child when local authorities have been contacted for help;
2. Serious injury to a child while under the family day home's supervision; and
3. Death of a child while under the family day home's supervision.

B. A written report shall be completed and submitted to the department within five working days of the date the incident occurred.

22VAC40-111-860 8VAC20-800-860. Reports of suspected child abuse or neglect and disease outbreaks.

A. A caregiver shall immediately call the local department of social services or call the toll free number of the Child Abuse and Neglect Hotline (1-800-552-7096/TDD) whenever there is reason to suspect that a child has been or is being subjected to any kind of child abuse or neglect by any person.

B. The provider shall immediately make or cause to be made a report of an outbreak of disease as defined by the Virginia Board of Health. Such report shall be made by rapid means to the local health department or to the Commissioner of the Virginia Department of Health.

Part XII
Nutrition

~~22VAC40-111-870~~ 8VAC20-800-870. General requirements for meals and snacks.

A. Meals and snacks shall be served in accordance with the times children are in care, which include:

1. For family day homes operating less than four consecutive hours at least one snack shall be served.
2. For family day homes operating four to seven consecutive hours at least one meal and one snack shall be served.
3. For family day homes operating seven to 12 consecutive hours at least one meal and two snacks or two meals and one snack shall be served.
4. For family day homes operating 12 to 16 consecutive hours at least two meals and two snacks or three meals and one snack shall be served.

B. A family day home shall ensure that children arriving from a half-day, morning program who have not yet eaten lunch receive a lunch.

C. The family day home shall schedule snacks or meals so there is a period of at least 1-1/2 hours, but no more than three hours, between each meal or snack unless there is a scheduled rest or sleep period for children between the meals and snacks.

D. Children shall be served small-sized portions.

E. Food shall be prepared, stored, served, and transported in a clean and sanitary manner.

F. Leftover food shall be discarded from individual plates following a meal or snack.

G. Tables and high chair trays shall be cleaned after each use, but at least daily.

~~22VAC40-111-880~~ 8VAC20-800-880. Meals and snacks provided by family day home.

When family day homes provide meals or snacks, the following shall apply:

1. Family day homes shall follow the most recent, age-appropriate nutritional requirements of a recognized authority such as the Child and Adult Care Food Program of the United States Department of Agriculture (USDA).
2. Children shall be allowed second helpings of food listed in the child care food program meal patterns.

~~22VAC40-111-890~~ 8VAC20-800-890. Meals and snacks brought from child's home.

When food is brought from home, the following shall apply:

1. The food container shall be clearly labeled in a way that identifies the owner;

2. The family day home shall have extra food or shall have provisions to obtain food to serve to a child so the child can have an appropriate snack or meal as required in ~~22VAC40-111-880~~ 8VAC20-800-880 if the child forgets to bring food from home or brings an inadequate meal or snack; and

3. Unused portions of food shall be discarded by the end of the day or returned to the parent.

~~22VAC40-111-900~~ 8VAC20-800-900. Preventing choking.

A. To assist in preventing choking, food that is hard, round, small, thick and sticky, or smooth and slippery such as whole hot dogs sliced into rounds, nuts, seeds, raisins, uncut grapes, uncut raw carrots, peanuts, chunks of peanut butter, hard candy, and popcorn shall not be served to children under four years of age, unless the food is prepared before being served in a manner that will reduce the risk of choking, i.e., hot dogs cut lengthwise, grapes cut in small pieces, and carrots cooked or cut lengthwise.

B. Children shall not be allowed to eat or drink while walking, running, playing, lying down, or riding in vehicles.

~~22VAC40-111-910~~ 8VAC20-800-910. Drinking water and fluids.

A. Water shall be available for drinking and shall be offered on a regular basis to all children in care.

B. In environments of 80°F or above, attention shall be given to the fluid needs of children at regular intervals. Children in such environments shall be encouraged to drink fluids.

C. Clean individual drinking cups shall be provided daily. Children shall not be allowed to share common drinking cups.

~~22VAC40-111-920~~ 8VAC20-800-920. Menus.

When meals or snacks are provided by the family day home, the menu for the current one-week period shall:

1. Be dated;
2. Be given to parents or posted or placed in an area accessible to parents;
3. List any substituted food; and
4. Be kept on file one week at the family day home.

~~22VAC40-111-930~~ 8VAC20-800-930. Eating utensils and dishes.

A. Eating utensils shall be appropriate in size for children to handle.

B. Chipped or cracked dishes shall not be used.

C. Eating utensils and dishes shall be properly cleaned by prerinsing, washing, and air drying, or using a dishwasher.

D. Eating utensils and dishes shall be stored in a clean dry place, and protected from contamination.

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E. If disposable eating utensils and dishes are used, they shall be sturdy enough to prevent spillage or other health and safety hazards.

F. Disposable utensils and dishes shall be used once and discarded.

~~22VAC40-111-940~~ 8VAC20-800-940. Food storage.

A. Temperatures shall be maintained at or below 40°F in refrigerator compartments and at or below 0°F in the freezer compartments.

B. The provider shall have an operable thermometer available to monitor refrigerator and freezer compartment temperatures.

C. All perishable foods and drinks used for children in care, except when being prepared and served, shall be kept in the refrigerator.

~~22VAC40-111-950~~ 8VAC20-800-950. Milk.

A. All milk and milk products shall be pasteurized.

B. Powdered milk shall be used only for cooking.

~~22VAC40-111-960~~ 8VAC20-800-960. Feeding infants.

A. Infants shall be fed on demand unless the parent provides other written instructions.

B. Infants who cannot hold their own bottles shall be picked up and held for bottle feeding. Bottles shall not be propped.

C. High chairs, infant carrier seats, or feeding tables with safety waist and crotch straps fastened according to the manufacturer's instructions shall be used for children under 12 months of age who are not held while being fed.

D. Infant formula shall be prepared according to the manufacturer's or physician's instructions.

E. Bottles shall be refrigerated and labeled with the child's full name and the date, if more than one infant is in care.

F. Refrigerated bottles of prepared formula and breast milk shall be discarded after 48 hours if not used.

G. Bottles shall not be heated in a microwave oven.

H. To avoid burns, heated formula and baby food shall be stirred or shaken and tested for temperature before being served to children.

I. A child's mother shall be granted access to a private area of the family day home to facilitate breast feeding.

J. Solid foods shall:

1. Not be fed to infants less than four months of age without parental consent; and
2. Be fed with a spoon, with the exception of finger foods.

K. Baby food shall be served from a dish and not from the container.

L. Baby food remaining in:

1. A serving dish shall be discarded;
2. Opened containers, from which a portion has been removed, shall be refrigerated and labeled with the child's full name and the date, if more than one infant is in care; and
3. Opened containers stored in the refrigerator shall be discarded if not consumed within 24 hours of storage.

~~22VAC40-111-970~~ 8VAC20-800-970. Special feeding infants.

A. The consistency of food provided for a child with special needs shall be appropriate to any special feeding needs of the child.

B. Necessary and adaptive feeding equipment and feeding techniques shall be used for a child with special feeding needs.

Part XIII Transportation

~~22VAC40-111-980~~ 8VAC20-800-980. Written permission for transportation and field trips.

A. General written permission shall be obtained from the parent of each child for the provider to take the child off the premises of the family day home. The general written permission shall be on a form that lists regularly scheduled trips (e.g., library, store, playground) and the driver, if the child is to be transported.

B. Special written permission shall be obtained from the parent of each child for the provider to take the child on special field trips (those not regularly scheduled). The written special permission shall specify destination, duration of trip, and driver, if the child is to be transported.

~~22VAC40-111-990~~ 8VAC20-800-990. Requirements for drivers.

A. Drivers must be 18 years of age or older.

B. The provider shall ensure that during transportation of children the driver has:

1. A valid driver's license;
2. The name, address, and telephone number of the family day home;
3. A copy of the parent's written permission to transport the child;
4. A copy of each child's emergency contact information as required in ~~22VAC40-111-60~~ 8VAC20-800-60 B 2;
5. Emergency supplies as required in ~~22VAC40-111-760~~ 8VAC20-800-760; and
6. A mechanism for making telephone calls to emergency responders and parents (e.g., change, calling card, cellular phone).

~~22VAC40-111-1000~~ **8VAC20-800-1000. Requirements for vehicles.**

The provider shall ensure that the vehicle used for transportation:

1. Meets the safety standards set by the Virginia Department of Motor Vehicles;
2. Is kept in satisfactory condition to assure the safety of children;
3. Is licensed and insured according to state law;
4. Was manufactured for the purpose of transporting people seated in an enclosed area; and
5. Has seats that are attached to the floor.

~~22VAC40-111-1010~~ **8VAC20-800-1010. Requirements for transportation.**

The provider shall ensure that during transportation of children:

1. Each child is in an individual car seat or individual and appropriate restraint in accordance with Virginia law;
2. Each child's arms, legs, and head remain inside the vehicle;
3. Doors are closed properly and locked unless locks were not installed by the manufacturer of the vehicle;
4. No child is left unattended inside or outside a vehicle; and
5. Each child boards and leaves the vehicle from the curb side of the street.

Part XIV
Nighttime Care

~~22VAC40-111-1020~~ **8VAC20-800-1020. Nighttime care.**

A. For nighttime care during which a child sleeps more than two hours, the following is required:

1. A child shall have a rest area that meets the requirements of ~~22VAC40-111-510~~ 8VAC20-800-510;
2. An infant shall have an individual crib that meets the requirements of ~~22VAC40-111-520~~ 8VAC20-800-520; and
3. Linens shall be provided that meet the requirements in ~~22VAC40-111-530~~ 8VAC20-800-530.

B. For children in nighttime care, quiet activities and experiences shall be available immediately before bedtime.

C. Providers shall establish a bedtime schedule for a child in consultation with the child's parent.

D. Separate sleeping and dressing areas shall be provided for children of the opposite sex over six years of age.

E. Each child shall have a toothbrush, and a comb or hair brush assigned for individual use.

F. Each child nine months of age or older shall have flame-resistant or snug-fitting sleepwear.

G. Bath towels and washcloths, when used, shall be assigned for individual use and laundered as needed, but at least weekly.

H. A child shall have a routine that encourages good personal hygiene practices including bathing (if needed) and teeth brushing.

I. Caregivers shall remain awake until all children are asleep and shall sleep on the same floor level as the children in care.

J. A baby monitor shall be used if the caregiver is not sleeping in the room with the child or in a room adjacent to the room where the child is sleeping.

Chapter 810

Minimum Standards for Licensed Family Day Systems

~~22VAC40-120-10~~ **8VAC20-810-10. Definitions; license provisions.**

A. Chapter ~~17 14.1, Article 3~~ (§ ~~63.2-1700 22.1-289.010~~ et seq.) of Title ~~63.2 22.1~~ of the Code of Virginia sets forth the responsibility of the Department of ~~Social Services~~ Education for licensure of family ~~day-care day~~ systems, including the authority and responsibility of the State Board of ~~Social Services~~ Education for the development of regulations containing minimum standards and requirements.

It is a misdemeanor to operate a family ~~day-care day~~ system without a license. (§ ~~63.2-1712 22.1-289.022~~ of the Code of Virginia)

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

"Abused or neglected child" (see § 63.2-100 of the Code of Virginia) means any child younger than 18 years of age whose parents or other persons responsible for his care:

- a. Create or inflict, threaten to create or inflict, or allow to be created or inflicted a physical or mental injury by other than accidental means, or create a substantial risk of death, disfigurement, or impairment of bodily or mental functions;
- b. Neglect or refuse to provide care necessary for the child's health, unless the child is, in good faith, under treatment solely by spiritual means through prayer, according to the practice of a recognized church or denomination;
- c. Abandon the child;
- d. Commit or allow to be committed any sexual act upon a child in violation of the law.

"Child" means any person younger than 18 years of age.

~~"Commissioner" means the Commissioner of Social Services also known as the Director of the Virginia Department of Social Services. (§ 63.2-100 of the Code of Virginia)~~

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"Complaint" means an accusation received either orally or in writing that:

- a. A licensed family ~~day-care~~ day system is not in compliance with one or more of these standards or one or more statutory requirements;
- b. A family day-care ~~system~~ home is not in compliance with one or more applicable requirements of these standards or one or more requirements as established by the family ~~day-care~~ day system; or
- c. A child or children in the care of a family day-care home, which is a member of a licensed family ~~day-care~~ day system, is or are being abused or neglected.

"~~Day-care~~ Day care" means care, protection, and guidance provided to a child or group of children separated from their parents or guardian for less than 24 hours per day at a location other than the home of the parents or guardian.

"Day-care provider" means an individual who, by contract with a family ~~day-care~~ day system, provides ~~day-care~~ day care in his home.

"Department" means the Virginia Department of ~~Social Services~~ Education.

"Department representative" means an employee of the department, acting as the authorized agent of the ~~commissioner~~ superintendent in carrying out the responsibilities and duties specified in Chapter 47 14.1, Article 3 (§ ~~63.2-1700~~ 22.1-289.010 et seq.) of Title ~~63.2~~ 22.1 of the Code of Virginia.

"Director" means the licensee or a person designated by the licensee who oversees the day-to-day operation of the system, including compliance with all minimum standards for licensed family ~~day-care~~ systems.

"Family ~~day-care~~ day system" means any person who approves family day-care homes as members of its system; who refers children to available family day-care homes in that system; and who through contractual arrangement may provide central administrative functions, including training of operators of family day-care homes; technical assistance and consultation to operators of family day-care homes; inspection, supervision, monitoring, and evaluation of family day-care homes; and referral of children to available health and social services. (§ ~~63.2-100~~ 22.1-289.02 of the Code of Virginia)

"Family day-care ~~system~~ home" means any private family home, which is an approved member of a family ~~day-care~~ day system and receives nine or fewer children for care, protection, and guidance during any part of the 24-hour day except children who are related by blood or marriage to the person who maintains the home. Family day-care homes that are members of a licensed day-care system and are approved by that system to care for five or more children are not subject to direct licensure by the department. (§ 63.2-100 of the Code of Virginia)

"Licensee" means any person, association, partnership, or corporation to whom the license is issued.

"Person" means any individual; corporation; partnership; association; limited liability company; local government; state agency, including any department, institution, authority, instrumentality, board, or other administrative agency of the Commonwealth; or other legal or commercial entity that operates or maintains a ~~child welfare agency~~ child day program or family day system.

"Referral" means any activity by the family ~~day-care~~ day system that provides assistance in locating or arranging ~~day-care~~ day care for children in homes that have been accepted or approved as members of the system, or in locating or arranging for health or social services from other sources based upon identified needs.

"Sponsor" means an individual, association, partnership, or corporation having the responsibility for planning and operating a family ~~day-care~~ day system subject to licensure. The licensee is the sponsor of a family ~~day-care~~ day system. (The sponsor may not, in all cases, be the owner of the physical plant including buildings or real estate, or both, in or on which the family ~~day-care~~ day system office is located. In these instances the term "sponsor" as defined here and used in this chapter is considered to be the person, partnership, association, or corporation that owns the enterprise rather than the physical plant or real estate, or both.)

"Superintendent" means the Superintendent of Public Instruction or the superintendent's designee.

C. The license.

1. A license to operate a family ~~day-care~~ day system is issued to a specific person, partnership, association, or corporation for an exact location, which will be indicated on the license.
2. The family ~~day-care~~ day system shall be operated and conducted in the name of the sponsor or in such name as shall be designated on the application and as indicated on the license.
3. The license expires automatically and is not transferable when there is a change of sponsorship.
4. The current license shall be posted at all times at a place that is conspicuous to the public in the building housing the system office. If the system has more than one office, copies of the current license shall be posted in a place that is conspicuous to the public in each office.
5. An annual license is one issued to a family ~~day-care~~ day system when the activities, services, and facilities meet substantially the minimum standards and requirements for a license that are set forth in this chapter and any additional requirements that may be specified in Chapter 47 14.1, Article 3 (§ ~~63.2-1700~~ 22.1-289.010 et seq.) of Title ~~63.2~~ 22.1 of the Code of Virginia. The annual license is effective for 12 months unless it is sooner revoked or surrendered.

6. When an annual license expires, a provisional license may be issued for any period not to exceed six months if the applicant is temporarily unable to comply with all of the requirements; however, no facility may operate under any such provisional license and renewals of that license for a longer period than six successive months.

7. At the discretion of the ~~commissioner~~ superintendent, a conditional license may be issued to operate a new facility in order to permit the applicant to demonstrate compliance with all requirements. A conditional license and any renewal of that shall be for no longer a period than six successive months.

8. Terms of the license.

a. The terms of any license issued include:

- (1) The operating name of the family ~~day-care~~ day system;
- (2) The name of the individual, the partnership, the association, or the corporation to whom the license is issued;
- (3) The physical location;
- (4) The number of homes that may be under contract to the system;
- (5) The period of time for which the license is effective; and
- (6) The total number of children who may be referred by the system and be receiving care at any given time in all homes that are members of the system.

b. The terms of the license may include other limitations that the ~~commissioner~~ Superintendent may prescribe within the context of this chapter.

c. The provisional license cites the standards with which the licensee is not in compliance.

D. The licensing process.

1. Preapplication consultation. Upon request, the department's representative will provide consultation to any person seeking information about obtaining a license for a family ~~day-care~~ day system. The purpose of such consultation is:

- a. To explain standards;
- b. To help the potential applicant to explore the operational demands of a licensed family ~~day-care~~ day system;
- c. To provide assistance in locating sources of information and technical assistance;
- d. To alert the potential applicant of the need to determine whether local ordinances will affect the proposed operation (e.g., zoning, business license, etc.); and
- e. To provide an onsite visit to a proposed family ~~day-care~~ day system office, upon request.

2. The application.

a. The application for a license to operate a family ~~day-care~~ day system shall be obtained from the department.

b. The application, together with all required information, shall be submitted to the department at least two months in advance of the planned opening date.

This is required in order that a determination of compliance with the provisions of Chapter ~~47~~ 14.1, Article 3 (§ ~~63.2-1700~~ 22.1-289.010 et seq.) of Title ~~63.2~~ 22.1 of the Code of Virginia and with the Standards for Licensed Family ~~Day-Care~~ Day Systems as set forth in this chapter may be made.

Among other things, the information submitted shall be sufficient to enable the department's representative to determine, during the subsequent investigation, the specific services to be offered, the adequacy of staff to provide these services, the financial capability of the applicant, the character and reputation of the applicant, including the officers and agents of any association, partnership, or corporation as mandated by § ~~63.2-1702~~ 22.1-289.013 of the Code of Virginia.

c. The application shall be signed by the individual responsible for the operation of the family ~~day-care~~ day system. The application for a family ~~day-care~~ day system to be operated by a board shall be signed by an officer of the board, preferably the chairman.

3. The investigation.

a. Following receipt of the application, the department's representative will make an on-site inspection of the proposed office and an investigation of the proposed services, as well as an investigation of the character and reputation of the applicant, and, upon receipt of the initial application, an investigation of the applicant's financial responsibility.

b. Applicants for licensure and licensees shall at all times afford the ~~commissioner~~ superintendent reasonable opportunity to inspect all of their facilities, books, and records, and to interview their agents and employees and any person living or participating in such facilities, or under their custody, control, direction, or supervision. (§ ~~63.2-1706~~ 22.1-289.018 of the Code of Virginia) The financial records of an initial applicant shall not be subject to inspection if the applicant submits an operating budget and at least one credit reference.

4. Notice to the applicant of ~~commissioner's~~ superintendent's action. Upon completion of the investigation of the application for a license, the applicant will be notified in writing of the ~~commissioner's~~ superintendent's decision.

If the license is issued, an accompanying letter will cite any areas of noncompliance with standards. This letter will also include any limitations on the license and may contain recommendations.

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If a license is to be denied, the letter will state the reasons for the intent to deny and will set forth the applicant's right to an administrative hearing.

5. Procedures for renewal of annual, provisional, or conditional license. In order to renew an annual, provisional, or conditional license, the licensee must complete the renewal application and return it, together with any required attachments, to the department. In order to assure timely processing, the renewal application should be completed and returned within 10 days after it is received from the department.

The procedure for investigation and issuance or denial of the license as set forth in subdivisions 3 and 4 of this subsection will be followed.

6. Early compliance (replacement of a provisional or conditional license with an annual license).

a. A provisional or conditional license may be voided and an annual license issued when all of the following conditions exist:

(1) The facility complies with all standards listed on the face of the provisional or conditional license well in advance of the expiration date of the provisional or conditional license, and no additional areas of noncompliance exist;

(2) Compliance has been verified by an on-site observation by the department representative or by written evidence provided by the licensee; and

(3) All other terms of the license remain the same.

b. A request to void a provisional or conditional license and to issue an annual license must be made in writing by the licensee to the ~~regional office of the department from which the family day care system's license to operate was issued~~ Office of Child Care Licensing.

c. If the request is approved by the department, the effective date of the new annual license will be the same as the beginning date of the provisional or conditional license.

7. Situation requiring a new application. A new application must be filed when sponsorship of the family ~~day care~~ day system changes.

8. Modification.

a. The conditions of the license may be modified during the effective dates of the license with respect to increasing or decreasing the number of homes that may be placed under contract, the number of children who may be referred by the system and be receiving care at a given time, changing the name of the system when there is no change in sponsorship, changing location of the system office, or other conditions caused by changes in staff, program, or facilities.

b. The licensee shall report to the department any contemplated changes in operation that would affect either the terms of the license or the continuing eligibility for a license. (This does not mean the department has to approve changes in staff or program unless they affect the terms of the license or continuing eligibility.)

c. This information shall be submitted in writing by the licensee to the ~~regional office of the department from which the family day care system's license to operate was issued~~ Office of Child Care Licensing.

d. The department will then determine whether such changes may be approved and the license modified accordingly or whether a new application must be filed.

9. Determination of continued compliance. In order to determine continued compliance with standards during the effective dates of the license, the department's representative will make announced and unannounced visits to the office or offices of the system and may make such visits to homes that are members of the system.

10. Complaint investigation.

a. The department has the responsibility to investigate any complaints regarding alleged violations of minimum standards for licensed family ~~day care~~ day systems and provisions of Chapter ~~47 14.1, Article 3~~ (§ ~~63.2-1700 22.1-289.010~~ et seq.) of Title ~~63.2 22.1~~ of the Code of Virginia.

b. The licensee has the responsibility to investigate any complaints regarding any family day-care home that is approved as a member of its system. (See ~~22VAC40-120-50 8VAC20-810-50 C.~~) At its discretion the department may also investigate complaints against individual homes.

11. Revocation. Any license may be revoked for failure to maintain these standards or for violation of the provisions of Chapter ~~47 14.1, Article 3~~ (§ ~~63.2-1700 22.1-289.010~~ et seq.) of Title ~~63.2 22.1~~ of the Code of Virginia.

12. Appeals. The applicant or licensee has the right to request an administrative hearing regarding any denial or revocation of a license, in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

Following the receipt of the final order that transmits the department's decision after the administrative hearing, the applicant or licensee has the right to appeal to a court of record in accordance with § ~~63.2-1710 22.1-289.024~~ of the Code of Virginia.

~~22VAC40-120-20~~ 8VAC20-810-20. Organization and administration.

A. Sponsorship.

1. A family ~~day-care~~ day system may be sponsored by a single individual, a partnership, an association, or a corporation.

2. A corporation sponsoring a family ~~day-care~~ day system shall maintain its corporate status in accordance with Virginia law.

3. Such corporation shall be organized and empowered for the purpose of operating and maintaining a family ~~day-care~~ day system. Corporations not organized and empowered solely to operate a family ~~day-care~~ day system shall provide for such operations in their charters.

4. A family ~~day-care~~ day system sponsored by an association or corporation shall be controlled by a governing board that shall fulfill the duties of the licensee.

5. If a family ~~day-care~~ day system is sponsored by an individual or a partnership, the individual or partnership shall be the licensee and shall comply with the responsibilities specified for the governing board. (See subdivision B 3 of this section.)

B. Governing board.

1. Composition of the governing board.

a. The membership of the governing board shall be based on the size and purpose of the family ~~day-care~~ day system as well as the services to be offered by the system.

b. It shall be large enough and of a composition to:

(1) Be representative of the variety of interests served by the system;

(2) Contain experience appropriate to the services offered by the system; and

(3) Be representative of the geographical area served by the system.

c. At minimum, the governing board shall be composed of three members, unless there are fewer than three shareholders at which time the number of members can equal the number of shareholders. This membership shall include a president, secretary-treasurer, and member-at-large. When there are fewer than three members, this membership shall consist of a president and secretary-treasurer.

d. The method of selecting board members shall be made known to the department's representative and shall be consistent with the bylaws.

2. Meetings of the governing board.

a. The governing board shall meet not less often than quarterly.

b. Minutes of all meetings shall be recorded and retained in a permanent file at the office of the family ~~day-care~~ day system.

c. Copies of minutes shall be made available to the department's representative upon request.

3. The responsibilities of the governing board shall include, but shall not be limited to:

a. Establishing written bylaws for the association or corporation (not applicable to an individual or partnership).

b. Establishing written goals and policies under which the family ~~day-care~~ day system is to operate (see subsection C of this section).

c. Ensuring the family ~~day-care~~ day system functions according to its defined purpose and within the scope of services to be offered.

d. Ensuring compliance with minimum standards for licensed family ~~day-care~~ day systems.

e. Maintaining a budgetary and financial system that assures a sound financial structure is maintained.

f. Appointing a qualified director to whom it delegates, in writing, the authority and responsibility for administrative direction and management of the family ~~day-care~~ day system in accordance with established policies (optional for an individual or partnership).

g. Establishing written policies that govern the board's or licensee's relationship to the director to include, at minimum:

(1) Evaluation of the performance of the director not less often than annually;

(2) Provision for the director to meet with the board periodically to review the services being provided and the personnel needs and the fiscal management of the family ~~day-care~~ day system.

h. Providing a written organizational chart that indicates the organizational elements of the system, the personnel positions within each organizational element, and the lines of authority and communication within the family ~~day-care~~ day system. This chart shall be kept current.

i. Reviewing, at least annually, the program of the family ~~day-care~~ day system. This review shall include an examination of:

(1) The number, size, and capabilities of homes, and quality of service offered by homes that are members of the system;

(2) The needs of homes that are members of the system and the services offered to these homes by the system;

(3) The needs of children and families served by the system and the services offered to them;

(4) Problems encountered in the operation of the system;

(5) Consistency of services provided within the framework of the stated purpose and objectives of the system;

(6) Changes required in the focus of the system's program;

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(7) The adequacy of the recordkeeping system.

j. Determining, based on the annual review required by subdivision 3 i of this subsection, the following:

- (1) Requirements for additional staff training;
- (2) Requirements for changes in staffing;
- (3) Requirements for changes in the focus of the program and services offered by the system.

k. Developing and implementing plans to respond to the needs identified in subdivision 3 j of this subsection.

l. Maintaining accurate and appropriate inventories regarding all real property and equipment belonging to the system.

m. Ensuring that member homes comply with local child care ordinances where such ordinances exist. (NOTE: A note of approval from the administrator of the local ordinances will constitute evidence of compliance.)

C. Goals, policies, and procedures.

1. Goals.

a. Written goals shall be developed for the family ~~day-care~~ day system.

b. These goals shall clearly describe the philosophy and objectives of the system.

c. At minimum, they shall address:

- (1) The purpose of the family ~~day-care~~ day system;
- (2) The population to be served;
- (3) The recruitment of homes;
- (4) The program to be offered by the system in terms of:
 - (a) Services to be provided to the homes that are members of the system;
 - (b) Services to be provided to families and children who use the system.

2. Policies and procedures. Written policies and procedures shall be prepared for the operation of the family day-care system. These policies and procedures shall relate to:

a. Personnel policies. (See ~~22VAC40-120-30~~ 8VAC20-810-30 B.)

b. Services to member homes including:

- (1) Criteria for approving family day-care homes as members of system;
- (2) Training of home operators;
- (3) Technical assistance and consultation to home operators; and
- (4) Inspection, supervision, monitoring and evaluation of system homes.

c. Services to children and their families including:

- (1) Referral of children to homes that are members of the system; and

(2) Referral of children to available health and social services.

3. A copy of the goals and all policies and procedures shall be made available to the department representative upon request.

D. Finances.

1. Fiscal accountability. The family ~~day-care~~ day system shall have a plan of financing that assures sufficient funds to operate in accordance with its stated purpose, objectives, and the services to be provided.

2. Internal financial procedures.

a. There shall be a system of financial recordkeeping that is consistent with generally accepted accounting principles, showing separation of the system's accounts from all other records.

b. There shall be a written policy for the collection and disbursement of funds.

c. Those members of the governing board or body and staff who have been granted authorized responsibility for funds of the system shall be bonded.

3. Fee and payment schedules.

a. The family ~~day-care~~ day system shall maintain a current written schedule of fees charged for the services provided. The applicable schedule or schedules shall be made available to families who seek or use the services of the system, to homes that apply for membership in the system, and to the department as part of the application for licensure.

b. The family ~~day-care~~ day system shall establish and maintain a current written schedule of payments to be made to homes that are members of the system. This schedule shall specify the amount of payment, conditions of payment, and frequency of payment. It shall be provided to all homes that are members of the system and also to the department as part of the application for licensure. When applicable, this schedule shall also be made available to families who seek or use the services of the system.

E. Relationship to the licensing authority.

1. The family ~~day-care~~ day system shall submit to the department such reasonable reports and information as it may require. (See § ~~63.2-1708~~ 22.1-289.021 of the Code of Virginia.)

2. The system's books and records shall be made available for inspection by the department's representative, upon request. (See § ~~63.2-1706~~ 22.1-289.018 of the Code of Virginia.)

3. The licensee, governing board, or its official representative shall notify the department when any major change is anticipated in the program, services provided, or

administrative structure. When such a change occurs, which was not anticipated, this notification shall be provided no later than 10 days following the change. The department shall also be notified within five working days whenever a new director is employed by the family ~~day-care~~ day system.

F. Family ~~day-care~~ day system setting.

1. The family ~~day-care~~ day system shall have an office that shall serve as the headquarters of the system.
2. This office shall have:
 - a. Sufficient space for administration of the system, including all clerical functions;
 - b. Sufficient space to maintain privacy and confidentiality for conferences with parents who seek or use the services of the system and family day-care home operators who are members of the system; and
 - c. At least one working telephone, other than a pay phone, with a listed number that is available for system business. An emergency phone number shall be provided for the use of the homes in the system during any hours that children are in care if the system's telephone is not manned during those hours.

G. Determination of the number of homes that may be under contract to the system. In order to ensure timely and adequate service delivery, the maximum number of homes that may be under contract of the system shall be based on the following factors:

1. The number of system's office staff (NOTE: Persons who are approved as day-care providers and their assistants are not considered to be system's office staff.);
2. The geographical dispersion of homes with relation to the system office;
3. The ~~type or~~ types and needs of children served by the system;
4. The financial capabilities of the system; and
5. The types of ~~program or~~ programs and services offered by the system.

~~22VAC40-120-30~~ 8VAC20-810-30. Personnel.

A. General Requirements.

1. No person convicted of a crime involving child abuse, child neglect or moral turpitude shall be a family ~~day-care~~ day system owner, operator or employee.
2. The family ~~day-care~~ day system owner, director, and all system employees shall be:
 - a. At least 18 years of age (EXCEPTION: Secretarial and custodial help may be younger than 18 years of age.);
 - b. Of good moral character and reputation;

- c. Physically and mentally capable of carrying out assigned duties and responsibilities;
- d. Emotionally stable with an understanding of problems and needs of children and their families; and
- e. Qualified in accordance with the applicable educational training and experience requirements contained in these standards.

B. Personnel policies.

1. There shall be a written description for each staff position. This job description shall include:
 - a. The job title;
 - b. The functions assigned to the position, including authority and responsibility; and
 - c. Educational or experience, or both, requirements for the position.
2. A copy of the job description shall be made available to each person assigned to the position at the time of employment.
3. When a system has more than three employees, within the system's office, the system shall have written personnel policies outlining personnel practices as they affect both the employer and employee. A copy of these policies shall be readily accessible to each staff member and shall include at minimum:
 - a. Conditions of employment;
 - b. Conditions under which employment may be suspended or terminated;
 - c. Procedures for resignation;
 - d. Salary scales;
 - e. Provisions for paid vacation, sick leave, compensatory leave, and holidays, if any;
 - f. Provisions for recurring evaluation of work performance of each employee at least annually;
 - g. A description of employee benefits;
 - h. Provisions for staff development and training through in-service training, attendance at conferences and workshops and educational leave; and
 - i. Grievance procedures.

C. The system staff.

1. Composition and size.
 - a. Composition and number of staff employed by the system shall be sufficient to assure:
 - (1) Compliance with these standards;
 - (2) The uninterrupted and timely provision of all services included in the system program to children, parents, and homes that are members of the system.

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b. In order to ensure timely and adequate service delivery, the number and composition of staff shall be determined by:

- (1) The scope of the program and services offered by the system;
- (2) The number of homes that are members of the system and their geographical location in relation to the system office;
- (3) The number of children in care in homes that are members of the system;
- (4) The capabilities and experience of the staff; and
- (5) The total responsibilities assigned to each staff member and the time required to effectively carry out these responsibilities. Total responsibilities are those relating to inspection, supervision, monitoring, evaluation of member homes; providing training and technical assistance to operators and staff of member homes; providing referral services to parents and children; as well as administrative tasks and supervisory responsibilities.

c. Qualified staff members, who meet the applicable qualifications established by subdivision C 2 of this section shall be designated to perform each of the following functions:

- (1) Day-to-day management, administration and supervision of system operations;
- (2) Referral services to parents and children;
- (3) Training, technical assistance, and consultation to the staff of homes that are members of the system;
- (4) Home visitation and approval which includes at minimum those functions and services relating to inspection, supervision, monitoring, and evaluation of homes that are members of the system; and
- (5) Clerical functions.

d. Multiple functions may be assigned to an individual staff member provided:

- (1) The staff member meets the qualifications for each function as established by subdivision C 2 of this section; and
- (2) The multiple assignment is consistent with the requirements of subdivision C 1 a of this section regarding the timely and uninterrupted delivery of services, and subdivision C 1 b of this section which provides for a determination of the required number and composition of staff.

2. Staff qualifications.

a. The director.

- (1) There shall be one full-time staff member designated as the director of the system who shall be responsible for the overall day-to-day management, administration and supervision of system operations. In the case of an

individual proprietorship or partnership the director may be the licensee.

(2) An individual assuming the duties of a director on or after the effective date of these standards shall have:

(a) A master's degree in early childhood education, child development, social work, education or psychology from an accredited college or university, or the equivalent as determined and approved by the department, plus three years of experience in any one or more of these fields, including two years of experience in a supervisory, administrative, or management capacity; or

(b) A bachelor's degree in early childhood education, child development, social work psychology or education from an accredited four-year college or university, or the equivalent as determined and approved by the department, plus four years of experience in any of these fields, including two years of experience in a supervisory, administrative or management capacity.

b. Referral, training and home visitation services.

(1) Responsibilities for referral, training and home visitation services shall be assigned to a permanent staff member or members. These services and responsibilities shall consist of:

(a) Referral services—Interviewing of parents and children and the referral of children to family day-care homes that are members of the system or to available health or social services as special needs are identified.

(b) Training services—Developing and providing training, technical assistance and consultation to the operators and staff of family day-care homes that are members of the system.

(c) Home visitation services—Visiting family day-care homes, for the purpose of approving homes in accordance with requirements established in ~~22VAC40-120-40~~ 8VAC20-810-40 and any additional requirements established by the system and assuring continued compliance with these requirements. A full-time home visitation staff member shall be responsible for no more than 25 family day-care homes.

(2) Staff members designated to perform referral, training or home visitation services on or after the effective date of these standards shall have:

(a) A bachelor's degree in early childhood education, child development, social work, psychology or education from an accredited four-year college or university or the equivalent as determined and approved by the department, or

(b) An associate degree, or equivalent, in human services, community and social service, or educational services or their equivalent as determined and approved by the department, from an accredited community college or four-year college or university and two years of supervised experience working in a child care center, residential

children's facility, nursery school, family day-care home, or similar program providing care to children.

c. Clerical staff.

(1) The system shall employ sufficient clerical staff to keep correspondence, required records, accounts and files current and in good order.

(2) Clerical staff shall be qualified by both education and experience to perform assigned tasks.

d. Documentation of qualifications.

(1) The professional qualifications of staff members, established by subdivision C 2 of this section, shall be individually documented.

(2) The personal qualifications including those established by subdivision A 1 of this section shall be verified through character references.

(a) At least three references shall be obtained for each applicant.

(b) These references shall not be obtained from relatives of applicants.

(c) These references shall be in writing or there shall be a written notation of verbal references.

3. Staff development.

a. Provision shall be made for orientation for all staff. This shall be documented and recorded in the employee's record.

b. Prior to assuming their duties, new employees shall be given orientation and training in at least the following areas:

- (1) The objectives and philosophy of the system;
- (2) The services offered by the system;
- (3) Confidential treatment of personal information;
- (4) The policies and procedures that are applicable to their specific position and assigned duties and responsibilities; and
- (5) The standards as they apply to the individual position.

c. A written plan of in-service training with specific well-defined objectives shall be prepared and implemented annually for each employee. A copy of this plan shall be filed in the employee's record and shall be made available to the department's representative upon request. (EXCEPTION: Clerical and custodial employees are exempt from this requirement.)

d. Attendance at conferences, seminars, workshops, institutes and academic courses related to the employee's assigned duties and responsibilities shall be encouraged.

D. Volunteers.

1. Any volunteers used shall:

a. Have qualifications appropriate to the services they render;

b. Be subject to laws and regulations governing the confidential treatment of personal information; and

c. Be selected on the basis of their ability to make a positive contribution to the program.

2. The system shall establish written requirements for the screening and selection of volunteers.

3. Duties and responsibilities of all volunteers shall be clearly defined in writing and differentiated from those persons regularly filling staff positions.

4. At least one staff member shall be assigned the responsibility for selection, orientation, training, scheduling, supervision and evaluation of volunteers.

5. The system shall not be dependent on the use of volunteers to ensure the basic provision of services on a continuous basis.

*The minimum personnel requirements and qualifications for family day-care providers and their staff are addressed in ~~22VAC40-120-40~~ 8VAC20-810-40 B 1.

~~22VAC40-120-40~~ 8VAC20-810-40. Services to system homes.

A. Policies and agreements.

1. Policies. The system shall establish and maintain written policies regarding:

- a. The roles, rights and responsibilities of the system in the supervision and approval of member homes and referral of children to those homes;
- b. The roles, rights and responsibilities of homes that are members of the system;
- c. The roles, rights and responsibilities of parents of children who are cared for in homes that are members of the system;
- d. Procedures for consultation to prospective providers to include alerting them to zoning and other local ordinances;
- e. Procedures for evaluation, selection and initial approval of homes as members of the system;
- f. Orientation and training of operators and staff of homes that are members of the system;
- g. The annual renewal of approval of homes as members of the system; and
- h. Procedures to be followed to assure that all areas of non-compliance with approval requirements have been corrected.

2. Agreements.

a. The system shall have a written agreement with each member home which specifies at least the following:

(1) The home's agreement with the system's policies in the areas identified in subdivision A 1 of this section;

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- (2) The financial agreement between the system and the member home;
 - (3) The system's role in assisting the home in developing a plan to meet the needs of each child accepted for care;
 - (4) The system's role in planning for regular conferences between the home and parents of children in care;
 - (5) The system's responsibility for supervision of children's care and adjustment;
 - (6) The rights and responsibilities of the system to monitor, inspect, evaluate and approve member homes;
 - (7) The system's right to remove a child from the home and the conditions under which a child may be removed;
 - (8) That the home shall not accept a child from any source other than the system responsible for the home without the prior approval of the system;
 - (9) Conditions under which the provider may take children away from the member home on a routine basis (In an unusual situation, the provider shall notify the system by telephone and secure system approval before taking a child out of the home.); and
 - (10) That the home shall release a child only to the persons specified in the child care agreement required by 22VAC40-120-50 8VAC20-810-50 A 5.
- b. This agreement shall be signed prior to referral of children to the home.

B. Approval, monitoring and termination.

1. Approval, criteria and requirements. The system shall develop criteria and requirements that family day-care homes must meet to be approved as members of the system. At minimum these criteria and requirements shall address the following areas:

- a. Qualifications of day-care providers and their staff that include establishing specific educational or experience requirements, or both, to assure that both providers and their staff are capable of providing acceptable care to children placed in the member home. At minimum the following basic qualifications must be met:
 - (1) A family day-care provider must be at least 18 years of age;
 - (2) A family day-care must be able to read and write;
 - (3) A family day-care assistant must be at least 14 years of age;
 - (4) Family day-care providers and any assistant or assistants must have the following personal attributes:
 - (a) An understanding of children and their problems together with an ability to relate to children with courtesy, respect, patience and affection, and understanding and respect for the child's family;
 - (b) An ability to handle emergencies with dependability and good judgment; and

(c) A motivation to contribute to children's wholesome development;

(5) Family day-care providers and any assistant or assistants shall be responsible, wholesome, emotionally stable people of good character and reputation;

(6) No person convicted of a crime involving child abuse, child neglect or moral turpitude shall be a family day-care provider or assistant.

b. Ratio of adults to children in care. Ratios shall be based at minimum on the number, ages and needs of children in care. The system shall require at least one adult for every eight children in care, and infants below the age of two years shall be counted as two children in determining staff requirements.

c. The physical environment which includes:

(1) Physical plant requirements (building and grounds) and requirements for maintenance and cleanliness;

(2) Furnishing and equipment appropriate to the ages of children in care;

(3) Toileting and bathing facilities;

(4) Lighting requirements;

(5) Absence of safety hazard; and

(6) Adequate space requirements for play activities and napping.

d. The water supply and sanitary disposal system shall be approved by the health officer, unless water is obtained from a municipal supply and the member home is connected to a municipal sewer line.

e. Care of children including at minimum supervision of children in care and the planning and providing of varied daily activities which are appropriate to the ages, needs, and capabilities of children in care. Children must be supervised at all times by an adult and shall not be left alone in the care of an assistant under the age of 18 years.

f. Methods of dealing with unacceptable behavior which prohibit harsh and unreasonable punishment.

g. Nutrition to assure that nutritious and adequate meals and snacks, in terms of quality and quantity, are provided each child.

h. Health information shall be maintained for the family day-care provider, assistant and assistants and for those household members who come in contact with children or handle food served to children, as described below:

(1) Initial tuberculosis examination and report.

(a) Prior to approval or contact with children, each individual shall obtain an evaluation indicating the absence of tuberculosis in a communicable form.

(b) Each individual shall submit a statement that he or she is free of tuberculosis in a communicable form, including the type or types of test or tests used and the result or results.

(c) The statement shall be signed by a licensed physician, the physician's designee, or an official of a local health department.

(d) The statement shall be filed in the individual's record.

(2) Subsequent evaluations.

(a) An individual who had a significant (positive) reaction to a tuberculin skin test and whose physician certifies the absence of communicable tuberculosis must obtain chest x-rays on an annual basis for the following two years.

(i) The individual shall submit statements documenting the chest x-rays and certifying freedom from tuberculosis in a communicable form.

(ii) The statements shall be signed by a licensed physician, the physician's designee, or an official of a local health department.

(iii) The statement shall be filed in the individual's record.

(iv) Screening beyond two years is not required unless there is known contact with a case of tuberculosis or development of chronic respiratory symptoms.

(b) Additional screening is not required for an individual who had a non-significant (negative) reaction to an initial tuberculin skin test.

(c) Any individual who comes in contact with a known case of tuberculosis or who develops chronic respiratory symptoms shall, within 30 days of exposure or development, receive an evaluation in accordance with subdivision B 1 h (1) of this section.

(3) At the request of the licensed system or the Department of ~~Social Services~~ Education, a report of examination by a licensed physician shall be obtained when there are indications that the safety of children in care ~~may~~ may be jeopardized by the physical or mental health of a specific individual.

(4) Any individual who, upon examination or as a result of tests, shows indication of a physical or mental condition which may jeopardize the safety of children in care:

(a) Shall immediately be removed from contact with children;

(b) Shall immediately be removed from contact with food served to children; and

(c) Shall not be allowed contact with children or food served to children until the conditions cleared to the satisfaction of the examining physician as evidenced by a signed statement from the physician.

i. Fire safety to include appropriate emergency plans for evacuation of the home. The member home shall comply with any limitations which may be placed by the Virginia Fire Safety Regulations on the maximum number of children who may be in care.

j. Record keeping to include the records to be maintained in the home on each child and the content and format of each record.

k. Each member home shall have a working telephone on the premises with a listed number. The phone number for a doctor who may be called in an emergency, an ambulance service or rescue squad, the fire department and the police shall be posted near the phone.

2. Approval determination.

a. Prior to approval of any home, as a member of the system, the system shall determine that the home complies with the written criteria and requirements established by the system in accordance with subdivision B 1 of this section.

b. This determination of compliance shall be documented by a compliance investigation addressing, at minimum, the areas identified under subdivision B 1 of this section and an evaluation of all information provided as part of the application process.

c. The study shall also contain the following documentation:

(1) Health reports required by subdivision B 1 h of this section;

(2) Reports of at least three character references for the day-care provider and each member of the staff (These references shall be in writing or there shall be a written notation of verbal references.);

(3) A written record of previous training and experience of the day-care provider, if any; and

(4) Information to show how capacity was determined, including evaluation of any unusual conditions.

d. This study shall include interviews with all adult members of the household and at least two interviews with the day-care applicant or provider, one of which shall take place in the home where care will be provided to children.

3. Approval notification.

a. Within 30 days following the completion of the interviews required by subdivision B 2 d of this section, the system shall provide written notification to the applicant home of the results of the study, to include corrective action required.

b. If the home is approved, the notification to the provider shall include the capacity of the home. In no case shall the capacity exceed nine children, including children under six who are related by blood or marriage to the day-care provider.

c. If the day-care provider has responsibility for a handicapped person who requires special attention or services, this factor shall be considered in determining the approved capacity of the member home and the record of the home shall contain documentation of this evaluation.

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d. If the home is approved, this notification shall be accompanied by an approval certificate which shall be posted in a place that is conspicuous to the public in each approved home.

4. Termination.

a. The system shall have written policies for suspension or termination of a member home.

b. The system shall notify the provider in writing of the reasons for suspension or termination within two weeks of such suspension or termination.

5. Annual approval. Each member home shall be approved annually. The same approval process shall be used as described in subdivisions B 1 through 3.

6. Monitoring.

a. Each member home shall be visited at least quarterly in order to assure that the home continues to comply with the system's standards.

(1) At least two of these visits shall be unannounced;

(2) The results of these visits shall be documented in the home's record.

b. The department, at any time, may make an announced or unannounced visit to a home that is a member of the system in order to assure continued compliance with the applicable provisions of this chapter. The results of such visits shall be provided to the system.

7. Annually the system shall provide the ~~regional office of the Virginia Department of Social Services, from which the system's license to operate is issued,~~ Office of Child Care Licensing a current directory of approved homes that are members of the system.

a. The initial directory shall be provided 30 days after the system's initial license to operate is issued.

b. An updated directory shall be provided with the system's application for license renewal.

c. The directory shall contain at minimum the following information:

(1) The name of the day-care provider;

(2) The address of the member home;

(3) The telephone number of the member home; and

(4) The approved capacity of the member home.

8. Copies of the notification of member home approval and termination, required by subdivisions B 3 a and B 4 b of this section, shall also be provided by the system to the ~~regional office of the Virginia Department of Social Services from which the system's license to operate was issued~~ Office of Child Care Licensing.

C. Training.

1. The licensee shall have on file at the system office separate written plans describing initial and on-going training of each provider. Each plan shall describe such training in detail and shall include a description of training topic covered, training materials used, frequency and duration of training sessions, persons and resources utilized within the system and from the community to implement training, names of trainers, training methodology, and the process used to evaluate the training program by both staff and providers.

2. Initial training.

a. Prior to acceptance or within the first six months after acceptance as a member home, the system shall provide initial training for each day-care provider.

b. Such training shall include at minimum a two-hour training session on each of the following areas, unless the system develops a method to certify equivalent competency in these subject areas. Such methods shall be subject to review and approval by the department.

(1) An orientation to the system;

(2) Organizing for family ~~day-care~~ day care;

(3) Child growth and development;

(4) Health care;

(5) First aid, home safety and fire safety;

(6) Nutrition;

(7) Child abuse and protection;

(8) Appropriate activities and toys for mixed age groups of children;

(9) Dealing with unacceptable behavior;

(10) Community resources;

(11) Parent and day-care provider relationships.

c. The licensee shall describe and document the content and hours of training received by each provider or the equivalent competency, or both. This documentation shall be kept on file at the system office as part of the day-care provider required by ~~22VAC40-120-60~~ 8VAC20-810-60 C 2.

3. On-going training.

a. Within each succeeding year, following the completion of initial training, the licensee shall provide at least two hours of on-going, in-service training to providers each quarter.

b. The content of this training shall be determined by the system and shall be based on the needs of approved day-care providers. At minimum, it shall reinforce or expand on the areas identified in subdivision C 2 b of this section.

c. The licensee shall describe and document the content and hours of training received by each provider and shall keep this documentation on file at the system office as part

of the day-care provider record required by ~~22VAC40-120-60~~ 8VAC20-810-60 C 2.

4. A provider who refuses to participate in training shall be terminated as a member home.

D. Technical assistance and consultation.

1. The system has the responsibility to provide technical assistance and consultation to member homes.

2. Technical assistance and consultation include, but shall not be limited to, the following areas:

- a. Provision of information and advice on child development, methods of dealing with unacceptable behavior, fire safety, working with exceptional children, dealing with stress or crisis, etc.;
- b. Loans of toys and equipment, if available;
- c. Provision of information on training resources available in the community on an on-going basis and as appropriate; and
- d. Nutrition and menu planning on an on-going basis.

3. Technical assistance and consultation provided to member homes shall be recorded in the day-care provider record required by ~~22VAC40-120-60~~ 8VAC20-810-60 C 2 e (5).

~~22VAC40-120-50~~ 8VAC20-810-50. Services to children and families.

A. Referral to system homes.

1. Children shall be referred only to homes which have been approved as required in subsection B of this section.

2. No child shall be referred to a home which has reached its approved capacity.

3. Referrals shall be made only after a personal interview between a representative of the system and the parent ~~or parents~~ and child. Prior to acceptance of a child for care, the parent and child ~~or children~~ shall visit the home where care will be provided.

4. When a child is accepted for care and payment will be made by a local department of public welfare or social services, the system shall seek approval from that department prior to referral of the child for care.

5. When a child is accepted for care and a referral is made to a home that is a member of the system, there shall be a written agreement between the system and parent ~~or parents~~ or guardian ~~or guardians~~ of the child. A copy of the signed agreement shall be given to the parent ~~or parents~~ or guardian ~~or guardians~~ and a copy shall also be retained and filed by the system at the system office. Additionally, the requirements of subdivisions A 6 and A 7 also apply.

6. The child care agreement shall address the following items:

a. Child's name, birth date, home address, and home telephone number;

b. Names and addresses of parent ~~or parents~~ or guardian ~~or guardians~~ and telephone number at which they can be reached during hours the child is in care;

c. A statement that a child brought to the home shall be left with a staff member and released only to the parent ~~or parents~~ or other specified person ~~or persons~~;

d. The hours the child will be in care;

e. The name, address, and telephone number of the child's physician;

f. Emergency medical authorization;

g. Transportation arrangements;

h. Notes of any special problems or needs of a child;

i. Granting or denying permission for field trips;

j. Granting or denying permission for participation in water activities, such as swimming and wading;

k. Any other referral information;

l. Agreement regarding the home in which the child will be placed;

m. Financial arrangements for care;

n. A statement that staff members of both the system and member home in which the child receives care shall be available for parent conferences;

o. Information regarding the means by which care will be provided in the event the primary day-care provider is ill, on vacation or otherwise unavailable due to an emergency; and

p. Information regarding the role of the system in referral of children in care in a home that is terminated as a member of the system.

7. The child care agreement may be a one or two part agreement at the option of the system.

a. When a one part agreement is used it shall:

(1) Be signed by the parent ~~or parents~~ of the child, a representative of the system and the day-care provider in whose home the child will receive care.

(2) A copy of this agreement shall be provided by the system to the member home in which the child will receive care.

b. When the system elects to use to two part agreement the following standards apply:

(1) Part one:

(a) Shall contain all items specified in subdivision A 6 except financial arrangements for care (See subdivision A 6 m);

(b) Be signed by the parent or parents of the child, a representative of the system and the day-care provider in whose home the child will receive care; and

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(c) A copy shall be provided by the system to the member home in which the child will receive care.

(2) Part two:

(a) Shall contain the financial information required by subdivision A 6 m and any other information that the system deems appropriate;

(b) Shall be signed by the parent or parents of the child and a representative of the system.

8. Health requirements for children.

a. Timing and frequency of medical reports:

(1) Each child accepted for care shall obtain a physical examination by or under the direction of a licensed physician prior to admission (as outlined below) or within 30 days after admission:

(a) Within 60 days prior to admission for children six months of age and younger;

(b) Within 90 days prior to admission for children seven months through 18 months of age;

(c) Within six months prior to admission for children 19 months through 24 months of age;

(d) Within 12 months prior to admission for children two years of age through five years of age;

(e) Within 24 months prior to admission for children six years of age and above.

EXCEPTIONS:

(i) Children transferring from one facility licensed by the Virginia Department of ~~Social Services~~ Education, certified by a local department of ~~public welfare~~ or social services, or approved by a licensed family day ~~care~~ system:

If the initial report of physical examination and immunizations is submitted to the new home, no additional examination is ~~require~~ required. If the initial report is not available, a report of physical examination and immunizations is required.

(ii) Physical examinations are not required for any child whose parent or guardian objects on religious ground. The parent or guardian must submit a statement noting that the parents or guardian objects on religious grounds and certifying that, to the best of the parent's or guardian's knowledge, the child is in good health and free from communicable and contagious disease.

(2) Medical reports after admission:

(a) Updated information on immunizations received shall be obtained once every six months for children under the age of two years.

(b) Updated information on immunizations received shall be obtained once between each child's fourth and fifth birthdays.

b. Form and content of medical reports:

(1) The current form approved by the Virginia Department of Health, or any other form which provides all of the same information shall be used to record immunizations received and the results of the required physical examination.

(2) Each report shall include the date of the physical examination or the dates immunizations were received, or both.

(3) Each report shall be signed by a licensed physician, the physician's designee, or an official of a local department of health.

EXCEPTION: Documentation of immunizations received is not required for any child whose parent or guardian submits an affidavit to the center stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices.

9. An emergency medical authorization form shall be provided the home at the time the child enters care. (NOTE: At the discretion of the system this form may be part of the child care agreement required by subdivision A 6.)

a. The emergency medical authorization form shall be signed by the parent or parents, the provider, and a representative of the system.

b. A copy of the signed emergency medical authorization form shall also be filed in the child's record that is maintained in the system's office.

10. The system shall make arrangements for substitute or back-up care when a day-care provider in a member home needs assistance in any emergency or during illness or vacation. Such care may be provided by a staff person approved as a system assistant or another member provider with available enrollment capacity.

11. They system shall confer with the parent of each child at least twice a year concerning the child's progress and the parents' view of the adequacy of care being provided. This contact may be by telephone or in person at the discretion of the parent or parents involved.

B. Referral to health and social services.

1. The licensee shall have on file a written plan describing how the need for medical and social services is determined and how social services are made available, either within the system or by arrangement with specific public or private community agencies, or both. This written plan shall include the system's policy and procedures for referral of children and their parents to appropriate social, mental health, welfare and medical services.

2. The licensee shall maintain a written record of all referrals of children and their families to social, mental health, welfare, and medical services which shall include the results of such referrals, when reports of such results are provided to the system.

C. Complaint investigation. The family ~~day-care day~~ system shall be responsible for investigation of any complaint received on any home that is a member of its system. When a system receives such a complaint, the following Standards apply:

1. The complaint shall be recorded on a complaint record which shall include at minimum the information required by ~~22VAC40-120-60~~ 8VAC20-810-60 C 5 b.
2. A copy of this completed record shall be placed in the file of the home against which the complaint was made and a copy shall be provided ~~the regional office of the Virginia Department of Social Services from which the family day-care system's license to operate is issued~~ to the Office of Child Care Licensing. This copy shall be provided within 10 days of the date the complaint investigation is completed.
3. When the complaint concerns a specific child, a copy of the completed record shall be placed in the file of the child.
4. A complete investigation shall be made, by the licensee, of each complaint received. This investigation shall:
 - a. Be initiated within five working days following the receipt of the complaint;
 - b. Completed within 14 days following receipt of the complaint; and
 - c. Include at least one visit to the family day-care home on which the complaint was received.
5. If the complaint is found to be valid, corrective action shall be initiated immediately.
6. When the complaint includes an accusation of child abuse or neglect, the following Standards also apply:
 - a. The complainant shall be referred to the protective services unit of the local department of ~~public welfare or~~ social services in the locality where the home is located.
 - b. The family ~~day-care day~~ system shall notify the local department of ~~public welfare or~~ social services child protective services' staff member immediately and provide all information regarding the complaint. The oral notification shall be confirmed in writing within 72 hours and a copy placed in the file of the home against which the complaint was made. Simultaneously, a copy of this written notification shall also be provided ~~the regional office of the Virginia Department of Social Services from which the family day-care system's license to operate is issued~~ to the Office of Child Care Licensing.
 - c. The system shall make its own investigation within 24 hours. A joint investigation by the protective services worker of the local department of ~~public welfare or~~ social services and a representative of the system is encouraged to the maximum extent possible.

~~22VAC40-120-60~~ 8VAC20-810-60. Records.

A. General requirements.

1. Any forms used for record keeping shall contain at minimum the information specified in these Standards. Model forms, which may be copied, will be supplied by the department upon request.
2. If any model form developed by the department is not used, the substitute form shall be approved by the department.
3. All records shall be kept in a locked area.
4. The licensee shall have the responsibility for assuring that all records are treated confidentially and that information shall be made available only when needed for proper care of the children referred to homes who are members of the system. (EXCEPTION: All records shall be made available for inspection by the department's representative. See ~~22VAC40-120-10~~ 8VAC20-810-10 D 3 b.)

B. Written policies and procedures. The following written policies and procedures shall be developed by the system. Copies shall be maintained in a permanent file within the system office. Those so identified shall also be permanently filed in homes that are members of the system.

1. Policies and procedures pertaining to operation and management of the system:
 - a. Written goals which clearly describe the philosophy and objectives of the family ~~day-care day~~ system and address those areas specified in ~~22VAC40-120-20~~ 8VAC20-810-20 C 1. A copy of these written goals shall be provided to each home that is a member of the system.
 - b. Written policies and procedures which address system services to be provided to member homes and services to be provided to children and their families. (See ~~22VAC40-120-20~~ 8VAC20-810-20 C 2.) Copies of these policies and procedures which relate to services to be provided to member homes and to children and their families shall be provided to each home that is a member of the system.
 - c. Written by-laws, when the family ~~day-care day~~ system is sponsored by an association or corporation.
2. Policies and procedures pertaining to staff employed in the system office.
 - a. A written job description for each staff position which exists in the system office. Each job description shall address the areas identified in ~~22VAC40-120-30~~ 8VAC20-810-30 B 1.
 - b. Written policies which outline personnel practices as they affect both the employer and employee. These policies shall include the areas identified in ~~22VAC40-120-30~~ 8VAC20-810-30 B 3.
 - c. Written requirements for the screening and selection of volunteers, if volunteers are used. (See ~~22VAC40-120-30~~ 8VAC20-810-30 D 2.)
 - d. Written definition of the duties and responsibilities of volunteers. (See ~~22VAC40-120-30~~ 8VAC20-810-30 D 3.)

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3. Policies and procedures pertaining to member homes.

- a. Policies and procedures which describe the selection, evaluation, approval and general management of homes which are members of the system and cover at minimum those areas specified in ~~22VAC40-120-40~~ 8VAC20-810-40 A 1.
- b. Specific criteria and requirements which family ~~day-care~~ day homes must meet to be approved as members of the system. At minimum these criteria and requirements shall address the areas specified in ~~22VAC40-120-40~~ 8VAC20-810-40 B 1.
- c. Policies for suspension or termination of a home that is a member of the system. (See ~~22VAC40-120-40~~ 8VAC20-810-40 B 1.)
- d. Copies of the policies and procedures, required by subdivisions B 3 a, b, and c shall be provided to each home that is a member of the system.

C. System records. The following records shall be maintained by the system in a permanent file within the system office. Those so identified shall also be provided to each home that is a member of the system.

1. Records on the system.

- a. An organization chart (See ~~22VAC40-120-20~~ 8VAC20-810-20 B 3 h.)
- b. Financial records which are consistent with generally accepted accounting principles and reflect a separation of system accounts from all other records. (See ~~22VAC40-120-20~~ 8VAC20-810-20 D 2.)
- c. An inventory of all real property and equipment belonging to the system. (See ~~22VAC40-120-20~~ 8VAC20-810-20 B 3 1.)
- d. A schedule of fees charged for services provided. (See ~~22VAC40-120-20~~ 8VAC20-810-20 D 3 a.)
- e. A schedule of payments to be made to homes that are members of the system which contains the items required by ~~22VAC40-120-20~~ 8VAC20-810-20 D 3 b. A copy of this schedule shall be provided to each home who is a member of the system.
- f. Minutes of all meetings of the corporate or association governing board. (See ~~22VAC40-120-20~~ 8VAC20-810-20 B 2 b.)

2. Records on homes who are members of the system.

- a. An individual record shall be maintained on each home that is approved as a member of the system.
- b. This record shall be established when the home applies for membership in the system and shall be maintained in the system office.
- c. The record shall be kept current.

d. The complete record shall be retained until two years after the home withdraws or is terminated as a member of the system.

e. It shall contain at minimum the following information and documentation:

- (1) A copy of the agreement with the member home as required by ~~22VAC40-120-40~~ 8VAC20-810-40 A 2 a. A copy of this agreement shall be on file in the member home.
- (2) A copy of each compliance study completed on the home and required by ~~22VAC40-120-40~~ 8VAC20-810-40 B 2 b.
- (3) The report of each quarterly visit to the home as required by ~~22VAC40-120-40~~ 8VAC20-810-40 B 6 a (2).
- (4) A record containing the name of each child who has been referred to the home for care, the date of referral and in those cases where care has been terminated, the date and reason for termination.
- (5) A notation of all technical assistance and consultation provided to the home as required by ~~22VAC40-120-40~~ 8VAC20-810-40 D 3.
- (6) The following personal and social data on each day-care provider.
 - (a) Name;
 - (b) Birthdate;
 - (c) Current address and telephone number;
 - (d) Last previous employment;
 - (e) For providers who are accepted as members of the system after the effective date of ~~these Standards~~ this regulation, copies of at least three references or notations of verbal references reflecting the date of the reference, the source and the content;
 - (f) A statement signed by the day-care provider reporting any convictions of law violations excluding traffic violations and offenses committed before his or her eighteenth birthday which were finally adjudicated in a juvenile court or under a youth offender law;
 - (g) Previous experience or training, or both;
 - (h) Social Security number;
 - (i) Name and telephone number of person to contact in an emergency; and
 - (j) Date and reason for termination as a member of the system.
- (7) The following personal and social data for each person employed by the provider as a staff member in the home:
 - (a) Name;
 - (b) Birthdate;
 - (c) Current address and telephone number;
 - (d) Position and date employed;
 - (e) Last previous employment;

- (f) For persons who are employed after the effective date of this chapter, copies of at least two character references or notations of verbal references reflecting the date of the reference, the source and the content;
 - (g) A statement signed by the staff member reporting any convictions of law violations excluding traffic violations and offenses committed before ~~his or her~~ the staff member's eighteenth birthday which were finally adjudicated in a juvenile court or under a youth offender law;
 - (h) Previous experience or training, or both;
 - (i) Social Security number;
 - (j) Name and telephone number of person to contact in an emergency;
 - (k) Notations of formal training received following employment; and
 - (l) Date and reason for termination of employment.
- (8) The health related statements required by ~~22VAC40-120-40~~ 8VAC20-810-40 B 1 h.
- (9) The provider training plan, the record of initial provider training and the record of on-going provider training required by ~~22VAC40-120-40~~ 8VAC20-810-40 C 1, 2, c, and 3 c.
- (10) A copy of the record of each complaint received on the home as required by ~~22VAC40-120-50~~ 8VAC20-810-50 C 2. (See subdivision C 5 for content of this record.)
3. Records of persons employed in the system office.
- a. An individual record shall be maintained on each staff member employed in the system office.
 - b. This record shall be established when the individual is employed and shall not be destroyed until two years after employment is terminated.
 - c. The record shall be kept current.
 - d. It shall contain at minimum the following:
 - (1) Personal and social data:
 - (a) Name;
 - (b) Birthdate;
 - (c) Current address and telephone number;
 - (d) Position and date employed;
 - (e) Last previous employment;
 - (f) For persons employed after the effective date of this chapter, copies of at least three references or notations of verbal references reflecting the date of the reference, the source and the content;
 - (g) A statement signed by the employee reporting any convictions of law violations excluding traffic violations and offenses committed before ~~his or her~~ the employee's eighteenth birthday which were finally adjudicated in a juvenile court or under a youth offender law;
 - (h) Previous experience or training, or both;
 - (i) Social Security number;
 - (j) Name and telephone number of person to contact in an emergency;
 - (k) Notations of formal training received following employment; and
 - (l) Date and reason for termination of employment.
 - (2) The record of staff orientation required by ~~22VAC40-120-30~~ 8VAC20-810-30 C 3 a.
 - (3) The annual plan for in-service training required by ~~22VAC40-120-30~~ 8VAC20-810-30 C 3 c.
4. Records on children referred for care.
- a. An individual record shall be maintained on each child accepted by the system and referred to a member home for care.
 - b. This record shall be established when the child is accepted for care.
 - c. The record shall be kept current.
 - d. It shall contain at a minimum the following:
 - (1) A copy of the child care agreement required by ~~22VAC40-120-50~~ 8VAC20-810-50 A 5, A 6, and A 7;
 - (2) A record of placement which contains the name of each home in which the child has received care, the date referred for care and the date and reason care was terminated;
 - (3) A copy of the medical information required by ~~22VAC40-120-50~~ 8VAC20-810-50 A 8;
 - (4) A copy of the emergency medical authorization form required by ~~22VAC40-120-50~~ 8VAC20-810-50 A 9;
 - (5) A record or each referral of the child and/or the family to social, mental health, welfare and medical services as required by ~~22VAC40-120-50~~ 8VAC20-810-50 B 2.
 - e. A copy of the records required by subdivisions C 4 d (3) and C 4 d (4), shall be on file in the member home in which the child is provided care.
5. Complaint records.
- a. Each complaint shall be recorded on a complaint record. (See ~~22VAC40-120-50~~ 8VAC20-810-50 C 1.)
 - b. The complaint record shall include at minimum the following information:
 - (1) Name and address of the family day-care home;
 - (2) Name, address and telephone number of the complainant;
 - (3) Method by which the complaint was made, including the date and time received;
 - (4) Person receiving the complaint;
 - (5) A description of the complaint, including dates and times, where applicable;

Regulations

(6) Findings and action taken to include whether the complaint was found to be valid, invalid or validity not clearly determined;

(7) The name of the person or persons who investigated the complaint and the date the investigation was completed; and

(8) The date the complainant was notified of the results of the investigation.

c. When the complaint includes an accusation of child abuse or neglect, a copy of the written notification required by ~~22VAC40-120-50~~ 8VAC20-810-50 C 6 shall be attached to the complaint record and filed as a permanent part of that record.

d. Release of information regarding the identity of the complainant shall be governed by the provisions of the Privacy Protection Act, Chapter 26 (§ 2.1-377 et seq.) of Title 2.1 of the Code of Virginia.

Chapter 820

General Procedures and Information for Licensure

Part I

Introduction

8VAC20-820-10. Definitions.

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

"Administrative hearing" means a hearing that is conducted pursuant to § 2.2-4020 of the Administrative Process Act.

"Adverse action" means any case where the department either gives notice of revocation or refuses to issue a license for a child day program or family day system or imposes another administrative sanction pursuant to § 22.1-289.023 of the Code of Virginia.

"Aggrieved party" means an applicant or licensee who has requested an appeal in accordance with instructions provided after the department has given written notice of the imposition of an administrative sanction or adverse action for a child day program or family day system.

"Allowable variance" means permission is granted by the department to a licensee or applicant for licensure to meet the intent of a standard by some means other than as specified by the standard when the applicant or licensee has demonstrated that (i) the implementation of a standard would impose a substantial financial or programmatic hardship and (ii) the variance would not adversely affect the safety and well-being of persons in care.

"Applicant" means any individual; corporation; partnership; association; limited liability company; local government; state agency, including any department, institution, authority, instrumentality, board, or other administrative agency of the Commonwealth; or other legal or commercial entity that has

applied for a license to operate or maintain a child day program or family day system.

"Board" means the State Board of Education.

"Child day program" means a child day center or family day system.

"Complaint" means an accusation that a facility that is subject to licensure is operating without a license or that a licensed facility is not in compliance with licensing standards or law.

"Conditional license" means a license that may be issued to a new facility to operate in order to permit the applicant to demonstrate compliance with specified standards.

"Consent agreement" means an agreement between the licensee and the department that the licensee will perform specific actions for the purpose of correcting violations to come into compliance with standards or statutes.

"Day" means a calendar day unless otherwise specified.

"Denial" means the act of refusing to grant a license after receipt of an initial or renewal application.

"Department" means the Department of Education.

"Early compliance" means that the licensee has demonstrated full compliance with requirements, allowing the department to replace a provisional or conditional license with a regular license.

"Family day system" means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangements, may provide central administrative functions including training of operators of family day homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Functional design" means the design features of building and grounds not regulated by the Virginia Uniform Statewide Building Code (13VAC5-63), necessary for particular activities and operations of a facility subject to licensure by the Department of Education.

"Good character and reputation" means findings have been established and knowledgeable, reasonable, and objective people agree that the individual (i) maintains business or professional, family, and community relationships that are characterized by honesty, fairness, truthfulness, and dependability; and (ii) has a history or pattern of behavior that demonstrates the individual is suitable and able to administer a program for the care, supervision, and protection of children. Relatives by blood or marriage and persons who are not knowledgeable of the individual, such as recent acquaintances, may not be considered objective references.

"Hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in §§ 2.2-4007 and 2.2-4019 of the Code of Virginia and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 2.2-4009 of the Code of Virginia in connection with the making of regulations or (ii) a similar right of private parties of public agencies as provided in § 2.2-4020 of the Code of Virginia in connection with case decisions.

"Hearing coordinator" means the person designated by the Department of Education to perform certain administrative functions involved in setting up and carrying out the hearings concerning adverse action on a license for a child day program or family day system, as set out herein.

"Hearing officer" means an attorney selected from a list maintained by the Executive Secretary of the Supreme Court in accordance with § 2.2-4024 of the Code of Virginia to preside at hearings concerning adverse action on a license for a child day program or family day system.

"Informal conference" means the informal fact-finding procedures available pursuant to §§ 2.2-4019 and 2.2-3021 of the Code of Virginia.

"Licensee" means any individual; corporation; partnership; association; limited liability company; local government; state agency, including any department, institution, authority, instrumentality, board, or other administrative agency of the Commonwealth; or other legal or commercial entity to whom a license is issued and who is legally responsible for compliance with the regulations and statutory requirements related to the operation or maintenance of the child day program or family day system.

"Probationary status" means placing a licensee on notice that the facility or agency is substantially out of compliance with the terms of its license and the health, safety, and well-being of persons in care are at risk. Probationary status is a precursor to more serious action such as revocation, denial, or injunctive action unless immediate corrective action occurs.

"Provisional license" means a license that may be issued upon expiration of a regular license when the licensee is temporarily unable to substantially comply with the requirements of the law and regulations.

"Recommended findings of fact and recommended decision" means the report prepared by the hearing officer upon evidence presented in the administrative hearing based on the applicable laws and regulations under which the department operates.

"Regular license" means a license that is issued for 12 months or more as provided in Article 3, Chapter 14.1 (§ 22.1-289.010 et seq.) of Title 22.1 of the Code of Virginia to a facility determined to be in substantial compliance with applicable standards and regulations. The actual duration of the licensure period is stated on the license.

"Revocation" means the act of terminating a license during its effective dates because of findings of serious noncompliance.

"Special order" means an order imposing an administrative sanction issued to any party licensed pursuant to Title 22.1 of the Code of Virginia by the superintendent that has a stated duration of not more than 12 months. A special order shall be considered a case decision as defined in § 2.2-4001 of the Code of Virginia. The 12-month period begins 30 days after notification of the issuance of a special order or at the conclusion of all appeal steps.

"Substantial compliance" means that while there may be noncompliance with one or more standards that represents minimal risk, compliance clearly and obviously exists with most of the standards as a whole.

"Superintendent" means the Superintendent of Public Instruction at the Department of Education.

8VAC20-820-20. Preplanning.

A. Licensing staff are available throughout the application or licensing process to answer questions and provide consultation and technical assistance (see 8VAC20-820-130).

B. In order to avoid costly errors, applicants and prospective applicants are urged to present their building plans to the department as early as possible and before entering into contracts in order to assure that the building can be preapproved as meeting the department's regulations (see 8VAC20-820-150).

C. The department will make an on-site inspection of the proposed facility and services; investigate the character and reputation of the licensee and, if required, staff and household members; and upon receipt of the initial application will investigate the financial responsibility of the applicant (see 8VAC20-820-160).

Part II Licensing Regulations

8VAC20-820-30. Responsibility of the department.

Through the administration of the licensing program, the Department of Education assumes responsibility to ensure that licensed facilities and agencies provide children with at least a minimum level of care in accordance with regulations prescribed by the State Board of Education. The department also has the responsibility to investigate allegations of illegal operations and to initiate action to suppress illegal operations. The Code of Virginia requires the State Board of Education to adopt regulations for the licensure of the following categories of facilities and agencies:

1. Child day centers;
2. Family day homes; and
3. Family day systems.

Regulations

8VAC20-820-40. Adoption of regulations.

The State Board of Education has adopted regulations for each category listed above. The definition of each category and requirements for licensure are contained in each regulation.

8VAC20-820-50. Regulation development/revision process.

A. In developing or revising regulations for licensed facilities or agencies, the Department of Education, acting as agent for the State Board of Education, adheres to the requirements of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and the public participation process.

B. Input from licensees, associations of licensees, experts in related fields, advocacy organizations, consumers, and the general public is solicited in the development or revision of licensing regulations through informal and formal comment periods and public hearings.

C. Periodic reviews are conducted and, when necessary, comprehensive revisions of each regulation to assure that its standards continue to protect children in out-of-home care while considering the interests of both providers and consumers of care.

Part III Licenses

8VAC20-820-60. General.

A. A license to operate a facility or agency is issued to a specific person or organization to provide out-of-home care to children. An organization may be a partnership, association, corporation, limited liability company, or public entity.

B. Pursuant to § 22.1-289.026 of the Code of Virginia, any person, officer, or member of a governing board of any association or corporation that operates a child day program or family day system shall be guilty of a Class 1 misdemeanor if he:

1. Interferes with any representative of the superintendent in the discharge of the superintendent's licensing duties;
2. Makes to the superintendent or any representative of the superintendent any report or statement with respect to the operation of any child day program or family day system that is known by such person to be false or untrue;
3. Operates or engages in the conduct of these facilities without first obtaining a license as required or after such license has been revoked, suspended, or has expired and not been renewed; or
4. Operates or engages in the conduct of one of these facilities serving more persons than the maximum stipulated in the license.

C. When a licensee plans to close or sell a facility, the licensee shall notify the appropriate licensing office at least 60 days prior to the anticipated closure or sale date. When the facility

closes or the sale is finalized, the license shall be returned to the appropriate licensing office.

8VAC20-820-70. Nontransferability of license.

A license is not transferable when there is a change in the ownership or location of the facility or agency to which the license has been issued.

EXCEPTION: Licenses issued for family day systems are transferable when agencies change location.

8VAC20-820-80. Conditional license.

The department may issue a conditional license to a new facility or agency in order to permit the applicant to demonstrate compliance with specified standards. A conditional license may be renewed, but the issuance of a conditional license and any renewals thereof shall be for no longer a period than six successive months. When the conditional period is over, the facility or agency must substantially meet the standards or be denied a license. Conditional licenses may be used only for new facilities or agencies.

8VAC20-820-90. Regular license.

A regular license is issued when the activities, services, facilities, and applicant's financial responsibility substantially meet the requirements for a license that are set forth by regulations adopted by the State Board of Education and any additional requirements that may be specified by the Code of Virginia.

8VAC20-820-100. Duration of licensure.

Each license and renewal thereof may be issued for a period of up to three successive years. The criteria for determining the periods of licensure are based on the activities, services, management, and compliance history of the facility.

A three-year license may be issued when a facility's activities, services, and management routinely substantially exceed the minimum standards.

A two-year license may be issued when a facility's services and management routinely meet and maintain compliance with minimum standards and may exceed on a sustained basis in some areas.

An annual license may be issued when a facility's activities, services, and management indicate an inconsistent level of compliance but substantial compliance is reached. Some reinforcement and guidance are needed in order for the facility to meet or maintain minimum requirements.

EXCEPTION: A license, other than a conditional or provisional license, issued to a child day center shall have a duration of two years from the date of issuance.

8VAC20-820-110. Provisional license.

When a regular license expires and the applicant is temporarily unable to comply with the requirements of the regulations, the department may issue a provisional license for any period not to exceed six months. A provisional license shall not be issued to a facility or agency immediately following a conditional license. At the conclusion of the provisional licensure period, the facility or agency must be in substantial compliance with licensing standards or be denied a license to continue operation.

8VAC20-820-120. Terms of the license.

A. A facility or an agency shall operate within the terms of its license, which are:

1. The operating name of the facility or agency;
2. The name of the individual, partnership, association, corporation, limited liability company, or public entity sponsoring the facility or agency;
3. The physical location of the facility or agency;
4. The maximum number of children who may be in care at any time;
5. The period of time for which the license is effective;
6. For child care facilities or agencies, the age range of children for whom care may be provided; and
7. Any other limitations that the department may prescribe within the context of the regulations for any facility or agency.

B. The provisional license cites the standards with which the licensee is not in compliance.

C. The conditional license cites the standards with which the licensee must demonstrate compliance when operation begins, and also any standards with which the licensee is not in compliance.

D. Prior to changes in operation that would affect the terms of the license, the licensee shall secure a modification to the terms of the license from the department. (See 8VAC20-820-190.)

E. Certain documents related to the terms of the license are required to be posted on the premises of each facility. These are:

1. The most recently issued license. Any provisional license shall be posted at each public entrance of the facility and a notice shall be prominently displayed next to the license that states that a description of specific violations of licensing standards to be corrected and the deadline for completion of such corrections is available for inspection at the facility or on the facility's website, if applicable;
2. The findings of the most recent inspection of the facility;

3. Notice of the superintendent's intent to revoke or deny renewal of the license of a child day program or family day system. Such notice will be provided by the department and shall be posted in a prominent place at each public entrance of the facility to advise consumers of serious or persistent violations.

4. A copy of any final order of summary suspension of all or part of a license for a child day program or family day system operated by an agency of the Commonwealth shall be prominently displayed by the provider at each public entrance of the facility, or the provider may display a written statement summarizing the terms of the order, printed in clear and legible size and typeface, in a prominent location and identifying the location within the facility where the final order of summary suspension may be reviewed.

5. Notice of the Superintendent's intent to take any of the actions enumerated in subdivisions B 1 through B 6 of § 22.1-289.023 of the Code of Virginia. Such notice will be provided by the department, and a copy of the notice shall be posted in a prominent place at each public entrance of the facility to advise consumers of serious or persistent violations.

6. A copy of any special order issued by the department shall be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations.

7. Any other documents required by the superintendent.

Part IV Licensing Process

8VAC20-820-130. Provider support services.

A. The programmatic regulations require both general and specific training in various subject areas. The department provides preapplication consultation, ongoing technical assistance and consultation, and formal training sessions. The department's licensing representatives will provide assistance to any person seeking information about obtaining a license and information about initial and ongoing training requirements.

B. Applicants for licensure shall complete a prelicensure orientation program that focuses on health and safety standards offered through or approved by the department. The superintendent may, at the superintendent's discretion, waive the orientation requirement or issue a license conditioned upon the owner's or administrator's completion of the required training.

EXCEPTIONS: Applicants who have previously owned or managed a facility in satisfactory compliance with regulations are exempt from the requirements of prelicensure training.

Regulations

8VAC20-820-140. Initial application.

A. Upon request, the department will provide an application form for a license to operate a facility or agency. There are a number of licensing offices located throughout the state.

B. The department will consider an application complete when the application fee and all the required information is submitted in the form required by the department. The schedule of fees for licenses is provided in 8VAC20-830. If the department finds the application incomplete, the applicant will be notified in writing within 15 days of receipt of the incomplete application. If the applicant does not resubmit a complete application within 30 days from the notification, all materials except the nonrefundable fee will be returned to the applicant.

C. The applicant shall complete and submit the application to the department at least 60 days prior to a planned opening date to allow the department time to act on the application.

D. The applicant may withdraw a request for a license.

8VAC20-820-150. Approval of buildings and functional design features.

A valid certificate of occupancy is one prerequisite for licensure. When an application is for licensure of a building that has not previously been used for the type of license or use group being sought, or when renovations are made in the building, the department must approve functional design features of the building in accordance with applicable department regulations. The procedures are as follows:

1. Prior to beginning construction or renovation, the applicant or prospective applicant shall submit to the department floor plans that clearly indicate the use of space and other plans for compliance with all requirements for the building and physical environment contained in the applicable regulations.

(NOTE: Applicants and prospective applicants are urged to present their plans for compliance with departmental regulations to the department as early as possible and before entering into contracts in order to assure that the building can be preapproved as meeting the department's regulations. Architects, contractors, or building officials may not be thoroughly familiar with these functional design requirements, and costly errors can be avoided through early review by the department.)

2. The department will notify the applicant or prospective applicant within 10 working days of receipt if the plans to comply are incomplete, identifying the information still needed before the request can be considered complete.

3. When a complete plan is received, the department will issue within 20 days a preliminary approval statement or a letter indicating disapproval of the plan and the reasons for disapproval.

(NOTE: A preliminary approval statement does not imply that the department will approve the application for licensure since other factors will affect issuance decisions.)

4. All preliminary approval statements are conditional upon there being no change in the proposal or the circumstances affecting them and upon approval of all required fire, health, or building officials.

5. The department will forward a copy of the preliminary approval statement to the appropriate building official.

6. After construction or renovation, department staff will make an on-site inspection to evaluate compliance with the functional design requirements of the applicable regulations. Findings of this on-site inspection will be forwarded to the applicant and the local building official.

8VAC20-820-160. Investigation.

A. Upon receipt of the application the superintendent shall:

1. Cause an investigation to be made of the activities, services, and facilities of the applicant, and of his character and reputation;

2. If the applicant is an association, partnership, limited liability company, or corporation, cause an investigation of the character and reputation of its officers and agents; and

3. Upon receipt of the initial application, cause an investigation of the applicant's financial responsibility.

B. At the time of the initial application and annually thereafter, the applicant or licensee shall be responsible for obtaining inspection reports from appropriate fire and health agencies to determine compliance with applicable regulations.

EXCEPTION: This subsection does not apply to family day systems.

1. All buildings shall be inspected and approved by the local building official when required. This approval shall be documented by a Certificate of Use and Occupancy indicating that the building is classified for its proposed licensed purpose.

2. At the time of the initial application and at least annually thereafter, the applicant or licensee shall obtain an inspection report from state or local fire authorities, as applicable, to determine compliance of the building or buildings with the Virginia Statewide Fire Prevention Code (13VAC5-51).

3. At the time of the initial application and at least annually thereafter, the applicant or licensee shall obtain an inspection report from state or local health authorities that shall include approval of general sanitation and, if applicable, water supply, sewage disposal systems, and food service operations for the building or buildings in which the facility is operated.

C. The department's representative will make an on-site inspection of the proposed facility or agency and an investigation of the proposed services, as well as an investigation of the character, reputation, and financial responsibility of the applicant. Compliance with all standards will be determined by the Department of Education. The licensee is responsible for correcting any areas of noncompliance found during any on-site inspection.

D. The applicant or licensee shall at all times afford the department's representative reasonable opportunity to inspect all of the facility's or agency's buildings, books, and records. Records that contain confidential proprietary information furnished to the department pursuant to this section shall be exempt from disclosure pursuant to subdivision 4 of § 2.2-3705.5 of the Code of Virginia.

At the time of the initial application, the financial records of an applicant shall not be subject to inspection if the applicant submits an operating budget and at least one credit reference.

E. The applicant or licensee shall also allow the department's representative to interview the facility's or agency's agents, employees, participants, and any person under its custody, control, direction, or supervision. Interviews with participants and any person under the facility's or agency's custody, control, direction, or supervision shall be:

1. Authorized by the person to be interviewed or the person's legally authorized representative; and
2. Limited to discussion of issues related to the applicant's or licensee's compliance with applicable laws and regulations for licensure of the facility or agency.

F. After the on-site inspection the licensing representative will discuss the findings of the investigation with the administrator, licensee, or designee. As applicable, the applicant shall submit an acceptable plan for correcting any areas of noncompliance following these discussions.

G. At any time during the investigation, an applicant or licensee may request an allowable variance to any standard that creates a special hardship. (See Part V (8VAC20-820-220 et seq.) of this chapter.)

8VAC20-820-170. Notice to the applicant of issuance or denial of a license.

A. When the investigation is completed, the department will notify the applicant of its decision regarding the issuance of a license.

B. When the department intends to deny the license, the department will send a letter stating the reasons for this action and the applicant's right to appeal the decision. (See Part VIII (8VAC20-820-320 et seq.) of this chapter.)

8VAC20-820-180. Determination of continued compliance (renewal and monitoring inspections).

A. In order to determine continued compliance with standards during the effective dates of the license, the department's licensing representative will make announced and unannounced inspections of the facility or agency during the hours of its operation. The licensee is responsible for correcting any areas of noncompliance found during renewal or monitoring inspections.

B. All licensed child day programs and family day systems shall be inspected at least twice a year. At least one unannounced inspection of each licensed facility shall be made each year.

C. The department's representative may also make such inspections of any homes or facilities that are approved by the licensee for the care of children as one of the licensed services of the agency.

D. For any licensed child day center or family day system, the department may conduct such other announced or unannounced inspections as are considered appropriate.

NOTE: When necessary to respond to excessive workloads or to give priority to higher risk situations, the department may use its discretion to increase or decrease the frequency of announced and unannounced inspections made to licensed facilities during the year.

8VAC20-820-190. Modification.

A. The licensee may request a modification of the terms of a license at any time during the period of the license. The request must be submitted in writing to the department's representative.

The department will evaluate written information about any planned changes in operation that would affect either the terms of the license or the continuing eligibility for a license. A licensing representative may inspect the facility during the process of evaluating a proposed modification.

Examples of such changes are: changes in the number of children to be served, staff responsibilities, availability and use of the physical plant, and changes in program focus or needs of the population to be served.

B. If a modification can be granted under the standards, the department will issue a modified license reflecting the changes. In the event that a new application is needed or the modification cannot be granted, the licensee will be advised by letter.

8VAC20-820-200. Early compliance.

A. A provisional or conditional license may be voided and a regular license issued when all of the following conditions exist:

Regulations

1. The facility or agency complies with all standards listed on the face of the provisional or conditional license prior to the mid-point of the licensure period or within 90 days of the expiration date of the provisional or conditional license, whichever comes first, and the facility or agency is in substantial compliance with all other standards.

2. Compliance has been verified by an on-site observation by the department's licensing representative or, when applicable, by written evidence provided by the licensee.

3. All other terms of the license remain the same.

B. The licensee shall make a written request to the licensing representative for replacement of a provisional or conditional license with a regular license.

C. When the request is approved by the department, the effective date of the new regular license will be the same as the beginning date of the voided license. When the request is not approved, the reasons for this action will be confirmed to the licensee in writing.

D. Early compliance shall not be considered once the facility or agency has filed a renewal application.

8VAC20-820-210. Renewal process.

A. The department will send an application for renewal of the license to the licensee prior to the expiration date of the current license. The licensee shall submit the completed application form, including all attachments and the licensing application fee, in a timely manner to assure adequate time for processing by the department. In order for the application to be considered complete, the licensee must have paid any outstanding civil penalty assessed in a case decision.

B. The department will not process a renewal application that is not complete or when the current license is being denied or revoked in accordance with the provisions of the Administrative Process Act.

C. Should a current license expire before a new license is issued, the current license shall remain in effect provided that a complete application was filed prior to expiration of the current license and a decision for licensure is pending.

D. The department will follow the procedure for investigation and notice to the applicant previously outlined in 8VAC20-820-160, 8VAC20-820-170, and 8VAC20-820-180.

Part V

Allowable Variances

8VAC20-820-220. Conditions for initiating a request.

A licensee or applicant may request an allowable variance when he believes that the existing standard or requirement poses a substantial financial or programmatic hardship and when he believes that either an alternative method of compliance with the intent of the standard that is causing the hardship, or the actual suspension of all or part of that standard,

would neither endanger the safety or well-being of persons in care nor create a violation of statutes or of the requirements of another regulatory agency.

8VAC20-820-230. Process.

A. The licensee or applicant shall make a written request for consideration of an allowable variance. The department's licensing representative may provide consultation to the applicant or licensee in the development of the written request and throughout the allowable variance process.

1. The licensee or applicant shall describe the special hardship or hardships to the existing program or to a planned innovative or pilot program that will be caused by the enforcement of the requirement or requirements.

2. The licensee or applicant shall propose alternatives to meet the purpose of the requirement that will ensure the protection and well-being of persons in care.

3. The licensee or applicant shall obtain, when requested by the department, the opinions of professionals in the field or documented research, or both, that the proposed activities, facilities, or equipment are not injurious to persons in care.

4. The department can authorize allowable variances only to its own licensing standards, not to regulations of another agency or to any requirement in federal, state, or local laws.

B. The department's licensing representative will notify the petitioning applicant or licensee of the department's decision.

C. Approval.

1. The department may attach conditions to the granting of the allowable variance in order to protect persons in care.

2. Allowable variances are conditional upon there being no change in the circumstances that were the basis for the approval. Any allowable variance may be rescinded or modified if needs or conditions change; additional information becomes known that alters the basis for the original decision; the applicant or licensee fails to meet any conditions attached to the allowable variance; or results of the allowable variance jeopardize the safety, comfort, or well-being of persons in care.

3. Allowable variances expire automatically when there is a change in the facility's location or a change in the sponsorship of the facility or agency.

EXCEPTION: Allowable variances issued to family day systems are transferable when agencies change location.

4. The department's licensing representative will review each allowable variance at least annually. At minimum, this review shall address the impact of the allowable variance on persons in care, adherence to any conditions attached, and the continuing need for the allowable variance.

D. Denial.

1. When the decision is to deny a request for an allowable variance, the reason will be provided in writing to the applicant or licensee.

2. When a request for an allowable variance is denied, it may be reconsidered if the applicant or licensee submits another written request and provides new or additional supporting information within 30 days of denial.

NOTE: After the 30-day period, the applicant or licensee may submit a new allowable variance request describing changed conditions.

3. The department will reconsider the new request and the additional information and will notify the applicant or licensee of the decision within 30 days of receipt of the second request. This decision will be considered final and is not appealable.

E. When an allowable variance is denied, expires, or is rescinded, routine enforcement of the standard or portion of the standard shall be resumed.

F. The applicant or licensee may at any time withdraw a request for an allowable variance.

Part VI
Problem Solving Conferences

8VAC20-820-240. Initiating a request for a problem solving conference.

When an applicant or licensee has concerns about licensing procedures, interpretation of standards, or the actions of licensing personnel that cannot be resolved satisfactorily in discussion with the assigned licensing representative, the problem solving steps outlined below are available.

Licensing staff may also initiate a request for problem solving conferences with applicants or licensees when the need arises.

8VAC20-820-250. First step review.

A. The applicant or licensee may request either a desk review by, or a meeting with, the assigned licensing representative's immediate supervisor.

B. If the request stems from a desire to contest the findings or conclusions of an inspection, the following procedures shall apply:

1. The applicant or licensee shall make the request within 15 days of receiving the compliance plan.

2. The request shall specify the contested finding or conclusion and shall specify whether a desk review or conference is being requested.

3. The request shall include the applicant's or licensee's reasons or other evidence supporting the request for a review or a conference.

C. The first step informal desk review or conference will be held at the supervisor's office unless the supervisor designates a different location. The following procedures shall apply:

1. The supervisor will report the findings of a desk review in writing within 10 days of receiving the request and supporting materials or will hold the requested conference within 30 days of receipt of such request and materials.

2. When the request is for a conference, the supervisor will, within 10 days following the conference, confirm to the applicant or licensee in writing the results of the conference and any subsequent decisions made by the supervisor.

8VAC20-820-260. Second step review.

A. If after the first step review, the applicant or licensee believes that the laws, regulations, or departmental policies have been applied or interpreted in a manner that was unreasonable, arbitrary or capricious, he may request a second step review by program supervisory personnel as assigned by the Director of Child Care Licensing Programs according to the provisions of this section.

B. A second step review shall not be requested to challenge the content of an established law, regulation, or policy. However, the application of a law, regulation, or policy may be challenged.

C. When a second step review is requested, the request must be in writing.

D. The second step review request shall:

1. Be made within 15 days of the date of the first step response;

2. Specify the reason for requesting the second step informal review and include such information, explanation, or additional materials as necessary to support the applicant's or licensee's belief that the decision reached at the first step was unreasonable, arbitrary, or capricious; and

3. Include a copy of relevant materials and correspondence developed at the first step of the informal appeal process.

E. Within 30 days of receipt of this request, the director's office will respond in writing with the results of the desk review or schedule a conference.

8VAC20-820-270. Enforcement of disputed regulation.

Nothing in this part shall prohibit the department from exercising its responsibility and authority to enforce the disputed regulation during the problem solving process, including proceeding directly to imposition of administrative sanctions, or recommending petitions for injunction when, in the judgment of the Director, Office of Child Care Licensing, there is sufficient risk to persons in care to do so whether or not the steps available in the problem solving process have been exhausted.

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Part VII Complaint Investigation

8VAC20-820-280. Receipt of complaints.

Complaints may be received in written or oral form and may be anonymous. The department maintains a toll-free telephone line to receive complaints on all licensed facilities.

8VAC20-820-290. Investigation of complaints.

The department has the responsibility to investigate any complaints regarding alleged violations of the standards or statutes and complaints of the abuse and neglect of persons in care.

NOTE: In an investigation involving suspected child abuse, neglect, or exploitation in a licensed facility, the investigation will be conducted jointly with the local department of social services whenever possible in accordance with departmental policy.

8VAC20-820-300. Notification of findings.

When the investigation is completed, the licensee will be notified of the findings of the investigation. Any necessary corrective action will be identified.

8VAC20-820-310. Licensee's responsibility.

The licensee is responsible for correcting any areas of noncompliance found during a complaint investigation.

Part VIII Sanctions

8VAC20-820-320. Violation of standards or statutes.

A. The Superintendent of the Department of Education may impose such sanctions or take such actions as are appropriate for violation of any of the standards or statutes or for abuse or neglect of persons in care.

B. The following reasons may be considered by the department for the imposition of administrative sanctions:

1. Failure to demonstrate or maintain compliance with applicable standards or for violations of the provisions of the Code of Virginia;
2. Permitting, aiding, or abetting the commission of any illegal act in the licensed facility or agency;
3. Engaging in conduct or practices that are in violation of statutes and standards relating to abuse, neglect, or exploitation of children; or
4. Deviating significantly from the program or services for which a license was issued without obtaining prior written approval from the department, or failure to correct such deviations within a specified time.

8VAC20-820-330. Administrative sanctions.

The superintendent may impose administrative sanctions or initiate court proceedings, severally or jointly, when appropriate in order to ensure prompt correction of violations involving noncompliance with state law or regulation child day programs and family day systems as discovered through any inspection or investigation conducted by the Department of Education, the Virginia Department of Health, the Virginia Department of Behavioral Health and Developmental Services, or by state and local building or fire prevention officials. These administrative sanctions include:

1. Revoking or denying renewal of a license for any child day program or family day system that fails to comply with the limitations and standards set forth in its license;
2. Issuing a notice of summary suspension of the license to operate a child day program or family day system pursuant to proceedings set forth in § 22.1-289.022 C of the Code of Virginia or pursuant to proceedings set forth in § 22.1-289.024 of the Code of Virginia for child day programs or family day systems operated by an agency of the Commonwealth in conjunction with any proceedings for revocation, denial, or other action, when conditions or practices exist in the child day program or family day system that pose an immediate and substantial threat to the health, safety, and welfare of children receiving care; and
3. Imposing administrative sanctions through the issuance of a special order as provided in § 22.1-289.023 of the Code of Virginia. These include:
 - a. Placing a licensee on probation upon finding that the licensee is substantially out of compliance with the terms of the license and that the health and safety of children is at risk;
 - b. Reducing the licensed capacity or prohibiting new admissions when the superintendent has determined that the licensee cannot make necessary corrections to achieve compliance with the regulations except by a temporary restriction of its scope of service;
 - c. Mandating training for the licensee or licensee's employees, with any costs to be borne by the licensee, when the superintendent has determined that the lack of such training has led directly to violations of regulations;
 - d. Assessing civil penalties of not more than \$500 per inspection upon finding that the licensee of a child day program or family day system is substantially out of compliance with the terms of its license and the health and safety of children is at risk;
 - e. Requiring licensees to contact parents, guardians, or other responsible persons in writing regarding health and safety violations; and
 - f. Preventing licensees who are substantially out of compliance with the licensure terms or in violation of the regulations from receiving public funds.

8VAC20-820-340. Summary suspension procedures.

A. In conjunction with any proceeding for revocation, denial, or other action when conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of children, the Superintendent may issue a notice of summary suspension of the license to operate a child day program or family day system or of certain authority of the licensee to provide certain services or perform certain functions.

B. The hearing coordinator will select a hearing officer from a list prepared by the Executive Secretary of the Supreme Court of Virginia and will schedule the time, date, and location of the hearing to determine whether the suspension is appropriate as required by § 22.1-289.022 C or 22.1-289.024 C of the Code of Virginia.

C. Simultaneously with the issuance of a notice of revocation, denial, or other action, the superintendent will issue to the licensee a notice of summary suspension setting forth the following:

1. The procedures for the summary suspension;
2. The hearing and appeal rights as set forth in this subsection;
3. Facts and evidence that formed the basis for which the summary order of suspension is sought; and
4. The time, date, and location of the hearing.

D. Notice of the summary suspension shall be served on the licensee or the licensee's designee by personal service or by certified mail, return receipt requested, to the address of record of the licensee as soon as practicable after issuance thereof.

E. The hearing shall take place in the locality where the child day program or family day system operates unless the licensee or the licensee's designee expressly waives this venue provision.

1. The hearing shall be held no later than 15 business days after service of notice on the licensee. The hearing officer may grant a continuance upon written request and for good cause shown. In no event shall any continuance exceed 10 business days after the initial hearing date.
2. The hearing coordinator will forward a copy of the relevant licensing standards to the hearing officer.
3. The hearing will be conducted in accordance with the procedures set forth in 8VAC20-820-460, 8VAC20-820-470, and 8VAC20-820-480.
4. The department may be represented either by counsel or by agency staff authorized by § 2.2-509 of the Code of Virginia.

F. Within 10 days of the conclusion of the hearing, the hearing officer shall provide to the superintendent written findings and

conclusions, together with a recommendation as to whether the license should be summarily suspended. The department shall have the burden of proof in any summary suspension hearing. The decision of the hearing officer shall be based on the preponderance of the evidence presented by the record and relevant to the basic law under which the agency is operating.

G. Within 10 business days of receipt of the hearing officer's findings, conclusions, and recommendation, the superintendent may issue a final order of summary suspension or an order that such summary suspension is not warranted by the facts and circumstances presented.

H. In issuing a final order of summary suspension, the superintendent may:

1. Suspend the license of the child day program or family day system; or
2. Suspend only certain authority of the child day program or family day system to provide certain services or perform certain functions that the Superintendent determines should be restricted or modified in order to protect the health, safety, and welfare of the children receiving care.

I. The superintendent shall adopt the hearing officer's recommended decision unless to do so would be an error of law or department policy.

J. In the event the superintendent rejects a hearing officer's findings, conclusions, or recommended decision, the superintendent shall state with particularity the basis for rejection.

K. A copy of any final order of summary suspension shall be prominently displayed at each public entrance of the facility as required in 8VAC20-820-120.

L. The signed, original case decision shall remain in the custody of the agency as a public record, subject to the agency's records retention policy.

8VAC20-820-350. Appeal process.

A. The applicant or licensee will receive a notice of the department's intent to impose an administrative sanction. This notice will describe the sanctions and the reasons for the imposition. Service of the notice of adverse action is achieved by certified mailing of the notice to the applicant or licensee, unless service is made by other means and acknowledged by the applicant or licensee. If the applicant or licensee wishes to appeal the notice of adverse action, he shall have 15 days after receipt of the notice to note his appeal.

B. Upon receipt of the notice to impose an administrative sanction, the applicant or licensee has the right to appeal the decision in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). The procedures for filing an appeal will be outlined in the notice. The applicant or licensee shall submit any appeal of imposition of an

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administrative sanction in writing within 15 days of receipt of the notice.

C. If the applicant or licensee fails to appeal the notice of adverse action within 15 days of receipt of the notice, the final order will be entered. The decision will take effect 30 days after receipt of the notice.

D. The appeal process available is governed by law. Where the sanction is imposed by means of a special order as provided in § 22.1-289.023 of the Code of Virginia, the case decision is issued by the superintendent following findings and conclusions resulting from the informal conference. Other sanctions include a provision for an administrative hearing, which is described in § 2.2-4020 of the Code of Virginia, prior to the issuance of the case decision. For ease of reference, the process steps are displayed in the following chart:

List of Sanctions with Appeal Provisions			
Administrative Sanction	Informal Conference	Administrative Hearing	Circuit Court Review of Case Decision
Place licensee on probation	X		X
Reduce licensed capacity	X		X
Restrict admissions	X		X
Mandate training for licensee or staff	X		X
Assess civil penalty	X		X
Require written contact with responsible persons	X		X
Prevent receipt of public funds	X		X
Deny application for new or renewal license	X	X	X
Revoke license	X	X	X

E. A final order of summary suspension for a child day program or family day system not operated by an agency of the Commonwealth shall include notice that the licensee may appeal the superintendent's decision to the appropriate circuit court no later than 10 days following service of the order.

1. The sole issue before the court shall be whether the superintendent had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceedings.

2. The concurrent revocation, denial, or other proceedings shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

8VAC20-820-360. Failure to pay civil penalty.

A. If an outstanding civil penalty assessed after a case decision is not paid as required, the superintendent shall have the authority to:

1. Assess a late fee if the civil penalty payment is 60 days overdue, provided the total of the civil penalty and late fee do not exceed the penalty set forth in § 22.1-289.023 of the Code of Virginia;

2. Reduce the duration of the licensure period if the civil penalty payment is 60 days overdue; and

3. Deny renewal or revoke the license if the civil penalty payment is 90 days overdue.

B. The department will also institute legal collection procedures to collect unpaid penalties.

C. If a licensee appeals the imposition of a civil penalty, the provisions of this section shall not apply until the appeal is complete.

Part IX Hearings Procedures

8VAC20-820-370. Scope.

The appeal process as set forth in this part shall apply whenever the Department of Education takes adverse action on a license for a child day program or family day system. Therefore, whenever the department either revokes or refuses to issue or renew a license or imposes any other sanction for a child day program or family day system, the procedures specified in this part to produce a case decision shall be initiated.

8VAC20-820-380. Statutory basis for appeal process.

The Department of Education is mandated by statute to enforce the standards adopted by the State Board of Education pursuant to § 22.1-289.046 of the Code of Virginia, regarding facilities required to be licensed under Chapter 14.1 (§ 22.1-289.010 et seq.) of Title 22.1 of the Code of Virginia. As part of this enforcement duty, § 22.1-289.024 of the Code of Virginia requires that the procedures under the Administrative Process Act (§ 2.2-4000 et seq., of the Code of Virginia) shall apply whenever the department takes adverse action.

8VAC20-820-390. Duties of the hearing coordinator.

The hearing coordinator is the person designated by the Department of Education to perform certain administrative functions involved in setting up and carrying out the appeal process. The hearing coordinator's duties include the following:

1. Making a request to the Supreme Court for a hearing officer upon timely request for a formal administrative hearing.

2. Scheduling the date, time and location for the hearing.

3. Ensuring that a court reporter has been hired to record the hearing.

4. Preparing appropriate material for distribution to all participants. This includes the appointment of the hearing officer, preparing the notice of the hearing, and preparing the forms for the hearing officer to subpoena witnesses. It also includes submission of documents in the record, appropriate standards and any other pertinent information to all participants.

5. Monitoring the status of proceedings and the observance of timeframes throughout the appeal process.

8VAC20-820-400. Informal conference.

A. Section 2.2-4019 of the Code of Virginia provides the aggrieved party the right to request an informal conference. In the case of administrative sanctions that include a provision for an administrative hearing, the named party and the agency may consent to waive such a conference to go directly to the hearing.

B. The informal conference is a fact-finding process. The purpose of an informal conference is to give the aggrieved party an opportunity to present information or evidence he believes indicates that the intended sanction was based on factual error or on misinterpretation of facts, or to determine if the dispute may be resolved by consent. The department will decide if the conference will be open to the public.

C. If the aggrieved party presents exhibits or other documents that contain facts previously unknown to the conference chair, the conference chair may determine that the new information requires verification. Upon making such a determination, the conference chair shall notify the aggrieved party that the information needs to be verified. The report on the informal conference shall be held open for 14 days to allow for the verification of the exhibits or other documents. The conference chair has the option to require the aggrieved party to provide such verification.

D. If the aggrieved party believes the matter can be resolved by consent, a written proposal must be submitted to the department-appointed chair of the conference no later than five work days prior to the conference unless different arrangements are agreed upon with the chair. In no case may a proposed consent agreement be submitted later than the day of the conference.

E. Following the informal conference, the chair will prepare a written report and recommended decision to the department that will include statutory authority or legal basis for the remaining steps in the administrative appeals process; a

summary of the conference; the previous disposition as set out in the notice of adverse action, i.e., those issues on appeal; the findings of fact; the description of evidence; and the recommended decision or options. Within 90 days from the date of the informal conference, or from a later date agreed to by the aggrieved party and the agency, the department will issue its official decision in writing to the aggrieved party, including information concerning the named party's right to continue his appeal. The written report prepared by the chair will be attached to the letter and will be incorporated by reference.

F. When an informal conference is conducted following notification of an intent to issue a special order, the issuance of the special order shall be considered a case decision as defined in § 2.2-4001 of the Code of Virginia. Service of the decision following the informal conference shall be achieved by mailing the decision to the licensee, unless service is made by other means and acknowledged in writing by the licensee. If the licensee wishes to appeal the decision, he shall have 30 days after service of the notice to make such a request. If service is accomplished by mail, three days shall be added to the 30-day period. Any appeal following an informal conference related to special orders shall be made to the circuit court. All other appeals shall follow procedures set forth in the Administrative Process Act.

8VAC20-820-410. Consent agreements.

A. A consent agreement may be proposed by a licensee in lieu of adverse action. The proposed consent agreement shall be submitted no later than five work days prior to the conference unless different arrangements are agreed upon with the chair. In no case may a proposed consent agreement be submitted later than the day of the informal conference.

B. An acceptable consent agreement shall contain the following specific elements:

1. Dates of key actions, such as letter of sanction, timely appeal, the informal conference (if already held), and the names of the parties;

2. The assertion that all violations detailed in the letter of denial or revocation have been corrected or will be corrected by a time specified in the proposed agreement;

3. A description in detail of the case-specific systemic solution proposed that addresses the causes of the past history of violations, including the methods the licensee has in place to prevent violations and to monitor results;

4. A stipulation by the licensee to the validity of the violations enumerated in the specified correspondence and waiver of right to hearing under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) solely with respect to those violations;

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5. The duration of the consent agreement, including the information that the period begins when the division director signs;

6. A statement that when the division director signs the agreement, signifying final acceptance, the division director is also agreeing to rescind the outstanding adverse action and that the licensee is agreeing to withdraw all appeals to that action; and

7. A statement outlining conditions for termination of the final agreement for cause and the nature of the licensee's appeal rights in that event.

C. Throughout the duration of the consent agreement, licensing staff will make frequent inspections to determine whether the terms of the consent agreement are being implemented and whether its intended results are being achieved.

8VAC20-820-420. Acknowledgment of request for an administrative hearing.

Upon receipt of the written request from the aggrieved party for an administrative hearing pursuant to §§ 2.2-4020 and 2.2-4021 of the Code of Virginia, a hearing will be scheduled in the locality where the aggrieved party operates unless he expressly waives this venue provision (§ 8.01-261 of the Code of Virginia). The hearing coordinator will request appointment of a hearing officer from the list of qualified attorneys kept by the Supreme Court of Virginia. After a hearing officer is appointed and duly designated by the superintendent, a notice of hearing will be sent to the aggrieved party with a copy to the agency representative for the case. The department may be represented either by counsel or by agency staff authorized by § 2.2-509 of the Code of Virginia. After the hearing officer is appointed, the hearing coordinator will forward a copy of the relevant licensing standards and appeal procedures to the hearing officer. The hearing coordinator will not be directly involved in any investigation or litigation function in connection with the case.

8VAC20-820-430. Continuances.

A request for continuance shall be made to the hearing officer at least five days prior to the time designated for the hearing, except in cases of emergency. No continuance of an administrative hearing shall be granted except at the discretion of the hearing officer, for good cause shown and with due consideration of the potential risks to children in the facility from extended exposure to conditions detailed in the agency's revocation or denial letter. All parties involved in a hearing shall avoid delay caused by unnecessary postponements or continuances so that a decision can be made expeditiously.

8VAC20-820-440. Recesses and postponements.

The hearing officer has authority to grant recesses and postponements where necessary for the convenience and comfort of the parties, witnesses, and the court reporter.

8VAC20-820-450. Prehearing conferences.

The hearing officer has the statutory power to hold conferences for the settlement or simplification of issues by the parties. The hearing officer may hold a prehearing conference for the stipulation of certain facts or for any other purposes that might be accomplished by such a preliminary process. It may be useful for the hearing officer to direct the parties to submit to him and exchange in advance of the conference: proposed statements of issues, proposed stipulations, requests for information, statements of position, proposed procedural data, and the exchange of exhibits. The notice for such a prehearing conference must be established by the hearing officer as to the date, time and place for such conference. It will not be necessary to provide a verbatim reporting of the prehearing conference. A report summarizing the results of this conference must be prepared, consisting of a list of appearances, agreements reached, the hearing officer's rulings, and other matters decided. A copy of this report shall be provided to all persons who entered appearances, which shall become part of the agency record.

8VAC20-820-460. Conduct of hearing.

A. To initiate the proceedings, the hearing officer will call the hearing to order and make a brief statement giving the name of the proceeding, its case number, the names of all persons present and involved in the proceeding, and other appropriate introductory remarks such as the general rules of decorum and conduct. The parties shall be entitled to be accompanied by and represented by counsel. Before the formal presentation of evidence begins, the parties should be given an opportunity to bring up any preliminary matters or motions. If a hearing officer has questions or issues regarding the procedures in the hearing or his role in conducting the hearing, these questions shall be directed to the hearing coordinator. The parties at administrative hearings have the right to conduct cross-examination to obtain full and fair disclosure of the facts. The hearing officer will decide if the hearing will be open to the public.

B. The following shall be the order of proceedings at all hearings, subject to modification by the hearing officer before such hearing is commenced, for good cause:

1. Presentation, argument, and disposition of all preliminary matters and motions.

2. Presentation of opening statements. Such statements are not subject to cross-examination or an opportunity to present argumentative testimony.

3. Agency representative presents the case, calling witnesses in such order as is seen fit. Each witness should be subject to direct, cross, and redirect examination. Both the counsel for the adverse party and the hearing officer may direct questions to the witness.

4. The aggrieved party should present its case, using the same guidelines as established in subdivision 3 of this subsection.

5. Rebuttal evidence by the agency representative should be permitted.

6. At the close of the presentation of evidence, the parties may exercise their rights pursuant to §§ 2.2-4020 and 2.2-4021 of the Code of Virginia. The parties, on request, shall be given the opportunity for closing argument and may submit for the record, in writing, proposed findings and conclusions.

8VAC20-820-470. Rules of evidence.

A. The burden of proof shall be upon the proponent. Therefore, if this is a situation where the department has revoked a license or imposed another administrative sanction subject to appeal by administrative hearing, the department is the proponent and has the burden of proof. However, in cases where the department has refused to grant an initial or renewal license, the proponent is the applicant and has the burden of proving that it should be granted a license.

B. The formal rules of evidence shall not apply. The hearing officer shall receive any probative evidence, and should strike, on objection or own motion, evidence that is irrelevant, immaterial, insubstantial, privileged, or repetitive, as required by §§ 2.2-4020 and 2.2-4021 of the Code of Virginia. If a question or answer at hearing is irrelevant, improper, or excludable, the hearing officer may strike it without waiting for an objection.

C. A party to the hearing may conduct examinations or cross examinations without rigid adherence to formal rules of evidence, provided the examination or cross examination does not become abusive or constitute harassment of the witness, and the examination can be shown to be necessary to result in full and fair disclosure of the facts bearing upon matters in issue. The hearing officer may examine all or any of the witnesses at the hearing.

8VAC20-820-480. Record at hearing.

All testimony in the administrative hearing must be recorded either stenographically or by mechanical means. All documents or other evidence received are also part of the record and must be maintained. In addition, a record must be maintained of all evidence offered but excluded. See Rule 2A:3 (c) of the Rules of the Supreme Court of Virginia. As a matter of practice, it would be appropriate for the hearing officer to conditionally receive evidence and thereafter, if it is excludable, to avoid considering it in making the decision. In this way, if it is determined on judicial review that the hearing officer erroneously decided that the evidence was excludable, the case can be remanded for reconsideration of the evidence submitted but rejected as exhibits.

8VAC20-820-490. Recommendations of the hearing officer.

A. By statute, the hearing officer shall recommend findings of fact and a decision upon the preponderance of the evidence presented by the record and relevant to the basic law under which the agency is operating (§§ 2.2-4020 and 2.2-4021 of the Code of Virginia.). The recommended decision of the hearing officer shall be made upon consideration and review of the record as a whole or such portions of the record as may be cited by any party to the proceedings. The findings of fact shall be based exclusively on admissible evidence or matters that are officially noticed. The recommendation shall be in writing and shall include specific findings on all the major facts in issue.

B. The hearing officer shall provide a recommendation within 90 days from the date the agency record is closed (that is, the date of the final hearing or the date by which the hearing officer prescribes that all evidence shall be submitted) or from a later date if agreed to by the aggrieved party and the agency (§ 2.2-4024 of the Code of Virginia). If the hearing officer does not render a recommended decision within 90 days, the named party to the case decision may provide written notice to the hearing officer and the Executive Secretary of the Supreme Court that a decision is due. If no recommended decision is made by the hearing officer within 30 days from receipt of the notice, then the Executive Secretary of the Supreme Court, pursuant to § 2.2-4024 of the Code of Virginia, shall remove the hearing officer from the hearing officer list and report the hearing officer to the Virginia State Bar for possible disciplinary action, unless good cause can be shown for the delay.

C. The available remedies offered by the hearing officer shall be to (i) uphold the decision of the department; (ii) recommend reversing the decision; or (iii) recommend issuance of a different sanction as provided in § 22.1-289.023 of the Code of Virginia.

D. The findings, conclusions and recommended decision shall be provided to the parties and thereafter either party has 10 days to submit any exceptions in writing to the hearing coordinator for review by the Superintendent regarding the recommended decision of the hearing officer. The hearing officer may incorporate the procedure for making exceptions to his recommended decision within the text of his report and recommendation.

E. The hearing officer shall forward the agency record, including the recommendation; all documents submitted by the parties; a listing of all exhibits presented, received and rejected; and the transcript of the hearing to the hearing coordinator.

8VAC20-820-500. Case decision.

A. The superintendent, after review of the findings of fact and recommended decision of the hearing officer, shall make a case decision and issue an order in the case within 30 days from the date that the superintendent receives the hearing officer's

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recommendation (§§ 2.2-4020 and 2.2-4021 of the Code of Virginia). The superintendent shall provide notification to the aggrieved party of the decision within 30 days of receipt of the hearing officer's recommendation. If the superintendent does not render a decision within 30 days, the aggrieved party to the case decision may provide a written notice to the superintendent that a decision is due. If no decision is made within 30 days from the superintendent's receipt of the notice, the decision is deemed to be in favor of the aggrieved party. Service of the notice of the superintendent's decision is achieved by mailing the notice of the case decision to the licensee, unless service is made by other means and acknowledged in writing by the licensee. If service is accomplished by mail, three days shall be added to the 30-day period. If the licensee wishes to appeal the decision, the licensee shall have 30 days after service of the notice of case decision to make such request.

B. The signed original case decision shall remain in the custody of the agency as a public record, subject to the agency's records retention policy. The signed originals or facsimiles thereof, together with the full record or file of the case, shall be made available for public inspection or copying except as the agency may, in its discretion under § 2.2-4023 of the Code of Virginia, decide to withhold part or all of the records.

C. The provisions for appealing the Superintendent's order in accordance with the Administrative Process Act are found at §§ 2.2-4025 through 2.2-4030 of the Code of Virginia.

D. When issuance or renewal of a license for a child day program or family day system has been refused by the superintendent, the applicant shall not thereafter for a period of six months apply again for such license.

EXCEPTION: A child day program or family day system may apply again for such license before the end of the applicable specified period if the superintendent in his sole discretion believes that there has been such a change in the conditions on account of which he refused the prior application as to justify considering the new application.

Chapter 830

Fee Requirements for Processing Applications

8VAC20-830-10. Fees.

By act of the General Assembly and effective July 1, 2021, the Department of Education is authorized to charge fees for processing applications for licenses (§ 22.1-289.010 of the Code of Virginia).

Such fees are to be used for the development and delivery of training for operators and staff of facilities or agencies for children subject to licensure solely by the Department of Education.

Each license and renewal of it may be issued for a period of up to three successive years. The required fee for each licensed facility or agency will be based upon its licensed capacity and

the length of the total licensure period. However, the fee will be collected annually and licensees will be billed each year by the Department of Education for the appropriate portion of the fee. (Example: A facility with a capacity of 55 participants is issued a license for a period of 24 months. The fee for that facility for the two-year period would be \$210. The facility will be charged \$105 at the beginning of the licensure period and billed again for \$105 at the beginning of the second year of licensure.) No fee will be charged directly following the issuance of a conditional license.

Some programs such as, but not limited to, parks and recreation programs and summer camps, which operate for less than four months in a 12-month period, will pay a reduced fee as indicated in the fee schedule below (short-term programs).

Applicants shall use the following schedule of fees to determine the correct fee to pay for processing all applications.

<u>Schedule of Fees</u>			
<u>Capacity</u>	<u>1 year</u>	<u>2 years</u>	<u>3 years</u>
<u>1-12</u>	<u>\$14</u>	<u>\$28</u>	<u>\$42</u>
<u>13-25</u>	<u>\$35</u>	<u>\$70</u>	<u>\$105</u>
<u>26-50</u>	<u>\$70</u>	<u>\$140</u>	<u>\$210</u>
<u>51-75</u>	<u>\$105</u>	<u>\$210</u>	<u>\$315</u>
<u>76-200</u>	<u>\$140</u>	<u>\$280</u>	<u>\$420</u>
<u>201 & up</u>	<u>\$200</u>	<u>\$400</u>	<u>\$600</u>
<u>Short-term Programs</u>			
<u>1-50</u>	<u>\$25</u>	<u>\$50</u>	<u>\$75</u>
<u>51 & up</u>	<u>\$50</u>	<u>\$110</u>	<u>\$150</u>
<u>Flat Fees</u>			
<u>Family Day Care Systems</u>	<u>\$70</u>	<u>\$140</u>	<u>\$210</u>

The fee shall be paid by personal check, money order, or certified check, made payable to "Treasurer of Virginia."

A fee that is incorrect in amount or is made payable other than to the Treasurer of Virginia will be returned to the applicant. Otherwise, no fee will be returned or refunded for any reason.

Failure to submit the appropriate fee within the time frame specified by the Department of Education may result in negative action against a facility's or agency's license.

A fee will be charged for checks that must be returned to the applicant because of insufficient funds.

Chapter 840
Virginia Child Care Provider Scholarship Program

Part I
General Provisions

~~22VAC40-690-10~~ 8VAC20-840-10. Definitions.

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

"Applicant" means any individual who is applying for a scholarship for college tuition.

"Child care program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period. Child care includes care provided in the child's own home as well as care provided outside of the child's home in settings such as a private home, child care center, school, camp, recreational facility, or religious organization.

"Child care provider" means a person who is currently employed or plans to work in a child care program.

"Colleges and universities" means those Virginia based public and private accredited institutions of higher learning approved by the State Council of Higher Education for Virginia. This includes all in-state accredited Virginia public colleges, universities, two-year colleges, and community colleges; and all accredited Virginia private not-for-profit and private for-profit colleges and universities.

"Course" means any undergraduate class that focuses on preparing students to be child care providers. The courses shall focus on children between birth and 12 years of age and be in the subject areas of care or development of children, the administration of child care programs, or basic language, math, and sciences skills needed to promote growth and development in children. The courses shall be approved by the department and taught by Virginia's public or private colleges and universities.

"Department" means the Virginia Department of ~~Social Services~~ Education.

~~22VAC40-690-15~~ 8VAC20-840-20. Purpose and intent.

The purpose of the Virginia Child Care Provider Scholarship Program is to provide tuition assistance to child care providers. The intent of the program is to provide child care providers with a foundation in child care and child development. The anticipated benefit of an increased knowledge and skills base for child care providers will be an improved level of care provided to Virginia's children. This program is subject to the availability of funds.

~~22VAC40-690-20~~ 8VAC20-840-30. Application process.

A. All persons interested in obtaining a scholarship must submit a scholarship application form to the Virginia Department of ~~Social Services~~ Education or its designee as indicated on the application.

Note: Applications are available through the Virginia Department of ~~Social Services~~ Education or the designated third-party administrator.

B. A separate application must be submitted for each semester.

C. Only complete applications, both initial and resubmitted, received by the deadline indicated on the application shall be considered.

D. Applicants shall verify that the selected courses are being offered by the selected college or university for the applicable semester prior to applying for scholarships.

E. The selection of courses or colleges and universities may not be changed once the scholarship has been awarded unless the selected class is full or has been cancelled.

~~22VAC40-690-30~~ 8VAC20-840-40. Selection and eligibility.

A. Priority will be given to applicants currently employed in the field of child care. If funds remain available, the applications will be processed and scholarships awarded in order of date received.

B. In order for an applicant to be eligible for a scholarship, he must meet all of the following criteria. The applicant must:

1. Be one of the following:

- a. An employee of a child care program located in Virginia; or
- b. Domiciled in Virginia as defined in § 23-7.4 of the Code of Virginia and (i) employed in a child care program outside of Virginia or (ii) have declared an intent to become employed in child care.

2. Select a department-approved course for which he has not previously received scholarship funds; and

3. Have no more than one occurrence of the following for courses for which the applicant received a Virginia Child Care Provider Scholarship:

- a. Did not register for the course after receiving an award;
- b. Did not complete the course and received a grade of "W" for withdrawal; or
- c. Did not receive a passing grade.

In the event of such an occurrence, the department will not award future scholarships to an individual until the applicant reimburses the state for the course(s) tuition and fees that were paid to the college or university on behalf of the applicant.

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C. An applicant does not have to be enrolled in or have already taken a course in early childhood education or a related major to be eligible for a scholarship.

D. Scholarships will only be awarded if the department has adequate information to process scholarship requests. The department must have received final course grades and payment information on courses that have been previously approved for scholarships. In addition, scholarships will be awarded on a conditional basis for those persons who are in jeopardy of becoming ineligible to receive a scholarship as specified in subdivision B 3 of this section. In these instances, the department will review enrollment and grade information when provided by the institution for the current enrollment period and if the applicant is in compliance with subdivision B 3 of this section, the scholarship will be fully awarded.

E. The scholarship will only pay tuition and the technology fee for each course.

F. Applicants shall not receive scholarships for more than two courses per semester.

G. Scholarships shall not be transferred between semesters or individuals.

H. Scholarships are awarded only for courses approved by the department. The department will determine whether a course meets the definition of a "course" as defined in ~~22VAC40-690-40~~ 8VAC20-840-10.

I. Recipients may receive a total lifetime award of no more than the average tuition for eight community college courses or their monetary equivalent.

J. A recipient may use scholarship funds to attend any combination of Virginia public or private accredited two-year or four-year institutions over a period of time.

K. All applicants will be notified in writing regarding the acceptance or denial of their application.

~~22VAC40-690-35~~ 8VAC20-840-50. Appeal process.

A. Any person denied a scholarship who believes the denial was contrary to law or regulations may appeal the denial pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Section 2.2-4019 of the Code of Virginia provides the aggrieved party the right to request an informal conference. This request shall be made within 15 days of the date of denial. The informal conference is a fact-finding process and gives the aggrieved party an opportunity to present information that the denial decision was based on factual error or misinterpretation of facts. The aggrieved party may be required to provide verification of facts. The department then has 90 days from the date of the informal conference to issue its official decision in writing, including information concerning the aggrieved party's right to continue the appeal process pursuant to the Administrative Process Act. The

informal conference may be conducted by telephone if both parties consent.

B. No person shall have a right to appeal any denial due to lack of scholarship funds, untimely application, or incomplete application.

~~22VAC40-690-40~~ 8VAC20-840-60. College and university agreements.

A. Colleges and universities will be notified in writing when scholarships are awarded to applicants planning to attend their institutions.

B. The department shall provide written procedures to all colleges and universities that have any student using scholarship funds regarding the operation of the scholarship program. The procedures shall address the areas of, but not be limited to, verification of Virginia residency, billing procedures, and provision of final course grades. Specifically, these institutions shall:

1. Determine whether applicants that are not employed in child care programs located in Virginia are domiciled in Virginia as defined in § 23-7.4 of the Code of Virginia and provide the department with verification of such;

2. Provide the department each semester, but no later than at the time of billing, with the tuition rate category of each person for which the institution plans to bill or is billing the scholarship program.

3. Submit one bill to the department per institution per semester after the college's or university's published add/drop period has occurred. Colleges and universities shall submit a request for payment prior to the end of the semester for which the scholarship was awarded. Such request must be in a department-approved format; and

4. Provide the department with final course grades for classes paid for by the scholarship program within one month following the end of each semester.

C. All other eligible Virginia public and private colleges and universities may follow the procedures as outlined in subsection B of this section or place the responsibility on the student to seek reimbursement from the department.

~~22VAC40-690-55~~ 8VAC20-840-70. Disbursement of funds.

For those institutions participating in the tuition reimbursement process, funds will be disbursed to the colleges and universities upon receipt of an invoice in accordance with the Commonwealth Accounting Policies and Procedures. In the event that a college or university does not choose to participate in the tuition reimbursement process, the funds will be disbursed to the recipient upon proof of tuition payment and course enrollment through the end of the college's or university's published add/drop period.

~~22VAC40-690-60~~ 8VAC20-840-80. Gathering and maintaining information.

A. The department will maintain identifying, employment, and educational information on all applicants for a minimum of five years. This information will be obtained from the applications and subsequent information submitted by the colleges or universities or recipients as requested.

B. Additional information may be requested of any applicant receiving a scholarship as the department deems necessary to carry out its accountability functions.

~~22VAC40-690-65~~ 8VAC20-840-90. Recipient responsibilities.

A. A recipient must submit final course grades for classes paid by the Virginia Child Care Provider Scholarship Program to the department within one month of completion of the course unless the college or university does so.

Note: All colleges and universities are requested to provide final course grades to the department for the classes paid by the scholarship program as outlined in ~~22VAC40-690-40 B 4~~ 8VAC20-840-60 B 4. Grades will be used to determine eligibility as outlined in ~~22VAC40-690-30 B 3~~ 8VAC20-840-40 B 3.

B. By accepting the award, the recipient agrees to participate in any surveys conducted by the department regarding the scholarship program and comply with any requests for additional information as stated in ~~22VAC40-690-60~~ 8VAC20-840-80.

C. The recipient is responsible for all expenses related to taking the courses with the exception of the amount of the award, which only pays for tuition and the technology fee. The total lifetime award will pay the tuition and technology fee for a maximum of eight courses at the community colleges at the in-state tuition rate or the dollar equivalent of the total lifetime award, whichever comes first. Recipients shall be required to pay any additional tuition and technology fees that exceed the total lifetime award. Additional expenses for all recipients include, but are not limited to, other college or university fees, books, transportation, and child care.

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 (8VAC20-840)

[Virginia Child Care Provider Scholarship Program Application, Form #032-05-0032-06-eng \(eff. 9/2020\)](#)

Chapter 850
Voluntary Registration of Family Day Homes - Requirements for Providers
Part I
Introduction

~~22VAC40-180-10~~ 8VAC20-850-10. Definitions.

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

"Adult" means any individual 18 years of age or older.

"Age appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.

"Age groups" means the following:

"Infant" means children from birth to 16 months.

"Toddler" means children from 16 months to 31 months.

"Preschooler" means children from 31 months up to the age of eligibility to be enrolled in kindergarten or an equivalent program.

"School age" means children who are eligible to be enrolled in kindergarten or attend public school.

"Age of eligibility to attend public school" means five years of age or older by September 30.

"Care, protection and guidance" means responsibility assumed by a family day home provider for children receiving care in the home, whether they are related or unrelated to the provider.

"Certificate of registration" means a document issued by the ~~commissioner~~ Superintendent to a family day provider, acknowledging that the provider has been certified by the contracting organization or the department and has met the Requirements for Voluntary Registration of Family Day Homes - Requirements for Providers. (~~22VAC40-180~~ 8VAC20-850-10).

"Child" means any individual under 18 years of age.

~~"Commissioner" means the Commissioner of Social Services.~~

~~"Commissioner's designee" means a designated individual who or a division within the Department of Social Services that is delegated to act on the commissioner's behalf in one or more specific responsibilities.~~

"Contracting organization" means the agency which has contracted with the Department of ~~Social Services~~ Education to administer the voluntary registration program for family day homes.

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"Denial of a certificate of registration" means a refusal by the ~~commissioner~~ Superintendent to issue an initial certificate of registration.

"Department" means the Virginia Department of ~~Social Services~~ Education.

"Department's representative" means an employee or designee of the Virginia Department of ~~Social Services~~ Education acting as the authorized agent of the ~~commissioner~~ superintendent.

"Evaluate" or "evaluation" means the review of a family day provider by a contracting organization upon receipt of an application for a certificate of registration to verify that the applicant meets the Requirements for Providers.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. A family day home serving five through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. A family day home caring for more than four children under the age of two, including the provider's own children and any children who reside in the home, shall be licensed or voluntarily registered. A family day home where the children in care are all related to the provider by blood or marriage shall not be required to be licensed.

"Family day provider applicant" or "provider applicant" means a person 18 years of age or older who has applied for a certificate of registration.

"Monitor" or "monitoring visit" means to visit a registered family day provider and to review the provider's compliance with the applicable requirements described in the Requirements for Providers.

"Parent" means a biological, foster or adoptive parent, legal guardian, or any person with responsibility for, or custody of, a child enrolled or in the process of being enrolled in a family day home.

"Physician" means a person licensed to practice medicine.

"Provider" or "registered family day provider" means a person who has received an initial or renewed certificate of registration issued by the ~~commissioner~~ superintendent. This provider has primary responsibility for providing care, protection, supervision, and guidance to the children in the registered home.

"Provider assistant" means a person 14 years of age or older who has been designated by the family day provider and approved by the contracting organization to assist the provider in the care, protection, supervision, and guidance of children in the home.

"Refusal to renew a certificate of registration" means the nonissuance of a certificate of registration by the ~~commissioner~~ superintendent after the expiration of the existing certificate of registration.

"Registration fee" means the payment to a contracting organization by a provider or applicant upon filing an application for a certificate of registration.

"Registered family day home" means any family day home which has met the standards for voluntary registration for such homes pursuant to regulations promulgated by the State Board of ~~Social Services~~ Education and which has obtained a certificate of registration from the ~~commissioner~~ superintendent.

"Renewal of a certificate of registration" means the issuance of a certificate of registration by the ~~commissioner~~ superintendent after the expiration of the existing certificate of registration.

"Requirements for Providers" means the procedures and general information set forth for providers operating family day homes who voluntarily register. This includes staffing requirements and a self-administered health and safety checklist.

"Revocation of a certificate of registration" means the removal of a provider's current certificate of registration by the ~~commissioner~~ superintendent for failure to comply with the applicable Requirements for Providers.

"Substitute provider" means a provider who meets the Requirements for Providers and who is readily available to provide substitute child care in a registered provider's home or in the substitute provider's home.

"Superintendent" means the Superintendent of Public Instruction.

"Superintendent's designee" means a designated individual who or a division within the Department of Education that is designated to act on the superintendent's behalf in one or more specific responsibilities.

"USDA" means U.S. Department of Agriculture.

Part II

Provider Registration and General Procedures

~~22VAC40-180-30~~ 8VAC20-850-20. Provider eligibility.

A. A family day provider and substitute provider shall be 18 years of age or older.

B. A family day assistant shall be 14 years of age or older.

C. A family day provider, assistant or assistants and substitute provider shall be able to read, write, understand and carry out the responsibilities in the Requirements for Providers.

D. A family day provider and substitute provider shall live in a county, city, or town that does not have a local ordinance for the regulation or licensure of family day homes.

E. A family day provider that is voluntarily registered pursuant to § ~~63.2-1704~~ 22.1-289.015 of the Code of Virginia shall not be required by law to be licensed. Family day homes serving five through 12 children younger than the age of 13 years, exclusive of the provider's own children and any children who reside in the home, shall be licensed.

~~22VAC40-180-40~~ 8VAC20-850-30. Application for registration.

A. A family day provider applicant for a certificate of registration shall submit to the contracting organization a completed application form, which shall include, but not be limited to:

1. The health and safety checklist and statements of assurance as noted in Part III (~~22VAC40-180-120~~ 8VAC20-850-110 et seq.);
2. A tuberculosis test report as noted in subsection C of this section;
3. A criminal records check and Child Protective Services Central Registry Clearance as indicated in subsection D of this section;
4. A sworn disclosure statement as noted in subsection D of this section; and
5. General information as noted in subsection B of this section.

B. The provider shall also indicate a preference as to whether:

1. The provider applicant is interested in participating in the USDA food program (if the registrant is not currently participating);
2. The provider applicant is willing and able to serve as a substitute provider (after the primary provider obtains consent from parents of enrolled children) and is interested in being included on the substitute provider list maintained by the contracting organization.

C. Health information shall be submitted on the family day provider applicant, assistant ~~or assistants~~ and substitute providers, if any, and any other adult household member who comes in contact with children or handles food served to children. The applicant shall return the completed application form along with a tuberculosis (TB) form which provides written proof of the results of a tuberculosis examination for the applicant, the provider assistant, if any, and all other persons who care for children in the family day home as follows:

1. Initial tuberculosis examination and report.

- a. Within 90 days before the date of initial application for registration or within 30 days before employment or having contact with children in a registered home, each individual shall obtain a tuberculin skin test indicating the absence of tuberculosis in a communicable form;
- b. Each individual shall submit a statement that he is free of tuberculosis in a communicable form, including the results of the test;
- c. The statement shall be signed by a physician, the physician's designee, or an official of a local health department; and
- d. The statement shall be filed in the individual's record maintained at the family day home.

EXCEPTION: An individual may delay obtaining the tuberculosis test if a statement from a physician is provided that indicates the test is not advisable for specific health reasons. This statement shall include an estimated date for when the test can be safely administered. The individual shall obtain the test no later than 30 days after this date.

2. Subsequent evaluations.

- a. An individual who had a significant (positive) reaction to a tuberculin skin test and whose physician certifies the absence of communicable tuberculosis shall obtain chest x-rays on an annual basis for the following two years.
 - (1) The individual shall submit statements documenting the chest x-rays and certifying freedom from tuberculosis in a communicable form;
 - (2) The statements shall be signed by a licensed physician, the physician's designee, or an official of a local health department;
 - (3) The statements shall be filed in the individual's record maintained at the family day home; and
 - (4) Following the two-year period during which chest x-rays are required annually, additional screening shall be obtained every two years.
- b. An individual who had a nonsignificant (negative) reaction to an initial tuberculin skin test shall obtain additional screening every two years thereafter.
- c. Any individual who comes in contact with a known case of tuberculosis or who develops chronic respiratory symptoms shall, within 30 days of exposure or development, receive an evaluation in accordance with subdivision C 1 of this section.

3. At the request of the contracting organization or the Department of ~~Social Services~~ Education, a report of examination by a physician shall be obtained when there is an indication that the safety of children in care may be jeopardized by the physical or mental health of a specific individual.

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D. Information certifying that those in contact with children do not have a criminal background shall be submitted. Attachments will include:

1. A criminal records check, as specified in §§ ~~63.2-1720 and 63.2-1721~~ 22.1-289.036 of the Code of Virginia, conducted no more than 90 days before the date of initial application and no more than 90 days before the date of application for renewal, for the provider applicant, the provider assistant, and the substitute provider, if any, and any adults residing in the home;
2. A Child Protective Services (CPS) Central Registry Clearance conducted no more than 90 days before the date of initial application and no more than 90 days before the date of application for renewal, for the provider applicant, the provider assistant, and the substitute provider, if any, and any adults residing in the home; and
3. A sworn disclosure statement for the provider applicant, the provider assistant, and the substitute provider, if any, and any adults residing in the home.

~~22VAC40-180-50~~ 8VAC20-850-40. Registration fees.

A. At the time an application for a certificate of registration is submitted to the contracting organization, the provider applicant shall pay a nonrefundable registration fee not to exceed \$50 for a two-year period. The fee shall be paid in the form of a check or money order made payable to the contracting organization. (This does not include the fee for the criminal records check, CPS Central Registry Clearance or the tuberculosis test.)

B. An additional fee shall not be required if a minor change in the information collected, e.g., change in name, occurs before the expiration date of the current certificate of registration or if the provider requires a duplicate copy of the certificate of registration due to loss or destruction of the original.

C. An additional fee shall only be charged if a second home visit is required because:

1. The provider changes location (not to exceed \$50);
2. The original certificate of registration was revoked (not to exceed \$50); or
3. The provider's completion of a corrective action plan needs to be verified (not to exceed \$10).

~~22VAC40-180-60~~ 8VAC20-850-50. Issuance of a certificate of registration.

A. After the provider applicant has satisfactorily met the requirements for voluntary registration, the contracting organization shall certify the provider applicant as eligible for registration to the ~~commissioner~~ superintendent and recommend the issuance of a certificate of registration.

B. The ~~commissioner~~ superintendent shall issue the certificate of registration, which shall not be transferable, to a specific provider at a specific location.

C. If it is necessary to change any identifying information (name and phone) noted on the certificate of registration prior to the end of the two-year registration period, the provider shall advise the contracting organization no later than 14 calendar days after the change.

D. If the provider changes location prior to the end of the two-year registration period, the provider shall permit and participate in a second home visit and an evaluation of the new residence within 30 days of occupying the residence.

E. The provider shall not claim in advertising or in any written or verbal announcement to be registered with the Commonwealth of Virginia unless a certificate of registration is currently in effect.

F. A provider who has been denied a certificate of registration or who has had a certificate of registration revoked or refused renewal by the ~~commissioner~~ superintendent shall not be eligible for issuance of a certificate of registration until six months after the date of such action, unless the waiting period is waived by the ~~commissioner~~ superintendent.

~~22VAC40-180-70~~ 8VAC20-850-60. Renewal of a certificate of registration.

A. The certificate of registration shall be subject to renewal upon expiration.

B. No later than 45 days before the expiration of the current certificate of registration, the provider shall submit to the contracting organization a completed renewal application form which shall include, but not limited to, the required information specified in ~~22VAC40-180-40~~ 8VAC20-850-30.

~~22VAC40-180-80~~ 8VAC20-850-70. Denials, revocations, refusals to renew and provider appeals procedures.

A. A provider's certificate of registration may be denied, revoked, or refused renewal by the ~~commissioner~~ superintendent for cause including, but not limited to:

1. Failure to comply with adult-child ratios, staffing requirements, or other standards set forth in the Requirements for Providers;
2. Use of fraud in obtaining a certificate of registration or in the subsequent operations of the family day home;
3. Any conduct or activity which adversely affects or presents a serious hazard to the health, safety, and general well-being of an enrolled child, or which otherwise demonstrates unfitness by a provider to operate a family day care home;
4. Refusal to furnish the contracting organization or the department with records;

5. Refusal to permit immediate admission to the family day home to the parent of an enrolled child who is present in the home or to an authorized representative of the contracting organization or department when any enrolled child is present; or

6. Documentation maintained by a contracting organization or the department that a certificate of registration has been denied, revoked, or refused renewal by the ~~commissioner~~ superintendent to the provider during the six months prior to the date an application is resubmitted for a certificate of registration.

B. When a provider is found to be in violation of any of the provisions of subsection A of this section, the contracting organization shall notify the provider of the violation or violations first orally and then in writing, and, when appropriate, shall afford the provider an opportunity to abate the violation or violations within a timeframe agreed upon by the contracting organization and the provider. The provider shall immediately abate the violation or violations in situations where children are at risk of abuse or neglect or serious harm or injury.

C. If the provider fails to abate the violation or violations within the agreed upon timeframe or commits a subsequent violation, the contracting organization may recommend to the ~~commissioner~~ superintendent that the certificate of registration be denied, revoked, or refused renewal. A statement referencing the standard or standards violated shall be included with the recommendation.

D. Upon notification of the contracting organization's intent to recommend that a certificate of registration be denied, revoked, or refused renewal, a provider may request a review in writing by the contracting organization's review committee within 15 calendar days after receipt of notification.

E. The contracting organization shall submit its recommendation of the provider's eligibility for issuance of a certificate of registration to the ~~commissioner's~~ superintendent's designee. If a certificate of registration is denied, revoked or refused renewal by the ~~commissioner's~~ superintendent's designee, the provider may appeal the decision in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and may request a hearing in writing within 15 calendar days after receipt of notification of the decision.

F. After the hearing, the ~~commissioner~~ superintendent shall issue the final order, which may be appealed in accordance with the Administrative Process Act.

G. A provider whose certificate of registration is revoked or refused renewal shall notify the parent or parents of each child enrolled within 10 calendar days after receipt of notification of such action.

~~22VAC40-180-90~~ **8VAC20-850-80. Provider reporting requirements.**

A. The provider shall verbally notify the local department of social services or call the toll free number for the Child Protective Services Unit (1-800-552-7096) immediately whenever there is reason to suspect that a child has been or is being subjected to any kind of child abuse or neglect by any person.

B. The provider shall report the following incidents to the contracting organization as soon as possible but no later than the beginning of the contracting organization's next working day:

1. A lost or missing child when it was necessary to seek assistance from local emergency or police personnel;
2. Any injury that occurs while in the provider's care that results in the admission of a child to a hospital;
3. The death of a child while in the provider's care;
4. Any damage to the provider's home that affects the provider's compliance with the Requirements for Providers;
5. Any occurrence of a reportable disease, as specified in the list of reportable diseases provided by the contracting organization;
6. The termination of all family day care services by the provider; or
7. The provider's decision to surrender the certificate of registration in accordance with the Requirements of the Voluntary Registration Program.

~~22VAC40-180-100~~ **8VAC20-850-90. Provider record requirements.**

A. The provider's records shall be open for inspection by authorized representatives of the contracting organizations and the department.

B. The provider shall maintain on file a signed statement from each parent, affirming receipt of the information to parents statement.

C. The provider shall maintain an individual record for each child enrolled in care. This record shall include:

1. The child's full name (including nicknames, if any), address and birth date;
2. Name, address and telephone number of each parent or other responsible person or persons;
3. Name, address and telephone number of each parent's place of employment and his or her work hours;
4. Name, address and telephone number of one or more persons designated by the parent or parents to be called in case of emergency when a parent cannot be reached during the hours the child is in care;

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5. Name, address and telephone number of the child's physician;
6. Any known or suspected allergies and any chronic or recurrent diseases or disabilities;
7. The child's allergies to medication or drugs, if applicable, and directions for providing medicines to the child;
8. The name of the parent's hospitalization plan and number or medical assistance plan, if applicable;
9. The parent's signed authorization for the child's emergency medical treatment and written consent for giving of medications to the child;
10. The child's date of enrollment in and date of withdrawal from the family day home, when applicable;
11. Results of the health examination and up-to-date immunization records of each child unless there is record of a medical or religious exemption;
12. Names of persons authorized to visit or call for the child, as well as those who are not to visit or call for the child;
13. A record of any accidents and injuries sustained by a child;
14. The parent's signed authorization to use a substitute provider and his or her name, address, and phone number;
15. The parent's signed authorization to transport children and to take trips out of the immediate community;
16. Any written agreement made between the family day provider and the natural parent, guardian, or other responsible person for each child in care. The agreement may cover hours of care per day, week, or month; cost of care per day, week, or month; frequency and amount of payment per day, week, or month; and any special services to be provided by either party to the agreement.

D. The emergency contact information listed in subdivisions C 2 through C 5 of this section shall be made available to a physician, hospital or emergency care unit in the event of a child's illness or injury.

E. Whenever the provider leaves the home with the child or children, the provider shall have the emergency contact information and medical information required by subdivisions C 1 through C 9 of this section in the caregiver's possession.

F. The family day provider shall not disclose or permit the use of information pertaining to an individual child or family unless the parent or parents or guardian or guardians of the child has granted written permission to do so, except in the course of performance of official duties and to employees or representatives of the contracting organization or the department.

~~8VAC40-180-110~~ 8VAC20-850-100. Staffing requirements.

A. The provider shall ensure that the total number of children receiving care at any one time does not exceed four, which is the maximum capacity allowed by law (§ ~~63.2-1704~~ 22.1-289.015 of the Code of Virginia) for family day homes that may apply for voluntary registration.

B. ~~The following adult to child ratios shall be maintained for children receiving care until October 31, 1993. (NOTE: The adult-to-child ratios for voluntary registration shall be same as those for licensed day homes effective November 1, 1993.)~~

~~1. One adult may care for nine children at any one time, within the limitations that follow. This includes provider by blood or marriage the provider's own children and any children who reside in the home.~~

~~a. Of the nine children, no more than six shall be under school age without an assistant;~~

~~b. Of the children under school age, no more than five shall be under 31 months (2 ½ years of age or younger) even when an assistant is present;~~

~~c. Of the children under 31 months, no more than three shall be under 16 months without an assistant.~~

~~2. School age children who are 10 years of age and older shall not count in determining the ratio of adults to children for staffing purposes.~~

Part III Health and Safety Checklist

~~22VAC40-180-120~~ 8VAC20-850-110. Health and safety checklist criteria.

A. A health and safety checklist shall be completed by providers who apply for voluntary registration. The checklist serves as both a self-review tool for providers and an initial and renewal evaluation method for the contracting organization. Items included on the checklist are those which address the basic health and safety needs of children in care in family day homes.

B. The provider shall review and complete the checklist before being certified as eligible for issuance of a certificate of registration.

C. If the provider does not meet the criteria on the health and safety checklist at the time of the initial evaluation or monitoring visit, a corrective action plan shall be completed. This will briefly describe the standard not met, the action to be taken to meet it, the date by which it shall be completed and the signature of the provider.

D. The home shall have indoor running water and an indoor bathroom equipped with a flush toilet and a sink with running water.

E. If the provider does not have a working telephone, the caregiver shall demonstrate that one is quickly and easily accessible in case of an emergency.

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 (8VAC20-850)

[Voluntary Registration Health and Safety Checklist \(eff. 7/2021\)](#)

[Voluntary Registration Provider Application Form \(eff. 7/2021\)](#)

VA.R. Doc. No. R21-6777; Filed June 25, 2021, 5:24 p.m.



TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Virginia Racing Commission is exempt from the Administrative Process Act pursuant to § 2.2-4002 A 17 of the Code of Virginia when promulgating regulations regulating actual live horse racing at race meetings licensed by the commission.

Title of Regulation: **11VAC10-100. Horses (amending 11VAC10-100-30).**

Effective Date: July 19, 2021.

Agency Contact: Kimberly Mackey, Regulatory Coordinator, Virginia Racing Commission, 5707 Huntsman, Road Suite 201-B, Richmond, VA 23250, telephone (804) 966-7406, or email kimberly.mackey@vrc.virginia.gov.

Summary:

The amendment allows a readable microchip as an acceptable form of identification in determining a horse's eligibility to start in a race when the horse does not possess a lip tattoo.

11VAC10-100-30. Lip tattoo requirements.

No horse may start in a race without a legible lip tattoo number ~~being~~ or readable microchip applied by the designated personnel appropriate to the breed of horse. ~~The stewards, in their discretion, may approve a readable microchip approved by The Jockey Club for identification purposes if appropriate.~~ In harness racing, no Standardbred may start in a race without ~~either~~ a legible lip tattoo, ~~or~~ a freeze brand number ~~being~~ or

readable microchip applied by the designated personnel appropriate to the breed of horse.

VA.R. Doc. No. R21-6797; Filed June 22, 2021, 1:55 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Virginia Racing Commission is exempt from the Administrative Process Act pursuant to § 2.2-4002 A 17 of the Code of Virginia when promulgating regulations regulating actual live horse racing at race meetings licensed by the commission.

Title of Regulation: **11VAC10-110. Entries (amending 11VAC10-110-30).**

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Date: July 19, 2021.

Agency Contact: Kimberly Mackey, Regulatory Coordinator, Virginia Racing Commission, 5707 Huntsman Road, Suite 201-B, Richmond, VA 23250, telephone (804) 966-7406, or email kimberly.mackey@vrc.virginia.gov.

Summary:

The amendments allow for the use of a microchip in determining a horse's eligibility to start in a race when that horse does not possess a lip tattoo.

11VAC10-110-30. Horses ineligible to start.

A horse is ineligible to start in a race when:

1. The owner does not possess the required permit issued by the commission or has not applied for the appropriate permit;
2. The trainer, authorized agent, or the person having care and supervision of the horse does not possess the appropriate permit issued by the commission or has not applied for the required permit;
3. The horse's certificate of foal registration, eligibility certificate, or other registration document issued by the appropriate breed registry is not on file with the racing secretary or permission to start the horse without these documents has not been obtained from the stewards;
4. ~~The horse~~ A Thoroughbred has not been lip-tattooed or does not possess a readable microchip ~~approved~~ applied by ~~The Jockey Club for the purposes of identification~~ the designated personnel appropriate to the breed of horse, or is a Standardbred that ~~has~~ does not ~~had~~ possess a lip tattoo, freeze-brand number, or readable microchip applied by the designated personnel appropriate to the breed of horse;
5. The ownership of the horse has been transferred without notifying the racing secretary and the appropriate breed registry;
6. The horse is subject to a lien or lease that has not been approved by the stewards and filed with the racing secretary and horsemen's bookkeeper; or

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7. Nominating, sustaining, entry, starting or any other required fees have not been paid for the horse by the time specified in the published conditions of the race.

VA.R. Doc. No. R21-6798; Filed June 22, 2021, 2:09 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Virginia Racing Commission is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 23 of the Code of Virginia when promulgating regulations pertaining to the administration of medication or other substances foreign to the natural horse.

Title of Regulation: 11VAC10-180. Medication (adding 11VAC10-180-73).

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Date: July 19, 2021.

Agency Contact: Kimberly Mackey, Regulatory Coordinator, Virginia Racing Commission, 5707 Huntsman Road, Suite 201-B, Richmond, VA 23250, telephone (804) 966-7406, or email kimberly.mackey@vrc.virginia.gov.

Summary:

The amendments establish rules for the administration of clenbuterol to a horse.

11VAC10-180-73. Clenbuterol.

A. Clenbuterol use is prohibited in racing and training unless the following conditions are met:

1. The prescription for clenbuterol is made for a specific horse based upon a specific diagnosis. The prescription and volume dispensed cannot exceed a treatment period of 30 days.

2. The veterinarian must provide a copy of the prescription and diagnosis to the Equine Medical Director for review and approval. The horse may not receive clenbuterol before this approval is issued.

3. Trainers must make daily notification to the Equine Medical Director of horses in their custody having been administered clenbuterol. Notification shall be in writing as specified by the Equine Medical Director.

4. A horse administered clenbuterol shall be placed on the Veterinarian's List. The horse must meet all conditions for removal from the Veterinarian's List including a timed workout and blood and urine sampling. Both samples must have no detectable clenbuterol.

5. A horse may not enter to race until it has completed all the requirements in subdivision 4 of this subsection.

B. If clenbuterol is detected in a horse's post-race or out-of-competition sample and appropriate notification, as outlined in subdivision A 1 or A 2 of this section, was not completed, the horse shall immediately be placed on the Veterinarian's List pending the outcome of an investigation. The horse shall be

required to meet all conditions for removal from the Veterinarian's List outlined in subdivision A 4 of this section.

VA.R. Doc. No. R21-6799; Filed June 22, 2021, 2:19 p.m.

TITLE 12. HEALTH

Fast-Track Regulation

Title of Regulation: 12VAC30-10. State Plan under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (amending 12VAC30-10-60).

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

Public Hearing Information: No public hearings are currently scheduled.

Public Comment Deadline: August 18, 2021.

Effective Date: September 2, 2021.

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

Basis: Section 32.1 325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance and to promulgate regulations according to the board's requirements.

Purpose: The regulation is essential to protect the health, safety, and welfare of citizens as it ensures continuity in Medicaid benefits for members using Supplemental Nutritional Assistance Program (SNAP) and streamlines services by significantly reducing duplication of effort for state agencies. Research has shown that SNAP households have at least one member that receives coverage under Medicaid, and there may be additional eligible members. Due to similar eligibility requirements in the programs, using SNAP income to determine Medicaid eligibility will reduce the need for Medicaid participants to frequently reapply for benefits.

Rationale for Using Fast-Track Rulemaking Process: This rulemaking is expected to be noncontroversial because it does not have any negative effect on Medicaid providers or Medicaid members. The changes will streamline the eligibility process to make eligibility determinations both easier and faster. This will benefit DMAS, the Department of Social Services, and Medicaid members. There are no changes in the number or outcome of eligibility determinations made as a result of these changes, and there are no costs associated with these changes.

Substance: The amendments conform the State Plan for Medical Assistance to Centers for Medicare and Medicaid Services requirement changes.

Issues: The primary advantage of this regulatory action is DMAS will be allowed to coordinate policies and processes with other state agencies to improve administration, customer service, and program participation. This change will also reduce the need for DMAS to request additional paperwork from members. There are no disadvantages to the public, the agency, or the Commonwealth as a result of this regulatory action.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. On behalf of the Board of Medical Assistance Services, the Department of Medical Assistance Services (DMAS) proposes to use verified income information provided by applicants for the Supplemental Nutritional Assistance Program (SNAP) as part of the Medicaid application process.¹ Since SNAP income thresholds are lower than Medicaid income thresholds, the proposed amendment would not change the income thresholds or other eligibility criteria for Medicaid. Rather, the proposed amendment would use verified income data already present in the Virginia Case Management System (VaCMS), an enterprise eligibility determination system used by the Department of Social Services (DSS), thereby reducing the paperwork burden for Medicaid-eligible SNAP enrollees.

Background. Applications for SNAP and Medicaid are processed by DSS staff, who use VaCMS for case management. Functionality in VaCMS supports the use of SNAP income in making Medicaid eligibility decisions by showing local DSS eligibility staff whether the applicant's case file has current, verified SNAP income information that can thus be used to make a Medicaid eligibility determination. Currently, ex parte eligibility renewals for Medicaid are completed using information that is already available in an applicant's case file. The proposed amendment would allow the same process to also be implemented for initial Medicaid applications. Without the proposed change, local DSS staff would have to request additional income verification from individuals applying for Medicaid. This additional step could result in a denial or loss of coverage if the individual does not provide the information in time, even if income information for that individual already exists in VaCMS.

In particular, DMAS proposes to add the following language into 12VAC30-10-60 Application; determination of eligibility and furnishing Medicaid: Supplemental Nutrition Assistance Program (SNAP) income will be used to support Medicaid eligibility determinations for individuals currently enrolled in SNAP. The Medicaid agency will not alter SNAP procedures while using the reported income to determine Medicaid eligibility using Medicaid rules. The Medicaid agency will obtain all information necessary for a Medicaid eligibility determination that is not in the case record for SNAP from the

Medicaid eligibility application. This language has already been approved by the Centers for Medicare and Medicaid Services as part of a State Plan Amendment, with an effective date of October 1, 2019. Therefore, in practice, SNAP income is already in use for Medicaid eligibility determinations, and the proposed amendment would conform the regulation to current practice.

Estimated Benefits and Costs. The proposed amendment would directly benefit individuals applying for SNAP and Medicaid at the same time, or those applying for Medicaid who had previously been enrolled in SNAP, by reducing the number of times they have to provide the same income verification information. According to DMAS, DSS local eligibility workers would also benefit by the removal of unnecessary steps in the benefits determination process. Lastly, since the proposed amendment would not change the income thresholds or other eligibility criteria for either SNAP or Medicaid, it would not significantly affect enrollment rates for either program or have budget implications for the state's general fund allocations. While it is possible that some individuals who might have failed to provide income verification in a timely manner and thus be denied Medicaid would instead become enrolled, that marginal cost is likely negligible relative to overall Medicaid enrollment rates, and the benefit to those individuals from having health insurance likely outweighs the costs.

Businesses and Other Entities Affected. As mentioned previously, local DSS employees who conduct eligibility verifications would benefit from having a more streamlined process, and applicants for Medicaid who have also applied for SNAP would benefit from lower paperwork requirements. An estimate of the number of applicants for Medicaid who also apply for SNAP is not available.

Small Businesses² Affected. The proposed amendment would not affect any small businesses.

Localities³ Affected.⁴ The proposed amendment does not introduce new costs for local governments and is unlikely to affect any locality in particular, although some marginal savings in local DSS staff time may result.

Projected Impact on Employment. The proposed amendment is unlikely to affect employment.

Effects on the Use and Value of Private Property. The proposed regulation is unlikely to affect the use and value of private property. Real estate development costs are not affected.

¹"Medicaid" as used throughout the document includes other public health insurance programs that specifically cover pregnant women, mothers and children.

²Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

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

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

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

Summary:

The amendments allow the Department of Medical Assistance Services (DMAS) to use Supplemental Nutritional Assistance Program income information to support Medicaid eligibility determinations at the time of Medicaid application.

12VAC30-10-60. Application; determination of eligibility and furnishing Medicaid.

A. The Medicaid agency meets all requirements of 42 CFR Part 435, Subpart J for processing applications, determining eligibility and furnishing Medicaid.

B. 1. Except as provided in subdivisions 2 and 3 of this subsection, individuals are entitled to Medicaid services under the plan during the three months preceding the month of application, if they were, or on application would have been, eligible. The effective date of prospective and retroactive eligibility is specified in 12VAC30-40-10.

2. For individuals who are eligible for Medicaid cost sharing expenses as qualified Medicare beneficiaries under § 1902(a)(10)(E)(i) of the Act, coverage is available for services furnished after the end of the month in which the individual is first determined to be a qualified Medicare beneficiary. 12VAC30-40-10 specifies the requirements for determination of eligibility for this group.

3. Pregnant women are not entitled to ambulatory prenatal care under the plan during a presumptive eligibility in accordance with § 1920 of the Act. 12VAC30-40-10 specifies the requirements for determination of eligibility of this group.

C. The Medicaid agency elects to enter into a risk contract with an HMO that is qualified under Title XIII of the Public Health Service Act or is provisionally qualified as an HMO pursuant to § 1903(m)(3) of the Social Security Act (42 USC § 1396(m)).

The Medicaid agency elects to enter into a risk contract with an HMO that is not federally qualified, but meets the requirements of 42 CFR 434.20(c) and is defined in 12VAC30-20-60.

D. The Medicaid agency has procedures to take applications, assist applicants, and perform initial processing of applications from those low income pregnant women, infants, and children under age 19, described in § 1902(a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), and (a)(10)(A)(ii)(IX) at locations other than those used by the Title IV-A program including FQHCs and disproportionate share hospitals. Such

application forms do not include the ADFC form except as permitted by HCFA instructions.

E. Supplemental Nutrition Assistance Program (SNAP) income will be used to support Medicaid eligibility determinations for individuals currently enrolled in SNAP. The Medicaid agency will not alter SNAP procedures while using the reported income to determine Medicaid eligibility using Medicaid rules. The Medicaid agency will obtain all information necessary for a Medicaid eligibility determination that is not in the case record for SNAP from the Medicaid eligibility application.

V.A.R. Doc. No. R21-6558; Filed June 22, 2021, 3:24 p.m.

Fast-Track Regulation

Title of Regulation: 12VAC30-10. State Plan under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (amending 12VAC30-10-650).

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: August 18, 2021.

Effective Date: September 2, 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@dmass.virginia.gov.

Basis: Section 32.1 325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance and to promulgate regulations according to the board's requirements.

Purpose: DMAS is incorporating changes to the state plan text related to the Drug Utilization Review Program in accordance with the requirements of the Support Act (Public Law No. 115-271). The changes include Support Act provisions related to (i) claims review limitations; (ii) a program to monitor antipsychotic medications by children; (iii) fraud and abuse identification; and (iv) Medicaid managed care organizations requirements. This action is essential to protect the health, safety, and welfare of the public in that it ensures that DMAS and Medicaid Managed Care Organizations are in compliance with the Support Act with regard to opioid and antipsychotic medications, as well as federal rules related to prescription fraud and abuse.

Rational for Using Fast-Track Rulemaking Process: These changes ensure that DMAS will remain in compliance with

federal regulation to ensure continued federal financial participation. In addition, as a result of the Support Act, DMAS updated its state plan through State Plan Amendment 19-017 with an effective date of December 31, 2019. This regulatory action is eligible for the fast-track process because none of the changes are expected to be controversial.

Substance: The Support Act requires DMAS and Medicaid Managed Care Organizations to comply with federal rules relating to opioid and antipsychotic medications, as well as federal rules related to prescription fraud and abuse. Those federal requirements are being incorporated into regulation to ensure compliance on these items. The section of the State Plan for Medical Assistance that is affected by this amendment is 12VAC30-10-650.

Issues: The changes ensure that DMAS remains in compliance with federal regulations to continue to obtain federal financial participation; there are no disadvantages in this regulatory change.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As the result of a federal mandate, the Board of Medical Assistance Services (Board) proposes to amend the Drug Utilization Review (DUR) Program provisions in the State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions regulation (regulation) to align with the Medicaid State Plan for Medical Assistance Services (state plan).

Background: Federal background. Section 1902 (a) of the Social Security Act (42 USC 1396a) establishes the federal requirements for administering State Plans for Medical Assistance including specific administration, eligibility, payment, and reporting requirements. Section 1004 of the federal Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act (Public Law No. 115-271) amended § 1902(a) effective October 1, 2019, requiring compliance with the drug review and utilization requirements under subsection (oo)(1) in an effort "to reduce opioid related fraud, misuse and abuse."¹

State background. To comply with the SUPPORT Act, DMAS has already updated its state plan through Virginia State Plan Amendment (SPA) #: 19-017 effective December 31, 2019.² According to DMAS, the proposed amendments to the regulation are identical to the SPA. Thus, the requirements are already in effect.

Part of the current regulation is as follows:

B. The DUR program is designed to educate physicians and pharmacists to identify and to reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and patients or associated with specific drugs as well as:

1. Potential and actual adverse drug reactions
2. Therapeutic appropriateness
3. Overutilization and underutilization
4. Appropriate use of generic products
5. Therapeutic duplication
6. Drug disease contraindications
7. Drug-drug interactions
8. Incorrect drug dosage or duration of drug treatment
9. Drug allergy interactions
10. Clinical abuse/misuse

The Board proposes to add the following:

11. Provisions of Section 1004 of the SUPPORT ACT (below)

C. SUPPORT ACT Provisions

1. Claim Review Limitations

- a. Prospective safety edits including early, duplicate fill, and quantity limits for clinical appropriateness for opioids.
- b. Maximum daily Morphine Milligram Equivalents (MME) safety edits: A maximum dosing limit on opioids limits the daily morphine milliequivalents (as recommended by clinical guidelines)
- c. Concurrent Utilization Alerts: Prospective drug to-drug interaction alerts will require a response from the pharmacy if an opioid and benzodiazepine or opioid and antipsychotics are being dispensed within an overlapping period with retrospective reviews performed on an ongoing periodic basis.
- d. Comprehensive Retrospective DUR is performed on opioid prescriptions on an ongoing periodic basis.

2. Programs to Monitor Antipsychotic Medications to Children. Antipsychotic agents are reviewed for age appropriateness, duplicate therapy, and adverse effects in children based on the FDA product approval and clinical guidelines.

3. Fraud and Abuse Identification. The Client Medical Management (CMM) program for fee-for-service (FFS) beneficiaries that may require restriction to physician, pharmacy or both limiting the beneficiary's access to services identified as not medically necessary, excessive or both. The beneficiary's designated physician is responsible for supervising, coordinating, and providing initial and primary medical care; initiating written referrals for specialist care and for maintaining the continuity of patient care.

Estimated Benefits and Costs. There are six managed care organizations (MCOs) that have contracted with DMAS to provide managed care services to Medicaid recipients. DMAS and each of the MCOs have their own DUR programs. The DMAS program is for fee-for-service Medicaid recipients. A large part of the DUR programs involve pharmacists receiving

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immediate alerts when the items listed in 12VAC30-10-650 B are detected, as well as retrospective reviews.

All of the new requirements that were added to the state plan through SPA were also added to MCO contracts. Thus, these requirements are already in effect. With the exception of Concurrent Utilization Alerts (see 12VAC30-10-650 C 1 c), DMAS does not believe any of the new requirements caused the MCOs to substantively alter their practices or affected cost. DMAS does not know if the MCOs were producing Concurrent Utilization Alerts for opioid and benzodiazepine or opioid and antipsychotics being dispensed within an overlapping period. If any of the MCOs were not producing these alerts, they would have needed to reprogram their computer system to start producing such alerts to pharmacists. In addition to the time cost of reprogramming,³ there is potential benefit in producing these alerts in that the likelihood of some adverse drug interactions may be reduced.

According to DMAS, the agency was already doing everything in the new language prior to it being added to the state plan. Thus, DMAS and fee-for-service Medicaid recipients were not directly affected.

Businesses and Other Entities Affected. The proposed amendments concern the approximate 1,500 pharmacies that are enrolled with Virginia Medicaid, the six MCOs that have contracted with DMAS, and Medicaid recipients. Adding the proposed language to the regulation would not increase costs for any entity.

Small Businesses⁴ Affected. The proposed amendments do not appear to adversely affect small businesses.

Localities⁵ Affected.⁶ The proposed amendments do not disproportionately affect any particular locality. The proposal does not introduce costs for local governments.

Projected Impact on Employment. The proposal does not affect employment.

Effects on the Use and Value of Private Property. The proposal does not affect the use and value of private property. The proposal does not affect real estate development costs.

¹See <https://www.medicaid.gov/federal-policy-guidance/downloads/cib080519-1004.pdf>

²See <https://www.medicaid.gov/State-resource-center /Medicaid-State-Plan-Amendments/Downloads/VA/VA-19-0017.pdf>

³If the MCO used an outside firm for programming, it would be a fee cost instead of the time of an MCO employee.

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

⁵"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁶§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the

Department of Planning and Budget. The agency raises no issues with this analysis.

Summary:

The amendments incorporate changes to the State Plan for Medical Assistance related to the Drug Utilization Review Program in accordance with the requirements of the SUPPORT Act (P.L. 115-271) and include (i) provisions related to claims review limitations, (ii) adding a program to monitor antipsychotic medications by children, (iii) fraud and abuse identification, and (iv) new Medicaid managed care organizations requirements.

12VAC30-10-650. Drug Utilization Review Program.

A. 1. The Medicaid agency meets the requirements of § 1927(g) of the Social Security Act for a drug use review (DUR) program for outpatient drug claims.

2. The DUR program assures that prescriptions for outpatient drugs are:

- a. Appropriate;
- b. Medically necessary;
- c. Are not likely to result in adverse medical results;

B. The DUR program is designed to educate physicians and pharmacists to identify and to reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and patients or associated with specific drugs as well as:

1. Potential and actual adverse drug reactions;
2. Therapeutic appropriateness;
3. Overutilization and underutilization;
4. Appropriate use of generic products;
5. Therapeutic duplication;
6. Drug disease contraindications;
7. Drug-drug interactions;
8. Incorrect drug dosage or duration of drug treatment;
9. Drug allergy interactions;
10. Clinical ~~abuse/misuse~~ abuse or misuse; and
11. Provisions of § 1004 of the SUPPORT Act.

C. SUPPORT Act provisions.

1. Claim review limitations:

- a. Prospective safety edits, including early, duplicate fill, and quantity limits for clinical appropriateness for opioids.
- b. Maximum daily morphine milligram equivalents safety edits. A maximum dosing limit on opioids limits the daily morphine milliequivalents as recommended by clinical guidelines.

c. Concurrent utilization alerts. Prospective drug-to-drug interaction alerts will require a response from the pharmacy if an opioid and benzodiazepine or opioid and antipsychotics are being dispensed within an overlapping period with retrospective reviews performed on an ongoing periodic basis.

d. Comprehensive retrospective DUR is performed on opioid prescriptions on an ongoing periodic basis.

2. Programs to monitor antipsychotic medications to children. Antipsychotic agents are reviewed for age appropriateness, duplicate therapy, and adverse effects in children based on the U.S. Food and Drug Administration product approval and clinical guidelines.

3. Fraud and abuse identification. The Client Medical Management (CMM) program for fee-for-service (FFS) beneficiaries that may require restriction to physician, pharmacy, or both limiting the beneficiary's access to services identified as not medically necessary, excessive, or both. The beneficiary's designated physician is responsible for supervising, coordinating, and providing initial and primary medical care; initiating written referrals for specialist care; and maintaining the continuity of patient care.

D. The DUR program shall assess data use against predetermined standards whose source materials for their development are consistent with peer-reviewed medical literature which that has been critically reviewed by unbiased independent experts and the following compendia:

1. American Hospital Formulary Service Drug Information (2003, as amended);
2. United States Pharmacopeia-Drug Information (2003, as amended);
3. MICROMEDEX (as updated monthly);
4. Drug Facts and Comparisons (as updated monthly); and
5. Drug Information Handbook (2003, as amended in 2004).

E. DUR is not required for drugs dispensed to residents of nursing facilities that are in compliance with drug regimen review procedures set forth in 42 CFR 483.60. The state has nevertheless chosen to include nursing home drugs in retrospective DUR.

F. 1. The DUR program includes prospective review of drug therapy at the point of sale or point of distribution before each prescription is filled or delivered to the Medicaid recipient.

2. Prospective DUR includes screening each prescription filled or delivered to an individual receiving benefits for potential drug therapy problems due to:

- a. Therapeutic duplication;
- b. Drug disease contraindications;

c. Drug-drug interactions;

d. Drug-interactions with nonprescription or over-the-counter drugs;

e. Incorrect dosage or duration of drug treatment;

f. Drug allergy interactions; and

g. Clinical ~~abuse/misuse~~ abuse or misuse.

3. Prospective DUR includes counseling for Medicaid recipients based on standards established by State law and maintenance of patient profiles.

4. Prospective DUR may also include electronic messages as well as rejection of claims at point-of-sale pending appropriate designated interventions by the dispensing pharmacist or prescribing physician.

5. Designated interventions may include provider override, obtaining prior authorization via communication to a call center staffed with appropriate clinicians, or written communication to prescribers.

G. 1. The DUR program includes retrospective DUR through its mechanized drug claims processing and information retrieval system or otherwise which that undertakes ongoing periodic examination of claims data and other records to identify:

a. Patterns of fraud and abuse;

b. Gross overuse; and

c. Inappropriate or medically unnecessary care among physicians, pharmacists, Medicaid recipients, or associated with specific drugs or groups of drugs.

2. The DUR program assesses data on drug use against explicit predetermined standards, including but not limited to monitoring for:

a. Therapeutic appropriateness;

b. Overutilization and underutilization;

c. Appropriate use of generic products;

d. Therapeutic duplication;

e. Drug disease contraindications;

~~Drug-drug~~ f. Drug-to-drug interactions;

g. Incorrect ~~dosage/duration~~ dosage or duration of drug treatment; and

h. Clinical ~~abuse/misuse~~ abuse or misuse.

3. The DUR program through its state DUR Board, using data provided by the board, provides for active and ongoing educational outreach programs to educate practitioners and pharmacists on common drug therapy problems to improve prescribing and dispensing practices.

4. In situations of conflict with these criteria, DMAS, pursuant to the DUR Board's criteria and requirements, shall reject or deny presented claims and require the dispensing pharmacist to intervene as specified through electronic

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messages in the point-of-sale system before the claim will be approved for payment.

5. Designated interventions may include provider override, obtaining prior authorization via communication to a call center staffed with appropriate clinicians, or written communication to prescribers.

~~G. H.~~ 1. The DUR program has established a state DUR Board directly.

2. The DUR Board membership includes health professionals (one-third licensed actively practicing pharmacists and one-third but no more than 51% ~~percent~~ licensed and actively practicing physicians) with knowledge and experience in one or more of the following:

- a. Clinically appropriate prescribing of covered outpatient drugs.
- b. Clinically appropriate dispensing and monitoring of covered outpatient drugs.
- c. Drug use review, evaluation, and intervention.
- d. Medical quality assurance.

3. The activities of the DUR Board include:

- a. Prospective DUR;
- b. Retrospective DUR;
- c. Application of Standards as defined in § 1927(g)(2)(C); and
- d. Ongoing interventions for physicians and pharmacists targeted toward therapy problems or individuals identified in the course of retrospective DUR.

4. The interventions include in appropriate instances:

- a. Information dissemination,
- b. Written, oral, and electronic reminders,
- c. Face-to-Face and telephonic discussions,
- d. Intensified ~~monitoring/review~~ monitoring or review of prescribers/ prescribers or dispensers.
- e. Rejected or denied claims, as appropriate, to prevent the violation of the DUR Board's predetermined criteria.
- f. Provider override, obtaining prior authorization via communication to a call center staffed with appropriate clinicians, or written communication to prescribers.

~~H. I.~~ The state assures that it will prepare and submit an annual report to the secretary, which incorporates a report from the state DUR Board, and that the state will adhere to the plans, steps, procedures as described in the report.

The Medicaid agency ensures that predetermined criteria and standards have been recommended by the DUR Board and approved by either ~~BMAS~~ Board of Medical Assistance Services (BMAS) or the director, acting on behalf of the BMAS, pursuant to § 32.1-324 of the Code of Virginia and that they are based upon documentary evidence of the DUR Board.

The activities of the DUR Board and the Medicaid fraud control programs are and shall be maintained as separate. The DUR Board shall refer suspected cases of fraud or abuse to the appropriate fraud and abuse control unit with the Medicaid agency.

~~J. I.~~ 1. The state establishes, as its principal means of processing claims for covered outpatient drugs under this title, a point-of-sale electronic claims management system to perform on-line:

- a. Real time eligibility verification.
- b. Claims data capture.
- c. Adjudication of claims. Such adjudication may include the rejection or denial of claims found to be in conflict with DUR criteria. Should such rejection or denial occur during the adjudication process, the dispensing pharmacist shall have the opportunity to resolve the conflict and resubmit the claim for readjudication.
- d. Assistance to pharmacists, etc., applying for and receiving payment.

2. Prospective DUR is performed using an electronic point of sale drug claims processing system.

~~J. K.~~ Hospitals which dispense covered outpatient drugs are exempted pursuant to federal law from the drug utilization review requirements of this section when facilities use drug formulary systems and bill the Medicaid program no more than the hospital's purchasing cost for such covered outpatient drugs.

V.A.R. Doc. No. R21-6136; Filed June 22, 2021, 11:41 a.m.

Fast-Track Regulation

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

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: August 18, 2021.

Effective Date: September 2, 2021.

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

Basis: Section 32.1 325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the

State Plan for Medical Assistance and to promulgate regulations according to the board's requirements.

Items 303 V 2 and 303 JJ 1(vii) of Chapter 2 of the 2018 Acts of Assembly, Chapter 854 of the 2019 Acts of Assembly, and Chapter 1289 of the 2020 Acts of Assembly direct DMAS to provide for a settlement agreement process for informal and formal administrative proceedings.

Purpose: The amendments are needed to meet this outcome of the workgroup and budget items.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action is expected to be noncontroversial because the changes arose out of a workgroup consisting of representatives of the provider community, legal community, and Office of the Attorney General. DMAS held three open public meetings to explore and discuss the DMAS audit methodology and findings, as well as the appeals process. The workgroup agreed to adopt a plan of action, and these changes are part of that plan.

Substance: No policy currently exists permitting settlement discussions at the informal appeal level. No current written policy exists informing providers that they can discuss settlement, therefore most providers wanting to enter into settlement discussions with DMAS have resorted to filing a request for a formal administrative hearing. Doing so costs the Medicaid service providers and the Commonwealth time, money, and other resources that could be better used to serve and provide medical assistance to needy Virginians. Because no statutory or regulatory authority currently exists permitting settlement discussions at the informal appeal level, these amendments are the only means of meeting the need identified by the mandated workgroup and the General Assembly.

Issues: The primary advantages of these amendments are that they ensure that DMAS regulations and DMAS practices are aligned. This ensures transparency for Medicaid providers, Medicaid members, other agencies, and members of the public. There are no disadvantages to the public, the agency, or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to the 2018 Acts of Assembly, Chapter 2, Item 303, V.2 and JJ.1.vii¹ and the 2019 Acts of Assembly, Chapter 854, Item 303, V.2 and JJ.1,² the Director of the Department of Medical Assistance Services acting on behalf of the Board proposes to permanently replace an emergency regulation, which established a process for settlement agreements during the informal and formal provider appeals processes. The proposed process for settlement agreements has been implemented since January 2018 under a Medicaid Memo.

Background. Under the Department of Medical Assistance Services (DMAS) provider appeal regulations and the Virginia Administrative Process Act, Virginia Medicaid providers are afforded two levels of appeal: an informal appeal and a formal

appeal. Informal appeals must be filed within 30 days of when the adverse action was issued. The informal appeals are decided by an informal appeals agent, who is a DMAS employee who has not been involved in any prior level of the decision-making on the appealed action. DMAS has 180 days to process informal appeals. If the appeal is not decided in that timeframe, the provider prevails, regardless of the amount at stake.

DMAS is represented in the formal appeal by a staff attorney. Providers are not required to obtain legal counsel, but if the provider is a corporation and does not have legal counsel, it cannot make legal arguments. A hearing officer assigned by the Executive Secretary of the Virginia Supreme Court presides over the appeal and issues a recommended decision to the DMAS director. The recommended decision must be received within 120 days of when the formal appeal request was filed. The DMAS director then has 60 days from receipt of the recommended decision to issue the final agency decision.

The 2017 Acts of Assembly, Chapter 1, Item 306, WW.3³ directed DMAS to convene a workgroup consisting of representatives from the provider community, legal community, and the Office of Attorney General (OAG) to study issues relating to contractual compliance. This workgroup studied, in part, the need for a process that would allow cases to be settled during the informal appeals process in situations that did not merit the time and cost of a formal administrative hearing.

The workgroup discovered that the primary reason providers did not reach a settlement with DMAS during an informal appeal was the fact that there was no process or point of contact to submit a request for a settlement. In contrast, the formal appeals process allowed providers to tender settlement proposals to the attorney representing DMAS. Following up the workgroup's findings,⁴ DMAS determined that there was no legal barrier to start a process for settlement requests during an informal appeal. As a result, DMAS issued a Medicaid memo in January 2018 advising providers of the ability to propose a settlement during an informal appeal.

The workgroup also recommended that DMAS seek emergency regulatory authority to amend 12VAC30-20-540 of the Virginia Administrative Code to allow additional time for issuance of the informal appeal decision to allow sufficient time for settlement if the provider waives the deadline. In response, during the 2018 General Assembly Session budget language was added that provided the requested authority. Specifically, Item 303 JJ.1.vii in Chapter 2, 2018 Acts of Assembly (2018 Appropriation Act) directed DMAS to promulgate amendments that clarify that settlement proposals may be tendered during the appeal process and that approval is subject to the requirements of § 2.2-514 of the Code of Virginia. The amended regulations shall develop a framework for the submission of the settlement proposal and state that DMAS and the provider may jointly agree to stay the deadline

Regulations

for the informal appeal decision or for the formal appeal recommended decision of the Hearing Officer for a period of up to sixty (60) days to facilitate settlement discussions. If the parties reach a resolution as reflected by a written settlement agreement within the sixty-day period, then the stay shall be extended for such additional time as may be necessary for review and approval of the settlement agreement in accordance with law.

Item 303 V.2 provides additional details about the settlement agreement process, noting that

An appeal of the director's informal fact-finding conference decision concerning provider reimbursement shall be heard in accordance with § 2.2-4020 of the Administrative Process Act (§ 2.2-4020 et seq.) and the State Plan provided for in § 32.1-325, Code of Virginia. [DMAS] and the provider may jointly agree to stay the deadline for the informal appeal decision or for the formal appeal recommended decision of the Hearing Officer for a period of up to sixty (60) days to facilitate settlement discussions. If the parties reach a resolution as reflected by a written settlement agreement within the sixty-day period, then the stay shall be extended for such additional time as may be necessary for review and approval of the settlement agreement in accordance § 2.2-514 of the Code of Virginia.

Emergency regulations⁵ became effective on November 14, 2019, and specified the process for settlement requests, including staying the informal appeal deadline for a period of up to 60 days to facilitate settlement discussions, so long as the DMAS appeal representative and the provider jointly agree in writing. Since the Medicaid memo, settlement proposals are first reviewed by the DMAS staff attorney, who submits the recommendation to the DMAS director. If the DMAS director approves the settlement, it is sent to the OAG, who is required by Virginia Code Section 2.2-514 to review any proposed compromise. If the settlement amount exceeds \$250,000, it must also be approved by the Governor.

Estimated Benefits and Costs. The proposed action would permanently adopt the emergency regulations which have formalized the settlement agreement option that has been allowed under a Medicaid memo since January 2018. Since this option had already been made available under DMAS's then existing authority as a DMAS policy, the economic impact of this policy change cannot be directly attributed to this regulatory action. However, since DMAS already have data about pre and post policy change, the following discussion is provided for informational purposes only.

The settlement option requires agreement of both parties to stay the appeal for up to 60 days to reach a settlement. The purpose of the settlement option is to resolve disputes that does not merit the time and expense of a formal appeal. Because requesting a settlement would be less costly, a provider would have incentives to make such requests so long as it believes DMAS would agree to it and to the extent that the cost of making such a request is below the expected amount the provider hopes to recover. Thus, we can reliably infer that the settlement option is unlikely to make providers worse off, or have

any adverse impact on them. However, the settlement agreement option would likely lead to an increase or shift in administrative costs from other areas for DMAS to evaluate settlement requests and an increase in additional funds to be expended as a result of settled cases.

The following table provides statistics regarding provider appeals over the years 2017-2020.

		Pre-Medicaid Memo	Post-Medicaid Memo		
		2017	2018	2019	2020
Informal Appeals	Cases Filed	3,700	3,500	4,800	6,200
	Settlement Requested	NA	5	1	4
	Settlement Approved	NA	1	1	1*
Formal Appeals	Cases Filed	151	106	134	170
	Final Agency Decisions Issued**	29	16	21	12
	Settlement Requested	7	6	3	4
	Settlement Approved	5	4	2	4

* Currently under review at OAG.

** Excludes withdrawn and settled cases.

It appears that the number of informal cases filed has noticeably increased in 2019 and 2020 compared to 2017 (i.e., 3,700 vs. 4,800 and 6,200, respectively). It also appears the number of settlement agreements requested during an informal appeal ranges from one to five, usually only one of them being approved. The impact on the number of formal appeals filed appears mixed, but the number of final agency decisions issued, settlements requested and approved seems to have decreased. The trend over time appears to be that the majority of provider appeals end at the informal level, without filing a formal appeal. Whether this trend is directly related to the settlement option made available in the informal appeals since January 2018 is difficult to assess as there could be many other confounding factors.

According to DMAS, the average settlement is around a \$30,000 reduction in the initial overpayment amount. Non-monetary settlements sometimes occur to allow an informal appeal on the merits even when the initial informal appeal was dismissed as a result of untimely filing. (In those instances, the provider usually submits evidence during the formal appeal of issues receiving mail).

As far as the administrative costs for DMAS to handle these appeals, DMAS reports that it has two staff attorneys who review the settlement requests for appeals (informal or formal,

and their average salary is \$96,000/year), the average hearing officer payment for a case is \$3,000, and the average cost for transcripts per case is \$650. Whether DMAS has experienced an increase in its administrative costs is difficult to assess similarly due to possibility of many other confounding events occurring over the same time period. According to DMAS, there has not been an increase in administrative costs with the settlement process since the 2018 Medicaid memo. The reduction over the past years of formal appeals proceeding to a final agency decision has allowed DMAS to utilize the two current formal appeal staff attorneys to perform the informal appeal settlement reviews. If the volume of settlement requests at the informal appeal level significantly increased or formal appeals spiked, that may cause an increase, but the data does not indicate that is likely. There is the possibility that published final regulation may cause an increase in settlement requests as it may inform some providers about the settlement option who may be currently unaware of it.

Businesses and Other Entities Affected. DMAS currently has 67,000 unique providers enrolled as participating in the fee-for-service program. All providers can appeal adverse actions. The most recent data from 2020 indicate there were 6,200 informal and 170 formal appeals filed.

Since the settlement option is implemented under a DMAS policy at the beginning of 2018, any economic impact associated with the policy change cannot be directly attributed to this regulation. Thus, this action does not appear to indicate any adverse⁶ or disproportionate impact on any entity.

Small Businesses⁷ Affected. As already mentioned, the analysis of the proposed changes does not indicate any adverse impact on any entity including the small businesses. Providers enrolled with DMAS who operate as small businesses could benefit from the option to reach a settlement through the informal appeals process; however, the number of such providers is unknown.

Localities⁸ Affected.⁹ The proposed amendments do not particularly affect any locality or introduce costs for local governments.

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

Effects on the Use and Value of Private Property. No impact on the use and value of private property or real estate development costs are anticipated.

¹See <https://budget.lis.virginia.gov/item/2018/2/HB5002/Chapter/1/303>

²<https://budget.lis.virginia.gov/item/2019/1/HB1700/Chapter/1/303/>

³See <https://budget.lis.virginia.gov/item/2018/2/HB5002/Chapter/1/303>

⁴The link to the Appeals Workgroup report is: <https://rga.lis.virginia.gov/Published/2017/RD604/PDF>.

⁵<https://townhall.virginia.gov/l/ViewStage.cfm?stageid=8435>

⁶Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

⁷Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

⁸"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁹§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

Item 303 V 2 and clause (vii) of Item 303 JJ 1 of Chapter 2 of the 2018 Acts of Assembly, Special Session I; Chapter 854 of the 2019 Acts of Assembly; and Chapter 1289 of the 2020 Acts of Assembly direct the Department of Medical Assistance Services (DMAS) to amend the State Plan for Medical Assistance to implement amendments related to appeals administered by and for DMAS in order to establish a more formalized process by which to address administrative settlement agreements in a timely fashion.

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

12VAC30-20-540. Informal appeals.

A. Notice of informal appeal.

1. Providers appealing the termination or denial of their Medicaid agreement pursuant to § 32.1-325 E of the Code of Virginia shall file a written notice of informal appeal with the DMAS Appeals Division within 15 days of the provider's receipt of the notice of termination or denial.

2. Providers appealing adjustments to a cost report shall file a written notice of informal appeal with the DMAS Appeals Division within 90 days of the provider's receipt of the notice of program reimbursement. The written notice of informal appeal shall identify the issues, adjustments, or items that the provider is appealing.

3. Providers appealing all other DMAS decisions shall file a written notice of informal appeal with the DMAS Appeals Division within 30 days of the provider's receipt of the decision. The written notice of informal appeal shall identify each adjustment, patient, service date, or other disputed matter that the provider is appealing.

B. Administrative dismissals.

Regulations

1. Failure to timely file a written notice of informal appeal with the information required by subdivision A 2 or A 3 of this section shall result in an administrative dismissal.

2. A representative, billing company, or other third-party entity filing a written notice of appeal on behalf of a provider shall submit to DMAS, at the time of filing or upon request, a written authorization to act on the provider's behalf, signed by the provider. The authorization shall reference the specific adverse action ~~or actions~~ being appealed including, if applicable, each patient's name and date of service. Failure to submit a written authorization as specified in this subdivision shall result in an administrative dismissal. This requirement shall not apply to an appeal filed by a Virginia licensed attorney.

3. If a provider has not exhausted any applicable DMAS or contractor reconsideration or review process or contractor's internal appeals process that the provider is required to exhaust before filing a DMAS informal appeal, the provider's written notice of informal appeal shall be administratively dismissed.

4. If DMAS has not issued a decision with appeal rights, the provider's attempt to file a written notice of informal appeal, prior to the issuance of a decision by DMAS that has appeal rights, shall be administratively dismissed.

C. Written case summary.

1. DMAS shall file a written case summary with the DMAS Appeals Division within 30 days of the filing of the provider's notice of informal appeal and shall transmit a complete copy of the case summary to the provider on the same day.

2. For each adjustment, patient, and service date or other disputed matter identified by the provider in its notice of informal appeal, the case summary shall explain the factual basis upon which DMAS relied in taking its action or making its decision and identify any authority or documentation upon which DMAS relied in taking its action or making its decision.

3. Failure to file a written case summary with the DMAS Appeals Division within 30 days of the filing of the written notice of informal appeal shall result in dismissal in favor of the provider.

4. The provider shall have 12 days following the due date of the case summary to file with the DMAS Appeals Division and transmit to the author of the case summary a written notice of all alleged deficiencies in the case summary that the provider knows, or reasonably should know, exist. Failure of the provider to timely file a written notice of deficiency with the DMAS Appeals Division shall be deemed a waiver of all deficiencies, alleged or otherwise, with the case summary.

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

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

D. Conference.

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

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

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

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

F. Remand. Whenever an informal appeal is required pursuant to a remand by court order, final agency decision, agreement of the parties, or otherwise, all time periods set forth in this section shall begin to run effective with the date that the document containing the remand is date-stamped by the DMAS Appeals Division in Richmond, Virginia.

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

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

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

C. Stay of decision deadlines.

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

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

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

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

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

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

If the stay is removed, the stay shall be communicated in writing between the parties and written notice provided to the Appeals Division Director. The time period to issue the

informal appeal decision or the formal appeal recommended decision shall resume on the day the notice is provided to the Appeals Division Director.

12VAC30-20-560. Formal appeals.

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

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

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

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

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

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

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

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

Regulations

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

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

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

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

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

VA.R. Doc. No. R20-5615; Filed June 22, 2021, 10:22 a.m.

Fast-Track Regulation

Title of Regulation: 12VAC30-30. Groups Covered and Agencies Responsible for Eligibility Determination (amending 12VAC30-30-70).

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: August 18, 2021.

Effective Date: September 2, 2021.

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

Basis: Section 32.1 325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to

administer and amend the Plan for Medical Assistance and to promulgate regulations. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance and to promulgate regulations according to the board's requirements.

Item 303 SS 4a of Chapter 2 of the 2018 Acts of Assembly and Chapter 854 of the 2019 Acts of Assembly and Item 313 QQ 3a(1) of Chapter 1289 of the 2020 Acts of Assembly direct DMAS to amend the State Plan for Medical Assistance to implement coverage for newly eligible individuals.

Purpose: This regulation is essential to protect the health, safety, and welfare of citizens in that it implements the General Assembly mandate to expand Medicaid coverage to new populations.

Rationale for Using Fast-Track Rulemaking Process: This regulatory package is expected to be noncontroversial because it describes changes that were approved by the Centers for Medicare and Medicaid Services and that went into effect on January 1, 2019. As of October 18, 2019, over 331,000 individuals had enrolled in Medicaid expansion, and no formal or informal complaints or comments had been received about these changes from any Medicaid member, Medicaid provider, or member of the public.

Substance: Medicaid expansion amended mandatory eligibility categories to include adults aged 19 years or older and younger than 65 years of age, with household incomes below 138% of the federal poverty level. In accordance with federal requirements, individuals in this covered group must be considered for possible hospital presumptive eligibility. This action accomplishes that objective.

Issues: The primary advantage of this regulatory action is that additional individuals will have access to comprehensive health insurance, which should help improve health measures and outcomes across the Commonwealth. There are no disadvantages to the agency or the public.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Director of the Department of Medical Assistance Services (DMAS) proposes to clarify that existing Medicaid hospital presumptive eligibility rules also apply to adults 19 years of age or older, but younger than 65 years of age, who became eligible for coverage under the eligibility expansion that was authorized by the 2018 General Assembly.

Summary of the Proposed Amendments to Regulation. The Director of the Department of Medical Assistance Services (DMAS) proposes to clarify that existing Medicaid hospital presumptive eligibility rules also apply to adults 19 years of age or older, but younger than 65 years of age, who became eligible for coverage under the eligibility expansion that was authorized by the 2018 General Assembly.

Background. Starting on January 1, 2019, Virginia expanded Medicaid eligibility to adults 19 years of age or older, but younger than 65 years of age, with household incomes below 138 percent of the federal poverty level. Both the 2018 and 2019 Appropriation Acts (Item 303.SS 4a) authorized DMAS to effectuate changes needed to implement the expansion. Likewise, both Appropriation Acts (Item 303.SS 4f) allowed DMAS to promulgate emergency regulations to implement the expansion related changes which became effective on October 15, 2019.¹ As of October 18, 2019, over 331,000 individuals had enrolled in the expanded category.

Federal regulations in 42 CFR 435.1101 and 1102 outline the details regarding the implementation of hospital presumptive eligibility rules by the states, and note that Medicaid recipients are presumed eligible for hospital services subject to certain conditions. However, this regulation which was adopted to comply with the federal hospital presumptive eligibility rules currently do not include the expanded eligibility category as one of the groups that are subject to hospital presumptive eligibility. The changes proposed by DMAS would permanently add the eligibility category of adults 19 years of age or older, but younger than 65 years of age, with household incomes below 138% of the federal poverty level to the groups that are subject to hospital presumptive eligibility rules.

Under the presumptive eligibility rules previously adopted by Virginia Medicaid, eligibility determinations are made by trained hospital staff based on an assessment of the individual's status as a member of a group (i.e. pregnant women, infants and children under age 19, parents and other caretaker relatives, individuals eligible for family planning services, former foster care children, individuals needing treatment for breast and cervical cancer), their income, state residency, and citizenship status.

The hospital then assists the individual in completing and submitting a full Medicaid application for future Medicaid coverage. If the individual is found presumptively eligible, he or she is temporarily enrolled in Medicaid and health care providers receive payment for services provided during this interim period. A full application for Medicaid coverage may follow, with the determination of eligibility completed by a local department of social services, or DMAS. The presumptive eligibility begins on the date the determination is made and ends on the earlier of the day on which a decision is made on a full Medicaid application, or the last day of the month following the month that the hospital's presumptive eligibility determination was made and no full Medicaid application was filed. Payment for services covered is guaranteed during the presumptive eligibility period. There is no recoupment for Medicaid services provided during that period resulting from erroneous determinations made by qualified entities.

Estimated Benefits and Costs. The primary advantages that would result from this regulatory action are that it would: enable DMAS to comply with federal requirements; assure

individuals in the expanded category timely access to care; promote Medicaid enrollment among individuals who are eligible for Medicaid but not enrolled; and permit hospitals to receive Medicaid reimbursement for covered services rendered. However, it should be noted that these effects are the result of the enabling legislation and cannot be directly attributed to the proposed regulatory language by themselves.

Also, the proposed changes have already been implemented effective October 15, 2019 under emergency regulations pursuant to 2018 and 2019 General Assembly mandates. Thus, the proposed changes are not expected to create any new economic impact following promulgation of these permanent rules, other than clarifying the regulatory text regarding the applicability of existing hospital presumptive eligibility rules to the expansion population.

Businesses and Other Entities Affected. There are 169 hospitals in Virginia enrolled in Medicaid and 63 of them are conducting presumptive eligibility determinations. In 2020, there were 2,338 individuals who enrolled through hospital presumptive eligibility rules in the expanded category. As noted above, the proposed amendments mandated by the legislation are beneficial for both hospitals and recipients as they allow recipients to receive Medicaid services and providers to receive reimbursement for covered services rendered, but these amendments are not directly responsible for such impacts. Also, the proposed changes are not expected to create any economic effect upon promulgation of these permanent rules other than providing clarification for the regulatory text. Thus, no adverse economic impact² on any entity is indicated.

Small Businesses³ Affected. According to DMAS, none of the 169 hospitals that are subject to the hospital presumptive eligibility rules are small businesses. Thus, the proposed amendments do not affect small businesses.

Localities⁴ Affected.⁵ The proposed amendments do not introduce costs for local governments.

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

Effects on the Use and Value of Private Property. The proposed amendments do not directly affect the use and value of private property nor real estate development costs.

¹<https://townhall.virginia.gov/l/ViewStage.cfm?stageid=8501>

²Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

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

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

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

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

Summary:

The amendments add a new adult coverage group to hospital presumptive eligibility, incorporating changes made to the State Plan for Medical Assistance in order to implement Medicaid Expansion.

12VAC30-30-70. Hospital presumptive eligibility.

A. Qualified hospitals shall administer presumptive eligibility in accordance with the provisions of this section. A qualified hospital is a hospital that meets the requirements of 42 CFR 435.1110(b) and that:

1. Has entered into a valid provider agreement with ~~DMAS~~ the Department of Medical Assistance Services (DMAS), participates as a Virginia Medicaid provider, notifies DMAS of its election to make presumptive eligibility determinations, and agrees to make presumptive eligibility determinations consistent with DMAS policies and procedures; and
2. Has not been disqualified by DMAS for failure to make presumptive eligibility determinations in accordance with applicable state policies and procedures as defined in subsections C, D, and E of this section or for failure to meet any standards established by the Medicaid agency.

B. The eligibility groups or populations for which hospitals determine eligibility presumptively are: (i) pregnant women; (ii) infants and children younger than age 19 years; (iii) parents and other caretaker relatives; (iv) individuals eligible for family planning services; (v) former foster care children; ~~and~~ (vi) individuals needing treatment for breast and cervical cancer; and (vii) adults 19 years of age or older but younger than 65 years of age.

C. The presumptive eligibility determination shall be based on:

1. The individual's categorical or nonfinancial eligibility for the group, as listed in subsection B of this section, for which the individual's presumptive eligibility is being determined;
2. Household income shall not exceed the applicable income standard for the group, as the groups are listed in subsection B of this section, for which the individual's presumptive eligibility is being determined if an income standard is applicable for this group;
3. Virginia residency; and
4. Satisfactory immigration status in accordance with 42 CFR 435.1102(d)(1) and as required in subdivision 3 of 12VAC30-40-10 and 42 CFR 435.406.

D. Qualified hospitals shall ensure that at least 85% of individuals deemed by the hospital to be presumptively eligible will file a full Medicaid application before the end of the presumptive eligibility period.

E. Qualified hospitals shall ensure that at least 70% of individuals deemed by the hospital to be presumptively eligible are determined eligible for Medicaid based on the full application that is submitted before the end of the presumptive eligibility period.

F. The presumptive eligibility period is determined in accordance with 42 CFR 435.1101 and shall begin on the date the presumptive eligibility determination is made. The presumptive eligibility period shall end on the earlier of:

1. The date the eligibility determination for regular Medicaid is made if an application for Medicaid is filed by the last day of the month following the month in which the determination of presumptive eligibility is made; or
2. The last day of the month following the month in which the determination of presumptive eligibility is made if no application for Medicaid is filed by last day of the month following the month in which the determination of presumptive eligibility is made.

G. Periods of presumptive eligibility are limited to one presumptive eligibility period per pregnancy and one per calendar year for all other covered groups.

VA.R. Doc. No. R20-5789; Filed June 22, 2021, 3:27 p.m.

Fast-Track Regulation

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (repealing 12VAC30-50-600).**

12VAC30-121. Commonwealth Coordinated Care Program (repealing 12VAC30-121-10 through 12VAC30-121-250).

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: August 18, 2021.

Effective Date: September 2, 2021.

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

Basis: Section 32.1 325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan

for Medical Assistance and to promulgate regulations according to the board's requirements.

Purpose: The amendments repeal the regulation as it is no longer needed due to the August 2017 implementation of the mandated CCC Plus Program. The CCC program terminated effective December 31, 2017. This regulatory change protects the health, safety, and welfare of Medicaid recipients by ensuring that DMAS regulations and current DMAS practices are aligned.

Rationale for Using Fast-Track Rulemaking Process: The repeal of these regulations will be noncontroversial because the CCC program ended on December 31, 2017, and the regulations have had no effect since then.

Substance: The amendments repeal the now defunct CCC Program.

Issues: The primary advantage of this action to both the public and the agency is the removal of outdated, unnecessary regulations. These changes create no disadvantages to the public, the agency, the Commonwealth, or the regulated community.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Director of the Department of Medical Assistance Services (DMAS) proposes to repeal the regulations associated with the Commonwealth Coordinated Care Program (CCC), which consist of all of 12VAC30-121, Medicare-Medicaid Demonstration Waivers, and 12VAC30-50-600 of 12VAC30-50, Amount, Duration, and Scope of Medical and Remedial Care Services.

Background. CCC was a managed-care program launched in 2014 to improve quality, access, and health care experiences for dual-eligible recipients of Medicare and Medicaid. The program reduced Medicare and Medicaid costs by streamlining benefits into one plan and provided individuals with services that were more coordinated and person-centered.

DMAS then implemented a new managed care program for long-term services and supports, known as CCC Plus, in 2017. CCC Plus operates statewide across six regions as a mandatory Medicaid managed care program, and serves individuals (adults and children) with disabilities and complex care needs. Nearly half of the CCC Plus participants are dually eligible for Medicare and Medicaid, and many individuals (dual and nondual) receive care through nursing facilities or through one of the DMAS home and community based services.

Once CCC Plus was implemented, all members who had been served by the old CCC program were transitioned into the new program. CCC ended on December 31, 2017. According to DMAS, the regulations associated with CCC were not repealed when the CCC Plus regulations¹ were promulgated in order to allow Medicaid providers the opportunity to file an appeal. DMAS believes sufficient time has now passed to allow for

appeals, and thus now proposes to repeal the regulations associated with CCC.

Estimated Benefits and Costs. Since the text proposed for repeal is on a program that no longer exists, the proposal would have no impact beyond eliminating potential confusion among readers of the Virginia Administrative Code.

Businesses and Other Entities Affected. The proposal potentially affects readers of the Virginia Administrative Code. The proposal does not produce any cost.

Small Businesses² Affected. The proposal does not adversely affect small businesses. .

Localities³ Affected.⁴ The proposal does not disproportionately affect any particular locality. The proposal does not introduce costs for local governments.

Projected Impact on Employment. The proposal does not affect employment.

¹See <https://townhall.virginia.gov/L/ViewStage.cfm?stageid=8620>

²Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

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

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

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

Summary:

The amendments repeal the regulations associated with the Commonwealth Coordinated Care (CCC) Program, which comprised all sections of 12VAC30-121 and the one section in 12VAC30-50 (12VAC30-50-600). The program, a managed-care program launched in 2014 to improve quality, access, and health care experiences for dual-eligible recipients of Medicare and Medicaid (i) reduced Medicare and Medicaid costs by streamlining benefits into one plan and (ii) provided individuals with services that are more coordinated and person-centered.

The Department of Medical Assistance Services (DMAS), with support from the Governor and the General Assembly, implemented a new managed long-term services and supports (LTSS) initiative, known as CCC Plus in 2017. CCC Plus operates statewide across six regions as a mandatory Medicaid managed care program, and serves individuals (adults and children) with disabilities and complex care needs. Nearly half of the CCC Plus participants are dually eligible for Medicare and Medicaid and many individuals (dual and nondual) receive care through nursing facilities or through one of the DMAS home and community based services.

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Once the CCC Plus program was implemented, all members who had been served by the old CCC program were transitioned into the new program, and the CCC program ended on December 31, 2017. As a result, the CCC regulations are no longer in effect, and are being repealed.

VA.R. Doc. No. R21-6694; Filed June 22, 2021, 11:17 a.m.

Final Regulation

Titles of Regulations: 12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-130).

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (adding 12VAC30-60-65).

12VAC30-120. Waivered Services (amending 12VAC30-120-924, 12VAC30-120-930).

12VAC30-122. Community Waiver Services for Individuals with Developmental Disabilities (adding 12VAC30-122-125).

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

Effective Date: August 18, 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:

For personal care, companion care, and respite care services, the amendments establish the requirements for electronic visit verification (EVV), which is a telephone and computer-based system by which providers of services to qualifying Medicaid individuals create an electronic record of their arrival and departure times, locations, and services provided at each visit. Additional amendments require the implementation of EVV for specific categories of service providers, including those providing (i) personal care services for children receiving early preventative screening, diagnosis, and treatment; (ii) consumer-directed or agency-directed personal care or respite care services specifically for activities of daily living; (iii) personal care or respite care services for individuals under the Elderly or Disabled with Consumer-Direction Waiver, agency-directed or consumer-directed companion services in the workplace or postsecondary school, and agency-directed or consumer-directed respite care services; and (iv) services for individuals with developmental disabilities receiving community waiver services. The amendments are in conformance with the 21st Century Cures Act (P.L. 114-255), Public Law 115-222, and Item 303 LLL of Chapter 2 of the 2018 Acts of Assembly, Special Session I.

Changes to the proposed regulation include giving providers additional billing claim directives and clarifying exemptions to applicable services. 12VAC30-120-766, a section pertaining to personal care and respite care services, was repealed effective March 31, 2021, and therefore is no longer included as part of the final regulation. The proposed amendments to that section were provisionally redundant with the amendments becoming final in 12VAC30-122-20.

12VAC30-50-130. Nursing facility services, EPSDT, including school health services and family planning.

A. Nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older. Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

B. General provisions for early and periodic screening, diagnosis, and treatment (EPSDT) of individuals younger than 21 years of age, and treatment of conditions found.

1. Payment of medical assistance services shall be made on behalf of individuals younger than 21 years of age who are Medicaid eligible for medically necessary stays in acute care facilities and the accompanying attendant physician care in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local departments of social services on specific referral from those departments.

3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. DMAS shall place appropriate utilization controls upon this service.

4. Consistent with § 6403 of the Omnibus Budget Reconciliation Act of 1989, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and that are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients 21 years of age and older, provided for by § 1905(a) of the Social Security Act.

C. Community mental health services. These services in order to be covered (i) shall meet medical necessity criteria based upon diagnoses made by LMHPs who are practicing within the

scope of their licenses and (ii) are reflected in provider records and on providers' claims for services by recognized diagnosis codes that support and are consistent with the requested professional services.

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

"Activities of daily living" means personal care activities and includes bathing, dressing, transferring, toileting, feeding, and eating.

"Adolescent" or "child" means the individual receiving the services described in this section. For the purpose of the use of these terms, adolescent means an individual 12 through 20 years of age; child means an individual from birth up to 12 years of age.

"Behavioral health service" means the same as defined in 12VAC30-130-5160.

"Care coordination" means collaboration and sharing of information among health care providers who are involved with an individual's health care to improve the care.

"Caregiver" means the same as defined in 12VAC30-130-5160.

"Certified prescriber" means an employee of the local community services board or behavioral health authority, or its designee, who is skilled in the assessment and treatment of mental illness and has completed a certification program approved by the Department of Behavioral Health and Developmental Services.

"Clinical experience" means providing direct behavioral health services on a full-time basis or equivalent hours of part-time work to children and adolescents who have diagnoses of mental illness and includes supervised internships, supervised practicums, and supervised field experience for the purpose of Medicaid reimbursement of (i) intensive in-home services, (ii) day treatment for children and adolescents, (iii) community-based residential services for children and adolescents who are younger than 21 years of age (Level A), or (iv) therapeutic behavioral services (Level B). Experience shall not include unsupervised internships, unsupervised practicums, and unsupervised field experience. The equivalency of part-time hours to full-time hours for the purpose of this requirement shall be as established by DBHDS in the document entitled Human Services and Related Fields Approved Degrees/Experience, issued March 12, 2013, revised May 3, 2013.

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

"Direct supervisor" means the person who provides direct supervision to the peer recovery specialist. The direct supervisor (i) shall have two consecutive years of

documented practical experience rendering peer support services or family support services, have certification as a PRS under a certifying body approved by DBHDS, and have documented completion of the DBHDS PRS supervisor training; (ii) shall be a qualified mental health professional (QMHP-A, QMHP-C, or QMHP-E) as defined in 12VAC35-105-20 with at least two consecutive years of documented experience as a QMHP, and who has documented completion of the DBHDS PRS supervisor training; or (iii) shall be an LMHP who has documented completion of the DBHDS PRS supervisor training who is acting within his scope of practice under state law. An LMHP providing services before April 1, 2018, shall have until April 1, 2018, to complete the DBHDS PRS supervisor training.

"DMAS" means the Department of Medical Assistance Services and its contractors.

"EPSDT" means early and periodic screening, diagnosis, and treatment.

"Family support partners" means the same as defined in 12VAC30-130-5170.

"Human services field" means the same as the term is defined by DBHDS in the document entitled Human Services and Related Fields Approved Degrees/Experience, issued March 12, 2013, revised May 3, 2013.

"Individual service plan" or "ISP" means the same as the term is defined in 12VAC30-50-226.

"Licensed mental health professional" or "LMHP" means the same as defined in 12VAC35-105-20.

"LMHP-resident" or "LMHP-R" means the same as "resident" as defined in (i) 18VAC115-20-10 for licensed professional counselors; (ii) 18VAC115-50-10 for licensed marriage and family therapists; or (iii) 18VAC115-60-10 for licensed substance abuse treatment practitioners. An LMHP-resident shall be in continuous compliance with the regulatory requirements of the applicable counseling profession for supervised practice and shall not perform the functions of the LMHP-R or be considered a "resident" until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Counseling. For purposes of Medicaid reimbursement to their supervisors for services provided by such residents, they shall use the title "Resident" in connection with the applicable profession after their signatures to indicate such status.

"LMHP-resident in psychology" or "LMHP-RP" means the same as an individual in a residency, as that term is defined in 18VAC125-20-10, program for clinical psychologists. An LMHP-resident in psychology shall be in continuous compliance with the regulatory requirements for supervised experience as found in 18VAC125-20-65 and shall not

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perform the functions of the LMHP-RP or be considered a "resident" until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Psychology. For purposes of Medicaid reimbursement by supervisors for services provided by such residents, they shall use the title "Resident in Psychology" after their signatures to indicate such status.

"LMHP-supervisee in social work," "LMHP-supervisee," or "LMHP-S" means the same as "supervisee" as defined in 18VAC140-20-10 for licensed clinical social workers. An LMHP-supervisee in social work shall be in continuous compliance with the regulatory requirements for supervised practice as found in 18VAC140-20-50 and shall not perform the functions of the LMHP-S or be considered a "supervisee" until the supervision for specific clinical duties at a specific site is preapproved in writing by the Virginia Board of Social Work. For purposes of Medicaid reimbursement to their supervisors for services provided by supervisees, these persons shall use the title "Supervisee in Social Work" after their signatures to indicate such status.

"Peer recovery specialist" or "PRS" means the same as defined in 12VAC35-250-10.

"Peer recovery support services" means the same as defined in 12VAC35-250-10.

"Person centered" means the same as defined in 12VAC30-130-5160.

"Progress notes" means individual-specific documentation that contains the unique differences particular to the individual's circumstances, treatment, and progress that is also signed and contemporaneously dated by the provider's professional staff who have prepared the notes. Individualized and member-specific progress notes are part of the minimum documentation requirements and shall convey the individual's status, staff interventions, and, as appropriate, the individual's progress, or lack of progress, toward goals and objectives in the ISP. The progress notes shall also include, at a minimum, the name of the service rendered, the date of the service rendered, the signature and credentials of the person who rendered the service, the setting in which the service was rendered, and the amount of time or units or hours required to deliver the service. The content of each progress note shall corroborate the units or hours billed. Progress notes shall be documented for each service that is billed.

"Psychoeducation" means (i) a specific form of education aimed at helping individuals who have mental illness and their family members or caregivers to access clear and concise information about mental illness and (ii) a way of accessing and learning strategies to deal with mental illness and its effects in order to design effective treatment plans and strategies.

"Psychoeducational activities" means systematic interventions based on supportive and cognitive behavior therapy that emphasizes an individual's and his family's needs and focuses on increasing the individual's and family's knowledge about mental disorders, adjusting to mental illness, communicating and facilitating problem solving, and increasing coping skills.

"Qualified mental health professional-child" or "QMHP-C" means the same as the term is defined in 12VAC35-105-20.

"Qualified mental health professional-eligible" or "QMHP-E" means the same as the term is defined in 12VAC35-105-20 and consistent with the requirements of 12VAC35-105-590.

"Qualified paraprofessional in mental health" or "QPPMH" means the same as the term is defined in 12VAC35-105-20 and consistent with the requirements of 12VAC35-105-1370.

"Recovery-oriented services" means the same as defined in 12VAC30-130-5160.

"Recovery, resiliency, and wellness plan" means the same as defined in 12VAC30-130-5160.

"Resiliency" means the same as defined in 12VAC30-130-5160.

"Self-advocacy" means the same as defined in 12VAC30-130-5160.

"Service-specific provider intake" means the face-to-face interaction in which the provider obtains information from the child or adolescent, and parent or other family member, as appropriate, about the child's or adolescent's mental health status. It includes documented history of the severity, intensity, and duration of mental health care problems and issues and shall contain all of the following elements: (i) the presenting issue or reason for referral, (ii) mental health history/hospitalizations, (iii) previous interventions by providers and timeframes and response to treatment, (iv) medical profile, (v) developmental history including history of abuse, if appropriate, (vi) educational or vocational status, (vii) current living situation and family history and relationships, (viii) legal status, (ix) drug and alcohol profile, (x) resources and strengths, (xi) mental status exam and profile, (xii) diagnosis, (xiii) professional summary and clinical formulation, (xiv) recommended care and treatment goals, and (xv) the dated signature of the LMHP, LMHP-supervisee, LMHP-resident, or LMHP-RP.

"Services provided under arrangement" means the same as defined in 12VAC30-130-850.

"Strength-based" means the same as defined in 12VAC30-130-5160.

"Supervision" means the same as defined in 12VAC30-130-5160.

2. Intensive in-home services (IIH) to children and adolescents younger than 21 years of age shall be time-limited interventions provided in the individual's residence and when clinically necessary in community settings. All interventions and the settings of the intervention shall be defined in the Individual Service Plan. All IIH services shall be designed to specifically improve family dynamics, provide modeling, and the clinically necessary interventions that increase functional and therapeutic interpersonal relations between family members in the home. IIH services are designed to promote psychoeducational benefits in the home setting of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from an out-of-home placement due to a documented medical need of the individual. These services provide crisis treatment; individual and family counseling; communication skills (e.g., counseling to assist the individual and the individual's parents or guardians, as appropriate, to understand and practice appropriate problem solving, anger management, and interpersonal interaction, etc.); care coordination with other required services; and 24-hour emergency response.

a. Service authorization shall be required for Medicaid reimbursement prior to the onset of services. Services rendered before the date of authorization shall not be reimbursed.

b. Service-specific provider intakes shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services based upon incomplete, missing, or outdated service-specific provider intakes or ISPs shall be denied reimbursement. Requirements for service-specific provider intakes and ISPs are set out in this section.

c. These services shall only be rendered by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a QMHP-C, or a QMHP-E.

3. Therapeutic day treatment (TDT) shall be provided two or more hours per day in order to provide therapeutic interventions. Day treatment programs provide evaluation; medication education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control, and appropriate peer relations, etc.); and individual, group, and family counseling.

a. Service authorization shall be required for Medicaid reimbursement.

b. Service-specific provider intakes shall be required at the onset of services, and ISPs shall be required during the entire duration of services. Services based upon incomplete, missing, or outdated service-specific provider intakes or ISPs shall be denied reimbursement. Requirements for service-specific provider intakes and ISPs are set out in this section.

c. These services shall be rendered only by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a QMHP-C, or a QMHP-E.

D. Therapeutic group home services and psychiatric residential treatment facility (PRTF) services for early and periodic screening diagnosis and treatment (EPSDT) of individuals younger than 21 years of age.

1. Definitions. The following words and terms when used in this subsection shall have the following meanings:

"Active treatment" means implementation of an initial plan of care (IPOC) and comprehensive individual plan of care (CIPOC).

"Assessment" means the face-to-face interaction by an LMHP, LMHP-R, LMHP-RP, or LMHP-S to obtain information from the child or adolescent and parent, guardian, or other family member, as appropriate, utilizing a tool or series of tools to provide a comprehensive evaluation and review of the child's or adolescent's mental health status. The assessment shall include a documented history of the severity, intensity, and duration of mental health problems and behavioral and emotional issues.

"Certificate of need" or "CON" means a written statement by an independent certification team that services in a therapeutic group home or PRTF are or were needed.

"Combined treatment services" means a structured, therapeutic milieu and planned interventions that promote (i) the development or restoration of adaptive functioning, self-care, and social skills; (ii) community integrated activities and community living skills that each individual requires to live in less restrictive environments; (iii) behavioral consultation; (iv) individual and group therapy; (v) skills restoration, the restoration of coping skills, family living and health awareness, interpersonal skills, communication skills, and stress management skills; (vi) family education and family therapy; and (vii) individualized treatment planning.

"Comprehensive individual plan of care" or "CIPOC" means a person centered plan of care that meets all of the requirements of this subsection and is specific to the individual's unique treatment needs and acuity levels as identified in the clinical assessment and information gathered during the referral process.

"Crisis" means a deteriorating or unstable situation that produces an acute, heightened emotional, mental, physical, medical, or behavioral event.

"Crisis management" means immediately provided activities and interventions designed to rapidly manage a crisis. The activities and interventions include behavioral health care to provide immediate assistance to individuals experiencing acute behavioral health problems that require immediate intervention to stabilize and prevent harm and higher level of acuity. Activities shall include assessment and short-term

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counseling designed to stabilize the individual. Individuals are referred to long-term services once the crisis has been stabilized.

"Daily supervision" means the supervision provided in a PRTF through a resident-to-staff ratio approved by the Office of Licensure at the Department of Behavioral Health and Developmental Services with documented supervision checks every 15 minutes throughout a 24-hour period.

"Discharge planning" means family and locality-based care coordination that begins upon admission to a PRTF or therapeutic group home with the goal of transitioning the individual out of the PRTF or therapeutic group home to a less restrictive care setting with continued, clinically-appropriate, and possibly intensive, services as soon as possible upon discharge. Discharge plans shall be recommended by the treating physician, psychiatrist, or treating LMHP responsible for the overall supervision of the plan of care and shall be approved by the DMAS contractor.

"DSM-5" means the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, copyright 2013, American Psychiatric Association.

"Emergency admissions" means those admissions that are made when, pending a review for the certificate of need, it appears that the individual is in need of an immediate admission to a therapeutic group home or PRTF and likely does not meet the medical necessity criteria to receive crisis intervention, crisis stabilization, or acute psychiatric inpatient services.

"Emergency services" means unscheduled and sometimes scheduled crisis intervention, stabilization, acute psychiatric inpatient services, and referral assistance provided over the telephone or face-to-face if indicated, and available 24 hours a day, seven days per week.

"Family engagement" means a family-centered and strengths-based approach to partnering with families in making decisions, setting goals, achieving desired outcomes, and promoting safety, permanency, and well-being for children, adolescents, and families. Family engagement requires ongoing opportunities for an individual to build and maintain meaningful relationships with family members, for example, frequent, unscheduled, and noncontingent telephone calls and visits between an individual and family members. Family engagement may also include enhancing or facilitating the development of the individual's relationship with other family members and supportive adults responsible for the individual's care and well-being upon discharge.

"Family engagement activity" means an intervention consisting of family psychoeducational training or coaching, transition planning with the family, family and independent living skills, and training on accessing community supports

as identified in the plan of care. Family engagement activity does not include and is not the same as family therapy.

"Family therapy" means counseling services involving the individual's family and significant others to advance the treatment goals when (i) the counseling with the family member and significant others is for the direct benefit of the individual, (ii) the counseling is not aimed at addressing treatment needs of the individual's family or significant others, and (iii) the individual is present except when it is clinically appropriate for the individual to be absent in order to advance the individual's treatment goals. Family therapy shall be aligned with the goals of the individual's plan of care. All family therapy services furnished are for the direct benefit of the individual, in accordance with the individual's needs and treatment goals identified in the individual's plan of care, and for the purpose of assisting in the individual's recovery.

"FAPT" means the family assessment and planning team.

"ICD-10" means International Statistical Classification of Diseases and Related Health Problems, 10th Revision, published by the World Health Organization.

"Independent certification team" means a team that has competence in diagnosis and treatment of mental illness, preferably in child psychiatry; has knowledge of the individual's situation; and is composed of at least one physician and one LMHP. The independent certification team shall be a DMAS-authorized contractor with contractual or employment relationships with the required team members.

"Individual" means the child or adolescent younger than 21 years of age who is receiving therapeutic group home or PRTF services.

"Individual and group therapy" means the application of principles, standards, and methods of the counseling profession in (i) conducting assessments and diagnosis for the purpose of establishing treatment goals and objectives and (ii) planning, implementing, and evaluating plans of care using treatment interventions to facilitate human development and to identify and remediate mental, emotional, or behavioral disorders and associated distresses that interfere with mental health.

"Initial plan of care" or "IPOC" means a person centered plan of care established at admission that meets all of the requirements of this subsection and is specific to the individual's unique treatment needs and acuity levels as identified in the clinical assessment and information gathered during the referral process.

"Intervention" means scheduled therapeutic treatment such as individual or group psychoeducation; skills restoration; structured behavior support and training activities; recreation, art, and music therapies; community integration

activities that promote or assist in the child's or adolescent's ability to acquire coping and functional or self-regulating behavior skills; day and overnight passes; and family engagement activities. Interventions shall not include individual, group, and family therapy; medical or dental appointments; or physician services, medication evaluation, or management provided by a licensed clinician or physician and shall not include school attendance. Interventions shall be provided in the therapeutic group home or PRTF and, when clinically necessary, in a community setting or as part of a therapeutic pass. All interventions and settings of the intervention shall be established in the plan of care.

"Plan of care" means the initial plan of care (IPOC) and the comprehensive individual plan of care (CIPOC).

"Physician" means an individual licensed to practice medicine or osteopathic medicine in Virginia, as defined in § 54.1-2900 of the Code of Virginia.

"Psychiatric residential treatment facility" or "PRTF" means the same as defined in 42 CFR 483.352 and is a 24-hour, supervised, clinically and medically necessary, out-of-home active treatment program designed to provide necessary support and address mental health, behavioral, substance abuse, cognitive, and training needs of an individual younger than 21 years of age in order to prevent or minimize the need for more intensive treatment.

"Recertification" means a certification for each applicant or recipient for whom therapeutic group home or PRTF services are needed.

"Room and board" means a component of the total daily cost for placement in a licensed PRTF. Residential room and board costs are maintenance costs associated with placement in a licensed PRTF and include a semi-private room, three meals and two snacks per day, and personal care items. Room and board costs are reimbursed only for PRTF settings.

"Services provided under arrangement" means services including physician and other health care services that are furnished to children while they are in a freestanding psychiatric hospital or PRTF that are billed by the arranged practitioners separately from the freestanding psychiatric hospital's or PRTF's per diem.

"Skills restoration" means a face-to-face service to assist individuals in the restoration of lost skills that are necessary to achieve the goals established in the beneficiary's plan of care. Services include assisting the individual in restoring self-management, interpersonal, communication, and problem solving skills through modeling, coaching, and cueing.

"Therapeutic group home" means a congregate residential service providing 24-hour supervision in a community-based home having eight or fewer residents.

"Therapeutic pass" means time at home or time with family consisting of partial or entire days of time away from the therapeutic group home or psychiatric residential treatment facility as clinically indicated in the plan of care and as paired with facility-based and community-based interventions to promote discharge planning, community integration, and family engagement activities. Therapeutic passes are not recreational but are a therapeutic component of the plan of care and are designed for the direct benefit of the individual.

"Treatment planning" means development of a person centered plan of care that is specific to the individual's unique treatment needs and acuity levels.

2. Therapeutic group home services pursuant to 42 CFR 440.130(d).

a. Therapeutic group home services for children and adolescents younger than 21 years of age shall provide therapeutic services to restore or maintain appropriate skills necessary to promote prosocial behavior and healthy living, including skills restoration, family living and health awareness, interpersonal skills, communication skills, and stress management skills. Therapeutic services shall also engage families and reflect family-driven practices that correlate to sustained positive outcomes post-discharge for youth and their family members. Each component of therapeutic group home services is provided for the direct benefit of the individual, in accordance with the individual's needs and treatment goals identified in the individual's plan of care, and for the purpose of assisting in the individual's recovery. These services are provided under 42 CFR 440.130(d) in accordance with the rehabilitative services benefit.

b. The plan of care shall include individualized activities, including a minimum of one intervention per 24-hour period in addition to individual, group, and family therapies. Daily interventions are not required when there is documentation to justify clinical or medical reasons for the individual's deviations from the plan of care. Interventions shall be documented on a progress note and shall be outlined in and aligned with the treatment goals and objectives in the IPOC and CIPOC. Any deviation from the plan of care shall be documented along with a clinical or medical justification for the deviation.

c. Medical necessity criteria for admission to a therapeutic group home. The following requirements for severity of need and intensity and quality of service shall be met to satisfy the medical necessity criteria for admission.

(1) Severity of need required for admission. All of the following criteria shall be met to satisfy the criteria for severity of need:

(a) The individual's behavioral health condition can only be safely and effectively treated in a 24-hour therapeutic milieu with onsite behavioral health therapy due to

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significant impairments in home, school, and community functioning caused by current mental health symptoms consistent with a DSM-5 diagnosis.

(b) The certificate of need must demonstrate all of the following: (i) ambulatory care resources (all available modalities of treatment less restrictive than inpatient treatment) available in the community do not meet the treatment needs of the individual; (ii) proper treatment of the individual's psychiatric condition requires services on an inpatient basis under the direction of a physician; and (iii) the services can reasonably be expected to improve the individual's condition or prevent further regression so that the services will no longer be needed.

(c) The state uniform assessment tool shall be completed. The assessment shall demonstrate at least two areas of moderate impairment in major life activities. A moderate impairment is defined as a major or persistent disruption in major life activities. A moderate impairment is evidenced by, but not limited to (i) frequent conflict in the family setting such as credible threats of physical harm, where "frequent" means more than expected for the individual's age and developmental level; (ii) frequent inability to accept age-appropriate direction and supervision from caretakers, from family members, at school, or in the home or community; (iii) severely limited involvement in social support, which means significant avoidance of appropriate social interaction, deterioration of existing relationships, or refusal to participate in therapeutic interventions; (iv) impaired ability to form a trusting relationship with at least one caretaker in the home, school, or community; (v) limited ability to consider the effect of one's inappropriate conduct on others; and (vi) interactions consistently involving conflict, which may include impulsive or abusive behaviors.

(d) Less restrictive community-based services have been given a fully adequate trial and were unsuccessful or, if not attempted, have been considered, but in either situation were determined to be unable to meet the individual's treatment needs and the reasons for that are discussed in the certificate of need.

(e) The individual's symptoms, or the need for treatment in a 24 hours a day, seven days a week level of care (LOC), are not primarily due to any of the following: (i) intellectual disability, developmental disability, or autistic spectrum disorder; (ii) organic mental disorders, traumatic brain injury, or other medical condition; or (iii) the individual does not require a more intensive level of care.

(f) The individual does not require primary medical or surgical treatment.

(2) Intensity and quality of service necessary for admission. All of the following criteria shall be met to satisfy the criteria for intensity and quality of service:

(a) The therapeutic group home service has been prescribed by a psychiatrist, psychologist, or other LMHP who has documented that a residential setting is the least restrictive clinically appropriate service that can meet the specifically identified treatment needs of the individual.

(b) The therapeutic group home is not being used for clinically inappropriate reasons, including (i) an alternative to incarceration or preventative detention; (ii) an alternative to a parent's, guardian's, or agency's capacity to provide a place of residence for the individual; or (iii) a treatment intervention when other less restrictive alternatives are available.

(c) The individual's treatment goals are included in the service specific provider intake and include behaviorally defined objectives that require and can reasonably be achieved within a therapeutic group home setting.

(d) The therapeutic group home is required to coordinate with the individual's community resources, including schools and FAPT as appropriate, with the goal of transitioning the individual out of the program to a less restrictive care setting for continued, sometimes intensive, services as soon as possible and appropriate.

(e) The therapeutic group home program must incorporate nationally established, evidence-based, trauma-informed services and supports that promote recovery and resiliency.

(f) Discharge planning begins upon admission, with concrete plans for the individual to transition back into the community beginning within the first week of admission, with clear action steps and target dates outlined in the plan of care.

(3) Continued stay criteria. The following criteria shall be met in order to satisfy the criteria for continued stay:

(a) All of the admission guidelines continue to be met and continue to be supported by the written clinical documentation.

(b) The individual shall meet one of the following criteria: (i) the desired outcome or level of functioning has not been restored or improved in the timeframe outlined in the individual's plan of care or the individual continues to be at risk for relapse based on history or (ii) the nature of the functional gains is tenuous and use of less intensive services will not achieve stabilization.

(c) The individual shall meet one of the following criteria: (i) the individual has achieved initial CIPOC goals, but additional goals are indicated that cannot be met at a lower level of care; (ii) the individual is making satisfactory progress toward meeting goals but has not attained plan of care goals, and the goals cannot be addressed at a lower level of care; (iii) the individual is not making progress, and the plan of care has been modified to identify more effective interventions; or (iv) there are current indications that the individual requires this level of treatment to

maintain level of functioning as evidenced by failure to achieve goals identified for therapeutic visits or stays in a nontreatment residential setting or in a lower level of residential treatment.

(d) There is a written, up-to-date discharge plan that (i) identifies the custodial parent or custodial caregiver at discharge; (ii) identifies the school the individual will attend at discharge, if applicable; (iii) includes individualized education program (IEP) and FAPT recommendations, if necessary; (iv) outlines the aftercare treatment plan (discharge to another residential level of care is not an acceptable discharge goal); and (v) lists barriers to community reintegration and progress made on resolving these barriers since last review.

(e) The active plan of care includes structure for combined treatment services and activities to ensure the attainment of therapeutic mental health goals as identified in the plan of care. Combined treatment services reinforce and practice skills learned in individual, group, and family therapy such as community integration skills, coping skills, family living and health awareness skills, interpersonal skills, and stress management skills. Combined treatment services may occur in group settings, in one-on-one interactions, or in the home setting during a therapeutic pass. In addition to the combined treatment services, the child or adolescent must also receive psychotherapy services, care coordination, family-based discharge planning, and locality-based transition activities. The child or adolescent shall receive intensive family interventions at least twice per month, although it is recommended that the intensive family interventions be provided at a frequency of one family therapy session per week. Family involvement begins immediately upon admission to therapeutic group home. If the minimum requirement cannot be met, the reasons must be reported, and continued efforts to involve family members must also be documented. Other family members or supportive adults may be included as indicated in the plan of care.

(f) Less restrictive treatment options have been considered but cannot yet meet the individual's treatment needs. There is sufficient current clinical documentation or evidence to show that therapeutic group home level of care continues to be the least restrictive level of care that can meet the individual's mental health treatment needs.

(4) Discharge shall occur if any of the following applies: (i) the level of functioning has improved with respect to the goals outlined in the plan of care, and the individual can reasonably be expected to maintain these gains at a lower level of treatment; (ii) the individual no longer benefits from service as evidenced by absence of progress toward plan of care goals for a period of 60 days; or (iii) other less intensive services may achieve stabilization.

d. The following clinical activities shall be required for each therapeutic group home resident:

(1) An assessment be performed by an LMHP, LMHP-R, LMHP-RP, or LMHP-S.

(2) A face-to-face evaluation shall be performed by an LMHP, LMHP-R, LMHP-RP, or LMHP-S within 30 calendar days prior to admission with a documented DSM-5 or ICD-10 diagnosis.

(3) A certificate of need shall be completed by an independent certification team according to the requirements of subdivision D 4 of this section. Recertification shall occur at least every 60 calendar days by an LMHP, LMHP-R, LMHP-RP, or LMHP-S acting within his scope of practice.

(4) An IPOC that is specific to the individual's unique treatment needs and acuity levels. The IPOC shall be completed on the day of admission by an LMHP, LMHP-R, LMHP-RP, or LMHP-S and shall be signed by the LMHP, LMHP-R, LMHP-RP, or LMHP-S and the individual and a family member or legally authorized representative. The IPOC shall include all of the following:

(a) Individual and family strengths and personal traits that would facilitate recovery and opportunities to develop motivational strategies and treatment alliance;

(b) Diagnoses, symptoms, complaints, and complications indicating the need for admission;

(c) A description of the functional level of the individual;

(d) Treatment objectives with short-term and long-term goals;

(e) Orders for medications, psychiatric, medical, dental, and any special health care needs whether or not provided in the facilities, treatments, restorative and rehabilitative services, activities, therapies, therapeutic passes, social services, community integration, diet, and special procedures recommended for the health and safety of the individual;

(f) Plans for continuing care, including review and modification to the plan of care; and

(g) Plans for discharge.

(5) A CIPOC shall be completed no later than 14 calendar days after admission. The CIPOC shall meet all of the following criteria:

(a) Be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the individual's situation and shall reflect the need for therapeutic group home care;

(b) Be based on input from school, home, other health care providers, FAPT if necessary, the individual, and the family or legal guardian;

(c) Shall state treatment objectives that include measurable short-term and long-term goals and objectives, with target dates for achievement;

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(d) Prescribe an integrated program of therapies, activities, and experiences designed to meet the treatment objectives related to the diagnosis; and

(e) Include a comprehensive discharge plan with necessary, clinically appropriate community services to ensure continuity of care upon discharge with the individual's family, school, and community.

(6) The CIPOC shall be reviewed, signed, and dated every 30 calendar days by the LMHP, LMHP-R, LMHP-RP, or LMHP-S and the individual or a family member or primary caregiver. Updates shall be signed and dated by the LMHP, LMHP-R, LMHP-RP, or LMHP-S and the individual or a family member or legally authorized representative. The review shall include all of the following:

(a) The individual's response to the services provided;

(b) Recommended changes in the plan as indicated by the individual's overall response to the CIPOC interventions; and

(c) Determinations regarding whether the services being provided continue to be required.

(7) Crisis management, clinical assessment, and individualized therapy shall be provided to address both behavioral health and substance use disorder needs as indicated in the plan of care to address intermittent crises and challenges within the therapeutic group home setting or community settings as defined in the plan of care and to avoid a higher level of care.

(8) Care coordination shall be provided with medical, educational, and other behavioral health providers and other entities involved in the care and discharge planning for the individual as included in the plan of care.

(9) Weekly individual therapy shall be provided in the therapeutic group home, or other settings as appropriate for the individual's needs, by an LMHP, LMHP-R, LMHP-RP, or LMHP-S, which shall be documented in progress notes in accordance with the requirements in 12VAC30-60-61.

(10) Weekly (or more frequently if clinically indicated) group therapy shall be provided by an LMHP, LMHP-R, LMHP-RP, or LMHP-S, which shall be documented in progress notes in accordance with the requirements in 12VAC30-60-61 and as planned and documented in the plan of care.

(11) Family treatment shall be provided as clinically indicated, provided by an LMHP, LMHP-R, LMHP-RP, or LMHP-S, and documented in progress notes in accordance with the requirements in 12VAC30-60-61 and as planned and documented in the plan of care.

(12) Family engagement activities shall be provided in addition to family therapy or counseling. Family engagement activities shall be provided at least weekly as outlined in the plan of care, and daily communication with

the family or legally authorized representative shall be part of the family engagement strategies in the plan of care. For each service authorization period when family engagement is not possible, the therapeutic group home shall identify and document the specific barriers to the individual's engagement with the individual's family or legally authorized representatives. The therapeutic group home shall document on a weekly basis the reasons why family engagement is not occurring as required. The therapeutic group home shall document alternative family engagement strategies to be used as part of the interventions in the plan of care and request approval of the revised plan of care by DMAS. When family engagement is not possible, the therapeutic group home shall collaborate with DMAS on a weekly basis to develop individualized family engagement strategies and document the revised strategies in the plan of care.

(13) Therapeutic passes shall be provided as clinically indicated in the plan of care and as paired with facility-based and community-based interventions to promote discharge planning, community integration, and family engagement activities.

(a) The provider shall document how the family was prepared for the therapeutic pass to include a review of the plan of care goals and objectives being addressed by the planned interventions and the safety and crisis plan in effect during the therapeutic pass.

(b) If a facility staff member does not accompany the individual on the therapeutic pass and the therapeutic pass exceeds 24 hours, the provider shall make daily contacts with the family and be available 24 hours per day to address concerns, incidents, or crises that may arise during the pass.

(c) Contact with the family shall occur within seven calendar days of the therapeutic pass to discuss the accomplishments and challenges of the therapeutic pass along with an update on progress toward plan of care goals and any necessary changes to the plan of care.

(d) Twenty-four therapeutic passes shall be permitted per individual, per admission, without authorization as approved by the treating LMHP and documented in the plan of care. Additional therapeutic passes shall require service authorization. Any unauthorized therapeutic passes shall result in retraction for those days of service.

(14) Discharge planning shall begin at admission and continue throughout the individual's stay at the therapeutic group home. The family or guardian, the community services board (CSB), the family assessment and planning team (FAPT) case manager, and the DMAS contracted care manager shall be involved in treatment planning and shall identify the anticipated needs of the individual and family upon discharge and available services in the community. Prior to discharge, the therapeutic group home shall submit an active and viable discharge plan to

the DMAS contractor for review. Once the DMAS contractor approves the discharge plan, the provider shall begin actively collaborating with the family or legally authorized representative and the treatment team to identify behavioral health and medical providers and schedule appointments for service-specific provider intakes as needed. The therapeutic group home shall request permission from the parent or legally authorized representative to share treatment information with these providers and shall share information pursuant to a valid release. The therapeutic group home shall request information from post-discharge providers to establish that the planning of pending services and transition planning activities has begun, shall establish that the individual has been enrolled in school, and shall provide individualized education program recommendations to the school if necessary. The therapeutic group home shall inform the DMAS contractor of all scheduled appointments within 30 calendar days of discharge and shall notify the DMAS contractor within one business day of the individual's discharge date from the therapeutic group home.

(15) Room and board costs shall not be reimbursed. Facilities that only provide independent living services or nonclinical services that do not meet the requirements of this subsection are not eligible for reimbursement.

(16) Therapeutic group home services providers shall be licensed by the Department of Behavioral Health and Developmental Services (DBHDS) under the Regulations for Children's Residential Facilities (12VAC35-46).

(17) Individuals shall be discharged from this service when treatment goals are met or other less intensive services may achieve stabilization.

(18) Services that are based upon incomplete, missing, or outdated service-specific provider intakes or plans of care shall be denied reimbursement.

(19) Therapeutic group home services may only be rendered by and within the scope of practice of an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a QMHP-C, a QMHP-E, or a QPPMH as defined in 12VAC35-105-20.

(20) The psychiatric residential treatment facility or therapeutic group home shall coordinate necessary services and discharge planning with other providers as medically and clinically necessary. Documentation of this care coordination shall be maintained by the facility or group home in the individual's record. The documentation shall include who was contacted, when the contact occurred, what information was transmitted, and recommended next steps.

(21) Failure to perform any of the items described in this subsection shall result in a retraction of the per diem for each day of noncompliance.

3. PRTF services are a 24-hour, supervised, clinically and medically necessary out-of-home program designed to provide necessary support and address mental health, behavioral, substance use, cognitive, or other treatment needs of an individual younger than 21 years of age in order to prevent or minimize the need for more inpatient treatment. Active treatment and comprehensive discharge planning shall begin prior to admission. In order to be covered for individuals younger than 21 years of age, these services shall (i) meet DMAS-approved psychiatric medical necessity criteria or be approved as an EPSDT service based upon a diagnosis made by an LMHP, LMHP-R, LMHP-RP, or LMHP-S who is practicing within the scope of his license and (ii) be reflected in provider records and on the provider's claims for services by recognized diagnosis codes that support and are consistent with the requested professional services.

a. PRTF services shall be covered for the purpose of diagnosis and treatment of mental health and behavioral disorders when such services are rendered by a psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards that is recognized by the state.

b. Providers of PRTF services shall be licensed by DBHDS.

c. PRTF services are reimbursable only when the treatment program is fully in compliance with (i) 42 CFR Part 441 Subpart D, specifically 42 CFR 441.151 (a) and (b) and 42 CFR 441.152 through 42 CFR 441.156 and (ii) the Conditions of Participation in 42 CFR Part 483 Subpart G. Each admission must be service authorized, and the treatment must meet DMAS requirements for clinical necessity.

d. The PRTF benefit for individuals younger than 21 years of age shall include services defined at 42 CFR 440.160 that are provided under the direction of a physician pursuant to a certification of medical necessity and plan of care developed by an interdisciplinary team of professionals and shall involve active treatment designed to achieve the child's discharge from PRTF services at the earliest possible time. The PRTF services benefit shall include services provided under arrangement furnished by Medicaid enrolled providers other than the PRTF, as long as the PRTF (i) arranges for and oversees the provision of all services, (ii) maintains all medical records of care furnished to the individual, and (iii) ensures that the services are furnished under the direction of a physician. Services provided under arrangement shall be documented by a written referral from the PRTF. For purposes of pharmacy services, a prescription ordered by an employee

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or contractor of the facility who is licensed to prescribe drugs shall be considered the referral.

e. PRTFs, as defined at 42 CFR 483.352, shall arrange for, maintain records of, and ensure that physicians order these services: (i) medical and psychological services, including those furnished by physicians, licensed mental health professionals, and other licensed or certified health professionals (i.e., nutritionists, podiatrists, respiratory therapists, and substance abuse treatment practitioners); (ii) pharmacy services; (iii) outpatient hospital services; (iv) physical therapy, occupational therapy, and therapy for individuals with speech, hearing, or language disorders; (v) laboratory and radiology services; (vi) durable medical equipment; (vii) vision services; (viii) dental, oral surgery, and orthodontic services; (ix) nonemergency transportation services; and (x) emergency services.

f. PRTF services shall include assessment and reassessment; room and board; daily supervision; combined treatment services; individual, family, and group therapy; care coordination; interventions; general or special education; medical treatment (including medication, coordination of necessary medical services, and 24-hour onsite nursing); specialty services; and discharge planning that meets the medical and clinical needs of the individual.

g. Medical necessity criteria for admission to a PRTF. The following requirements for severity of need and intensity and quality of service shall be met to satisfy the medical necessity criteria for admission:

(1) Severity of need required for admission. The following criteria shall be met to satisfy the criteria for severity of need:

(a) There is clinical evidence that the individual has a DSM-5 disorder that is amenable to active psychiatric treatment.

(b) There is a high degree of potential of the condition leading to acute psychiatric hospitalization in the absence of residential treatment.

(c) Either (i) there is clinical evidence that the individual would be a risk to self or others if the individual were not in a PRTF or (ii) as a result of the individual's mental disorder, there is an inability for the individual to adequately care for his own physical needs, and caretakers, guardians, or family members are unable to safely fulfill these needs, representing potential serious harm to self.

(d) The individual requires supervision seven days per week, 24 hours per day to develop skills necessary for daily living; to assist with planning and arranging access to a range of educational, therapeutic, and aftercare services; and to develop the adaptive and functional

behavior that will allow the individual to live outside of a PRTF setting.

(e) The individual's current living environment does not provide the support and access to therapeutic services needed.

(f) The individual is medically stable and does not require the 24-hour medical or nursing monitoring or procedures provided in a hospital level of care.

(2) Intensity and quality of service necessary for admission. The following criteria shall be met to satisfy the criteria for intensity and quality of service:

(a) The evaluation and assignment of a DSM-5 diagnosis must result from a face-to-face psychiatric evaluation.

(b) The program provides supervision seven days per week, 24 hours per day to assist with the development of skills necessary for daily living; to assist with planning and arranging access to a range of educational, therapeutic, and aftercare services; and to assist with the development of the adaptive and functional behavior that will allow the individual to live outside of a PRTF setting.

(c) An individualized plan of active psychiatric treatment and residential living support is provided in a timely manner. This treatment must be medically monitored, with 24-hour medical availability and 24-hour nursing services availability. This plan includes (i) at least once-a-week psychiatric reassessments; (ii) intensive family or support system involvement occurring at least once per week or valid reasons identified as to why such a plan is not clinically appropriate or feasible; (iii) psychotropic medications, when used, are to be used with specific target symptoms identified; (iv) evaluation for current medical problems; (v) evaluation for concomitant substance use issues; and (vi) linkage or coordination with the individual's community resources, including the local school division and FAPT case manager, as appropriate, with the goal of returning the individual to his regular social environment as soon as possible, unless contraindicated. School contact should address an individualized educational plan as appropriate.

(d) A urine drug screen is considered at the time of admission, when progress is not occurring, when substance misuse is suspected, or when substance use and medications may have a potential adverse interaction. After a positive screen, additional random screens are considered and referral to a substance use disorder provider is considered.

(3) Criteria for continued stay. The following criteria shall be met to satisfy the criteria for continued stay:

(a) Despite reasonable therapeutic efforts, clinical evidence indicates at least one of the following: (i) the persistence of problems that caused the admission to a degree that continues to meet the admission criteria (both severity of need and intensity of service needs); (ii) the

emergence of additional problems that meet the admission criteria (both severity of need and intensity of service needs); or (iii) that disposition planning or attempts at therapeutic reentry into the community have resulted in or would result in exacerbation of the psychiatric illness to the degree that would necessitate continued PRTF treatment. Subjective opinions without objective clinical information or evidence are not sufficient to meet severity of need based on justifying the expectation that there would be a decompensation.

(b) There is evidence of objective, measurable, and time-limited therapeutic clinical goals that must be met before the individual can return to a new or previous living situation. There is evidence that attempts are being made to secure timely access to treatment resources and housing in anticipation of discharge, with alternative housing contingency plans also being addressed.

(c) There is evidence that the plan of care is focused on the alleviation of psychiatric symptoms and precipitating psychosocial stressors that are interfering with the individual's ability to return to a less-intensive level of care.

(d) The current or revised plan of care can be reasonably expected to bring about significant improvement in the problems meeting the criteria in subdivision 3 c (3) (a) of this subsection, and this is documented in weekly progress notes written and signed by the provider.

(e) There is evidence of intensive family or support system involvement occurring at least once per week, unless there is an identified valid reason why it is not clinically appropriate or feasible.

(f) A discharge plan is formulated that is directly linked to the behaviors or symptoms that resulted in admission and begins to identify appropriate post-PRTF resources including the local school division and FAPT case manager as appropriate.

(g) All applicable elements in admission-intensity and quality of service criteria are applied as related to assessment and treatment if clinically relevant and appropriate.

(4) Discharge criteria. Discharge shall occur if any of the following applies: (i) the level of functioning has improved with respect to the goals outlined in the plan of care, and the individual can reasonably be expected to maintain these gains at a lower level of treatment; (ii) the individual no longer benefits from service as evidenced by absence of progress toward plan of care goals for a period of 30 days; or (iii) other less intensive services may achieve stabilization.

h. The following clinical activities shall be required for each PRTF resident:

(1) A face-to-face assessment shall be performed by an LMHP, LMHP-R, LMHP-RS, or LMHP-S within 30

calendar days prior to admission and weekly thereafter and shall document a DSM-5 or ICD-10 diagnosis.

(2) A certificate of need shall be completed by an independent certification team according to the requirements of 12VAC30-50-130 D 4. Recertification shall occur at least every 30 calendar days by a physician acting within his scope of practice.

(3) The initial plan of care (IPOC) shall be completed within 24 hours of admission by the treatment team. The IPOC shall include:

(a) Individual and family strengths and personal traits that would facilitate recovery and opportunities to develop motivational strategies and treatment alliance;

(b) Diagnoses, symptoms, complaints, and complications indicating the need for admission;

(c) A description of the functional level of the individual;

(d) Treatment objectives with short-term and long-term goals;

(e) Any orders for medications, psychiatric, medical, dental, and any special health care needs, whether or not provided in the facility; education or special education; treatments; interventions; and restorative and rehabilitative services, activities, therapies, social services, diet, and special procedures recommended for the health and safety of the individual;

(f) Plans for continuing care, including review and modification to the plan of care;

(g) Plans for discharge; and

(h) Signature and date by the individual, parent, or legally authorized representative, a physician, and treatment team members.

(4) The CIPOC shall be completed and signed no later than 14 calendar days after admission by the treatment team. The PRTF shall request authorizations from families to release confidential information to collect information from medical and behavioral health treatment providers, schools, FAPT, social services, court services, and other relevant parties. This information shall be used when considering changes and updating the CIPOC. The CIPOC shall meet all of the following criteria:

(a) Be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the individual's situation and must reflect the need for PRTF care;

(b) Be developed by an interdisciplinary team of physicians and other personnel specified in subdivision 3 d 4 of this subsection who are employed by or provide services to the individual in the facility in consultation with the individual, family member, or legally authorized representative, or appropriate others into whose care the individual will be released after discharge;

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(c) Shall state treatment objectives that shall include measurable, evidence-based, and short-term and long-term goals and objectives; family engagement activities; and the design of community-based aftercare with target dates for achievement;

(d) Prescribe an integrated program of therapies, interventions, activities, and experiences designed to meet the treatment objectives related to the individual and family treatment needs; and

(e) Describe comprehensive transition plans and coordination of current care and post-discharge plans with related community services to ensure continuity of care upon discharge with the recipient's family, school, and community.

(5) The CIPOC shall be reviewed every 30 calendar days by the team specified in subdivision 3 d 4 of this subsection to determine that services being provided are or were required from a PRTF and to recommend changes in the plan as indicated by the individual's overall adjustment during the time away from home. The CIPOC shall include the signature and date from the individual, parent, or legally authorized representative, a physician, and treatment team members.

(6) Individual therapy shall be provided three times per week (or more frequently based upon the individual's needs) provided by an LMHP, LMHP-R, LMHP-RP, or LMHP-S and shall be documented in the plan of care and progress notes in accordance with the requirements in this subsection and 12VAC30-60-61.

(7) Group therapy shall be provided as clinically indicated by an LMHP, LMHP-R, LMHP-RP, or LMHP-S and shall be documented in the plan of care and progress notes in accordance with the requirements in this subsection.

(8) Family therapy shall be provided as clinically indicated by an LMHP, LMHP-R, LMHP-RP, or LMHP-S and shall be documented in the plan of care and progress notes in accordance with the individual and family or legally authorized representative's goals and the requirements in this subsection.

(9) Family engagement shall be provided in addition to family therapy or counseling. Family engagement shall be provided at least weekly as outlined in the plan of care and daily communication with the treatment team representative and the treatment team representative and the family or legally authorized representative shall be part of the family engagement strategies in the plan of care. For each service authorization period when family engagement is not possible, the PRTF shall identify and document the specific barriers to the individual's engagement with his family or legally authorized representatives. The PRTF shall document on a weekly basis the reasons that family engagement is not occurring as required. The PRTF shall document alternate family engagement strategies to be used as part of the

interventions in the plan of care and request approval of the revised plan of care by DMAS. When family engagement is not possible, the PRTF shall collaborate with DMAS on a weekly basis to develop individualized family engagement strategies and document the revised strategies in the plan of care.

(10) Three interventions shall be provided per 24-hour period including nights and weekends. Family engagement activities are considered to be an intervention and shall occur based on the treatment and visitation goals and scheduling needs of the family or legally authorized representative. Interventions shall be documented on a progress note and shall be outlined in and aligned with the treatment goals and objectives in the plan of care. Any deviation from the plan of care shall be documented along with a clinical or medical justification for the deviation based on the needs of the individual.

(11) Therapeutic passes shall be provided as clinically indicated in the plan of care and as paired with community-based and facility-based interventions to promote discharge planning, community integration, and family engagement. Therapeutic passes include activities as listed in subdivision 2 d (13) of this section. Twenty-four therapeutic passes shall be permitted per individual, per admission, without authorization as approved by the treating physician and documented in the plan of care. Additional therapeutic passes shall require service authorization from DMAS. Any unauthorized therapeutic passes not approved by the provider or DMAS shall result in retraction for those days of service.

(12) Discharge planning shall begin at admission and continue throughout the individual's placement at the PRTF. The parent or legally authorized representative, the community services board (CSB), the family assessment planning team (FAPT) case manager, if appropriate, and the DMAS contracted care manager shall be involved in treatment planning and shall identify the anticipated needs of the individual and family upon discharge and identify the available services in the community. Prior to discharge, the PRTF shall submit an active discharge plan to the DMAS contractor for review. Once the DMAS contractor approves the discharge plan, the provider shall begin collaborating with the parent or legally authorized representative and the treatment team to identify behavioral health and medical providers and schedule appointments for service-specific provider intakes as needed. The PRTF shall request written permission from the parent or legally authorized representative to share treatment information with these providers and shall share information pursuant to a valid release. The PRTF shall request information from post-discharge providers to establish that the planning of services and activities has begun, shall establish that the individual has been enrolled in school, and shall provide individualized education program recommendations to the school if necessary. The

PRTF shall inform the DMAS contractor of all scheduled appointments within 30 calendar days of discharge and shall notify the DMAS contractor within one business day of the individual's discharge date from the PRTF.

(13) Failure to perform any of the items as described in subdivisions 3 h (1) through 3 h (12) of this subsection up until the discharge of the individual shall result in a retraction of the per diem and all other contracted and coordinated service payments for each day of noncompliance.

i. The team developing the CIPOC shall meet the following requirements:

(1) At least one member of the team must have expertise in pediatric behavioral health. Based on education and experience, preferably including competence in child or adolescent psychiatry, the team must be capable of all of the following: assessing the individual's immediate and long-range therapeutic needs, developmental priorities, and personal strengths and liabilities; assessing the potential resources of the individual's family or legally authorized representative; setting treatment objectives; and prescribing therapeutic modalities to achieve the CIPOC's objectives.

(2) The team shall include one of the following:

(a) A board-eligible or board-certified psychiatrist;

(b) A licensed clinical psychologist and a physician licensed to practice medicine or osteopathy; or

(c) A physician licensed to practice medicine or osteopathy with specialized training and experience in the diagnosis and treatment of mental diseases and a licensed clinical psychologist.

(3) The team shall also include one of the following: an LMHP, LMHP-supervisee, LMHP-resident, or LMHP-RP.

4. Requirements for independent certification teams applicable to both therapeutic group homes and PRTFs:

a. The independent certification team shall certify the need for PRTF or therapeutic group home services and issue a certificate of need document within the process and timeliness standards as approved by DMAS under contractual agreement with the DMAS contractor.

b. The independent certification team shall be approved by DMAS through a memorandum of understanding with a locality or be approved under contractual agreement with the DMAS contractor. The team shall initiate and coordinate referral to the family assessment and planning team (FAPT) as defined in §§ 2.2-5207 and 2.2-5208 of the Code of Virginia to facilitate care coordination and for consideration of educational coverage and other supports not covered by DMAS.

c. The independent certification team shall assess the individual's and family's strengths and needs in addition to

diagnoses, behaviors, and symptoms that indicate the need for behavioral health treatment and also consider whether local resources and community-based care are sufficient to meet the individual's treatment needs, as presented within the previous 30 calendar days, within the least restrictive environment.

d. The LMHP, LMHP-supervisee, LMHP-resident, or LMHP-RP, as part of the independent certification team, shall meet with an individual and the individual's parent or legally authorized representative within two business days from a request to assess the individual's needs and begin the process to certify the need for an out-of-home placement.

e. The independent certification team shall meet with an individual and the individual's parent or legally authorized representative within 10 business days from a request to certify the need for an out-of-home placement.

f. The independent certification team shall assess the treatment needs of the individual to issue a certificate of need (CON) for the most appropriate medically necessary services. The certification shall include the dated signature and credentials for each of the team members who rendered the certification. Referring or treatment providers shall not actively participate during the certification process but may provide supporting clinical documentation to the certification team.

g. The CON shall be effective for 30 calendar days prior to admission.

h. The independent certification team shall provide the completed CON to the facility within one calendar day of completing the CON.

i. The individual and the individual's parent or legally authorized representative shall have the right to freedom of choice of service providers.

j. If the individual or the individual's parent or legally authorized representative disagrees with the independent certification team's recommendation, the parent or legally authorized representative may appeal the recommendation in accordance with 12VAC30-110.

k. If the LMHP, as part of the independent certification team, determines that the individual is in immediate need of treatment, the LMHP shall refer the individual to an appropriate Medicaid-enrolled crisis intervention provider, crisis stabilization provider, or inpatient psychiatric provider in accordance with 12VAC30-50-226 or shall refer the individual for emergency admission to a PRTF or therapeutic group home under subdivision 4 m of this subsection and shall also alert the individual's managed care organization.

l. For individuals who are already eligible for Medicaid at the time of admission, the independent certification team shall be a DMAS-authorized contractor with competence in the diagnosis and treatment of mental illness, preferably

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in child psychiatry, and have knowledge of the individual's situation and service availability in the individual's local service area. The team shall be composed of at least one physician and one LMHP, including LMHP-S, LMHP-R, and LMHP-RP. An individual's parent or legally authorized representative shall be included in the certification process.

m. For emergency admissions, an assessment must be made by the team responsible for the comprehensive individual plan of care (CIPOC). Reimbursement shall only occur when a certificate of need is issued by the team responsible for the CIPOC within 14 calendar days after admission. The certification shall cover any period of time after admission and before claims are made for reimbursement by Medicaid. After processing an emergency admission, the therapeutic group home, PRTF, or institution for mental diseases (IMD) shall notify the DMAS contractor within five calendar days of the individual's status as being under the care of the facility.

n. For all individuals who apply and become eligible for Medicaid while an inpatient in a facility or program, the certification team shall refer the case to the DMAS contractor for referral to the local FAPT to facilitate care coordination and consideration of educational coverage and other supports not covered by DMAS.

o. For individuals who apply and become eligible for Medicaid while an inpatient in the facility or program, the certification shall be made by the team responsible for the CIPOC and shall cover any period of time before the application for Medicaid eligibility for which claims are made for reimbursement by Medicaid. Upon the individual's enrollment into the Medicaid program, the therapeutic group home, PRTF, or IMD shall notify the DMAS contractor of the individual's status as being under the care of the facility within five calendar days of the individual becoming eligible for Medicaid benefits.

5. Service authorization requirements applicable to both therapeutic group homes and PRTFs:

a. Authorization shall be required and shall be conducted by DMAS using medical necessity criteria specified in this subsection.

b. An individual shall have a valid psychiatric diagnosis and meet the medical necessity criteria as defined in this subsection to satisfy the criteria for admission. The diagnosis shall be current, as documented within the past 12 months. If a current diagnosis is not available, the individual will require a mental health evaluation prior to admission by an LMHP affiliated with the independent certification team to establish a diagnosis and recommend and coordinate referral to the available treatment options.

c. At authorization, an initial length of stay shall be agreed upon by the individual and parent or legally authorized representative with the treating provider, and the treating

provider shall be responsible for evaluating and documenting evidence of treatment progress, assessing the need for ongoing out-of-home placement, and obtaining authorization for continued stay.

d. Information that is required to obtain authorization for these services shall include:

(1) A completed state-designated uniform assessment instrument approved by DMAS;

(2) A certificate of need completed by an independent certification team specifying all of the following:

(a) The ambulatory care and Medicaid or FAPT-funded services available in the community do not meet the specific treatment needs of the individual;

(b) Alternative community-based care was not successful;

(c) Proper treatment of the individual's psychiatric condition requires services in a 24-hour supervised setting under the direction of a physician; and

(d) The services can reasonably be expected to improve the individual's condition or prevent further regression so that a more intensive level of care will not be needed;

(3) Diagnosis as defined in the DSM-5 and based on (i) an evaluation by a psychiatrist or LMHP that has been completed within 30 calendar days of admission or (ii) a diagnosis confirmed in writing by an LMHP after review of a previous evaluation completed within one year of admission;

(4) A description of the individual's behavior during the seven calendar days immediately prior to admission;

(5) A description of alternate placements and community mental health and rehabilitation services and traditional behavioral health services pursued and attempted and the outcomes of each service;

(6) The individual's level of functioning and clinical stability;

(7) The level of family involvement and supports available; and

(8) The initial plan of care (IPOC).

6. Continued stay criteria requirements applicable to both therapeutic group homes and PRTFs. For a continued stay authorization or a reauthorization to occur, the individual shall meet the medical necessity criteria as defined in this subsection to satisfy the criteria for continuing care. The length of the authorized stay shall be determined by DMAS. A current plan of care and a current (within 30 calendar days) summary of progress related to the goals and objectives of the plan of care shall be submitted to DMAS for continuation of the service. The service provider shall also submit:

a. A state uniform assessment instrument, completed no more than 30 business days prior to the date of submission;

- b. Documentation that the required services have been provided as defined in the plan of care;
- c. Current (within the last 14 calendar days) information on progress related to the achievement of all treatment and discharge-related goals; and
- d. A description of the individual's continued impairment and treatment needs, problem behaviors, family engagement activities, community-based discharge planning and care coordination, and need for a residential level of care.
7. EPSDT services requirements applicable to therapeutic group homes and PRTFs. Service limits may be exceeded based on medical necessity for individuals eligible for EPSDT. EPSDT services may involve service modalities not available to other individuals, such as applied behavioral analysis and neuro-rehabilitative services. Individualized services to address specific clinical needs identified in an EPSDT screening shall require authorization by a DMAS contractor. In unique EPSDT cases, DMAS may authorize specialized services beyond the standard therapeutic group home or PRTF medical necessity criteria and program requirements, as medically and clinically indicated to ensure the most appropriate treatment is available to each individual. Treating service providers authorized to deliver medically necessary EPSDT services in therapeutic group homes and PRTFs on behalf of a Medicaid-enrolled individual shall adhere to the individualized interventions and evidence-based progress measurement criteria described in the plan of care and approved for reimbursement by DMAS. All documentation, independent certification team, family engagement activity, therapeutic pass, and discharge planning requirements shall apply to cases approved as EPSDT PRTF or therapeutic group home service.
8. Inpatient psychiatric services shall be covered for individuals younger than 21 years of age for medically necessary stays in inpatient psychiatric facilities described in 42 CFR 440.160(b)(1) and (b)(2) for the purpose of diagnosis and treatment of mental health and behavioral disorders identified under EPSDT when such services meet the requirements set forth in subdivision 7 of this subsection.
- a. Inpatient psychiatric services shall be provided under the direction of a physician.
- b. Inpatient psychiatric services shall be provided by (i) a psychiatric hospital that undergoes a state survey to determine whether the hospital meets the requirements for participation in Medicare as a psychiatric hospital as specified in 42 CFR 482.60 or is accredited by a national organization whose psychiatric hospital accrediting program has been approved by the Centers for Medicare and Medicaid Services (CMS); or (ii) a hospital with an inpatient psychiatric program that undergoes a state survey to determine whether the hospital meets the requirements for participation in Medicare as a hospital, as specified in 42 CFR part 482 or is accredited by a national accrediting organization whose hospital accrediting program has been approved by CMS.
- c. Inpatient psychiatric admissions at general acute care hospitals and freestanding psychiatric hospitals shall also be subject to the requirements of 12VAC30-50-100, 12VAC30-50-105, and 12VAC30-60-25.
- d. PRTF services are reimbursable only when the treatment program is fully in compliance with (i) 42 CFR Part 441 Subpart D, specifically 42 CFR 441.151(a) and 42 CFR 441.151 (b) and 42 CFR 441.152 through 42 CFR 441.156 and (ii) the Conditions of Participation in 42 CFR Part 483 Subpart G. Each admission must be service authorized and the treatment must meet DMAS requirements for clinical necessity.
- e. The inpatient psychiatric benefit for individuals younger than 21 years of age shall include services that are provided pursuant to a certification of medical necessity and plan of care developed by an interdisciplinary team of professionals and shall involve active treatment designed to achieve the individual's discharge from inpatient status at the earliest possible time. The inpatient psychiatric benefit shall include services provided under arrangement furnished by Medicaid enrolled providers other than the inpatient psychiatric facility, as long as the inpatient psychiatric facility (i) arranges for and oversees the provision of all services, (ii) maintains all medical records of care furnished to the individual, and (iii) ensures that the services are furnished under the direction of a physician. Services provided under arrangement shall be documented by a written referral from the inpatient psychiatric facility. For purposes of pharmacy services, a prescription ordered by an employee or contractor of the inpatient psychiatric facility who is licensed to prescribe drugs shall be considered the referral.
- f. State freestanding psychiatric hospitals shall arrange for, maintain records of, and ensure that physicians order pharmacy services and emergency services. Private freestanding psychiatric hospitals shall arrange for, maintain records of, and ensure that physicians order the following services: (i) medical and psychological services including those furnished by physicians, licensed mental health professionals, and other licensed or certified health professionals (i.e., nutritionists, podiatrists, respiratory therapists, and substance abuse treatment practitioners); (ii) outpatient hospital services; (iii) physical therapy, occupational therapy, and therapy for individuals with speech, hearing, or language disorders; (iv) laboratory and radiology services; (v) vision services; (vi) dental, oral surgery, and orthodontic services; (vii) nonemergency transportation services; and (viii) emergency services. (Emergency services means the same as is set forth in 12VAC30-50-310 B.)
- E. Mental health family support partners.

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1. Mental health family support partners are peer recovery support services and are nonclinical, peer-to-peer activities that engage, educate, and support the caregiver and an individual's self-help efforts to improve health recovery resiliency and wellness. Mental health family support partners is a strength-based, individualized service provided to the caregiver of a Medicaid-eligible individual younger than 21 years of age with a mental health disorder that is the focus of support. The services provided to the caregiver and individual must be directed exclusively toward the benefit of the Medicaid-eligible individual. Services are expected to improve outcomes for individuals younger than 21 years of age with complex needs who are involved with multiple systems and increase the individual's and family's confidence and capacity to manage their own services and supports while promoting recovery and healthy relationships. These services are rendered by a PRS who is (i) a parent of a minor or adult child with a similar mental health disorder or (ii) an adult with personal experience with a family member with a similar mental health disorder with experience navigating behavioral health care services. The PRS shall perform the service within the scope of his knowledge, lived experience, and education.

2. Under the clinical oversight of the LMHP, LMHP-R, LMHP-RP, or LMHP-S completing the assessment recommending mental health family support partners, the peer recovery specialist in consultation with his direct supervisor shall develop a recovery, resiliency, and wellness plan based on the assessment of the LMHP, LMHP-R, LMHP-RP, or LMHP-S for service, the individual's and the caregiver's perceived recovery needs, and any clinical assessments or service specific provider intakes as defined in this section within 30 calendar days of the initiation of service. Development of the recovery, resiliency, and wellness plan shall include collaboration with the individual and the individual's caregiver. Individualized goals and strategies shall be focused on the individual's identified needs for self-advocacy and recovery. The recovery, resiliency, and wellness plan shall also include documentation of how many days per week and how many hours per week are required to carry out the services in order to meet the goals of the plan. The recovery, resiliency, and wellness plan shall be completed, signed, and dated by (i) the LMHP, LMHP-R, LMHP-RP, or LMHP-S; (ii) the PRS; (iii) the direct supervisor; (iv) the individual; and (v) the individual's caregiver within 30 calendar days of the initiation of service. The PRS shall act as an advocate for the individual, encouraging the individual and the caregiver to take a proactive role in developing and updating goals and objectives in the individualized recovery planning.

3. Documentation of required activities shall be required as set forth in 12VAC30-130-5200 C and E through J.

4. Limitations and exclusions to service delivery shall be the same as set forth in 12VAC30-130-5210.

5. Caregivers of individuals younger than 21 years of age who qualify to receive mental health family support partners (i) care for an individual with a mental health disorder who requires recovery assistance and (ii) meet two or more of the following:

a. Individual and his caregiver need peer-based recovery-oriented services for the maintenance of wellness and the acquisition of skills needed to support the individual.

b. Individual and his caregiver need assistance to develop self-advocacy skills to assist the individual in achieving self-management of the individual's health status.

c. Individual and his caregiver need assistance and support to prepare the individual for a successful work or school experience.

d. Individual and his caregiver need assistance to help the individual and caregiver assume responsibility for recovery.

6. Individuals 18, 19, and 20 years of age who meet the medical necessity criteria in 12VAC30-50-226 B 7 e, who would benefit from receiving peer supports directly and who choose to receive mental health peer support services directly instead of through their caregiver, shall be permitted to receive mental health peer support services by an appropriate PRS.

7. To qualify for continued mental health family support partners, medical necessity criteria shall continue to be met, and progress notes shall document the status of progress relative to the goals identified in the recovery, resiliency, and wellness plan.

8. Discharge criteria from mental health family support partners shall be the same as set forth in 12VAC30-130-5180 E.

9. Mental health family support partners services shall be rendered on an individual basis or in a group.

10. Prior to service initiation, an assessment shall be conducted and documented by an LMHP, LMHP-R, LMHP-RP, or LMHP-S who is acting within his scope of practice under state law. The assessment shall verify that the individual meets the medical necessity criteria set forth in subdivision 5 of this subsection. The assessment shall be included as part of the recovery, resiliency, and wellness plan and medical record. Services shall be initiated within 30 calendar days from when the assessment was complete.

11. Effective July 1, 2017, a peer recovery specialist shall have the qualifications, education, experience, and certification required by DBHDS in accordance with 12VAC35-250. Peer recovery specialists shall be registered by the Board of Counseling registration of peer recovery specialists by the Board of Counseling shall be required. The PRS shall perform mental health family support partners services under the oversight of the LMHP, LMHP-R,

LMHP-RP, or LMHP-S who assessed the individual and made the recommendation for services and providing the clinical oversight of the recovery, resiliency, and wellness plan.

12. The PRS shall be employed by or have a contractual relationship with the enrolled provider licensed for one of the following:

- a. Acute care general and emergency department hospital services licensed by the Department of Health.
- b. Freestanding psychiatric hospital and inpatient psychiatric unit licensed by the Department of Behavioral Health and Developmental Services.
- c. Psychiatric residential treatment facility licensed by the Department of Behavioral Health and Developmental Services.
- d. Therapeutic group home licensed by the Department of Behavioral Health and Developmental Services.
- e. Outpatient mental health clinic services licensed by the Department of Behavioral Health and Developmental Services.
- f. Outpatient psychiatric services provider.
- g. A community mental health and rehabilitative services provider licensed by the Department of Behavioral Health and Developmental Services as a provider of one of the following community mental health and rehabilitative services as defined in this section, 12VAC30-50-226, 12VAC30-50-420, or 12VAC30-50-430 for which the individual younger than 21 years meets medical necessity criteria: (i) intensive in home; (ii) therapeutic day treatment; (iii) day treatment or partial hospitalization; (iv) crisis intervention; (v) crisis stabilization; (vi) mental health skill building; or (vii) mental health case management.

13. Only the licensed and enrolled provider as referenced in subdivision (12) of this subsection shall be eligible to bill and receive reimbursement from DMAS or its contractor for mental health family support partner services. Payments shall not be permitted to providers that fail to enter into an enrollment agreement with DMAS or its contractor. Reimbursement shall be subject to retraction for any billed service that is determined not to be in compliance with DMAS requirements.

14. Supervision of the PRS shall meet the requirements set forth in 12VAC30-50-226 B 7 l and m.

F. Hearing aids shall be reimbursed for individuals younger than 21 years of age according to medical necessity when provided by practitioners licensed to engage in the practice of fitting or dealing in hearing aids under the Code of Virginia.

G. Addiction and recovery treatment services shall be covered under EPSDT consistent with 12VAC30-130-5000 et seq.

H. Services facilitators shall be required for all consumer-directed personal care services consistent with the requirements set out in 12VAC30-120-935.

I. Behavioral therapy services shall be covered for individuals younger than 21 years of age.

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

"Behavioral therapy" means systematic interventions provided by licensed practitioners acting within the scope of practice defined under a Virginia Department of Health Professions regulatory board and covered as remedial care under 42 CFR 440.130(d) to individuals younger than 21 years of age. Behavioral therapy includes applied behavioral analysis. Family training related to the implementation of the behavioral therapy shall be included as part of the behavioral therapy service. Behavioral therapy services shall be subject to clinical reviews and determined as medically necessary. Behavioral therapy may be provided in the individual's home and community settings as deemed by DMAS or its contractor as medically necessary treatment.

"Counseling" means a professional mental health service that can only be provided by a person holding a license issued by a health regulatory board at the Department of Health Professions, which includes conducting assessments, making diagnoses of mental disorders and conditions, establishing treatment plans, and determining treatment interventions.

"Individual" means the child or adolescent younger than 21 years of age who is receiving behavioral therapy services.

"Primary care provider" means a licensed medical practitioner who provides preventive and primary health care and is responsible for providing routine EPSDT screening and referral and coordination of other medical services needed by the individual.

2. Behavioral therapy services shall be designed to enhance communication skills and decrease maladaptive patterns of behavior, which if left untreated, could lead to more complex problems and the need for a greater or a more intensive level of care. The service goal shall be to ensure the individual's family or caregiver is trained to effectively manage the individual's behavior in the home using modification strategies. All services shall be provided in accordance with the ISP and clinical assessment summary.

3. Behavioral therapy services shall be covered when recommended by the individual's primary care provider or other licensed physician, licensed physician assistant, or licensed nurse practitioner and determined by DMAS or its contractor to be medically necessary to correct or ameliorate significant impairments in major life activities that have resulted from either developmental, behavioral, or mental

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disabilities. Criteria for medical necessity are set out in 12VAC30-60-61 F. Service-specific provider intakes shall be required at the onset of these services in order to receive authorization for reimbursement. Individual service plans (ISPs) shall be required throughout the entire duration of services. The services shall be provided in accordance with the individual service plan and clinical assessment summary. These services shall be provided in settings that are natural or normal for a child or adolescent without a disability, such as the individual's home, unless there is justification in the ISP, which has been authorized for reimbursement, to include service settings that promote a generalization of behaviors across different settings to maintain the targeted functioning outside of the treatment setting in the individual's home and the larger community within which the individual resides. Covered behavioral therapy services shall include:

- a. Initial and periodic service-specific provider intake as defined in 12VAC30-60-61 F;
- b. Development of initial and updated ISPs as established in 12VAC30-60-61 F;
- c. Clinical supervision activities. Requirements for clinical supervision are set out in 12VAC30-60-61 F;
- d. Behavioral training to increase the individual's adaptive functioning and communication skills;
- e. Training a family member in behavioral modification methods as established in 12VAC30-60-61 F;
- f. Documentation and analysis of quantifiable behavioral data related to the treatment objectives; and
- g. Care coordination.

4. All personal care services rendered to children under the authority of 42 CFR 440.40(b) shall comply with the requirements of 12VAC30-60-65 with regard to electronic visit verification.

J. School health services.

1. School health assistant services are repealed effective July 1, 2006.
2. School divisions may provide routine well-child screening services under the State Plan. Diagnostic and treatment services that are otherwise covered under early and periodic screening, diagnosis and treatment services, shall not be covered for school divisions. School divisions to receive reimbursement for the screenings shall be enrolled with DMAS as clinic providers.
 - a. Children enrolled in managed care organizations shall receive screenings from those organizations. School divisions shall not receive reimbursement for screenings from DMAS for these children.
 - b. School-based services are listed in a recipient's individualized education program (IEP) and covered under one or more of the service categories described in §

1905(a) of the Social Security Act. These services are necessary to correct or ameliorate defects of physical or mental illnesses or conditions.

3. Providers shall be licensed under the applicable state practice act or comparable licensing criteria by the Virginia Department of Education, and shall meet applicable qualifications under 42 CFR Part 440. Identification of defects, illnesses or conditions and services necessary to correct or ameliorate them shall be performed by practitioners qualified to make those determinations within their licensed scope of practice, either as a member of the IEP team or by a qualified practitioner outside the IEP team.

- a. Providers shall be employed by the school division or under contract to the school division.
- b. Supervision of services by providers recognized in subdivision 4 of this subsection shall occur as allowed under federal regulations and consistent with Virginia law, regulations, and DMAS provider manuals.
- c. The services described in subdivision 4 of this subsection shall be delivered by school providers, but may also be available in the community from other providers.
- d. Services in this subsection are subject to utilization control as provided under 42 CFR Parts 455 and 456.
- e. The IEP shall determine whether or not the services described in subdivision 4 of this subsection are medically necessary and that the treatment prescribed is in accordance with standards of medical practice. Medical necessity is defined as services ordered by IEP providers. The IEP providers are qualified Medicaid providers to make the medical necessity determination in accordance with their scope of practice. The services must be described as to the amount, duration and scope.

4. Covered services include:

- a. Physical therapy and occupational therapy and services for individuals with speech, hearing, and language disorders, performed by, or under the direction of, providers who meet the qualifications set forth at 42 CFR 440.110. This coverage includes audiology services.
- b. Skilled nursing services are covered under 42 CFR 440.60. These services are to be rendered in accordance to the licensing standards and criteria of the Virginia Board of Nursing. Nursing services are to be provided by licensed registered nurses or licensed practical nurses but may be delegated by licensed registered nurses in accordance with the regulations of the Virginia Board of Nursing, especially the section on delegation of nursing tasks and procedures. The licensed practical nurse is under the supervision of a registered nurse.
 - (1) The coverage of skilled nursing services shall be of a level of complexity and sophistication (based on assessment, planning, implementation, and evaluation) that is consistent with skilled nursing services when

performed by a licensed registered nurse or a licensed practical nurse. These skilled nursing services shall include dressing changes, maintaining patent airways, medication administration or monitoring, and urinary catheterizations.

(2) Skilled nursing services shall be directly and specifically related to an active, written plan of care developed by a registered nurse that is based on a written order from a physician, physician assistant, or nurse practitioner for skilled nursing services. This order shall be recertified on an annual basis.

c. Psychiatric and psychological services performed by licensed practitioners within the scope of practice are defined under state law or regulations and covered as physicians' services under 42 CFR 440.50 or medical or other remedial care under 42 CFR 440.60. These outpatient services include individual medical psychotherapy, group medical psychotherapy coverage, and family medical psychotherapy. Psychological and neuropsychological testing are allowed when done for purposes other than educational diagnosis, school admission, evaluation of an individual with intellectual or developmental disability prior to admission to a nursing facility, or any placement issue. These services are covered in the nonschool settings also. School providers who may render these services when licensed by the state include psychiatrists, licensed clinical psychologists, school psychologists, licensed clinical social workers, professional counselors, psychiatric clinical nurse specialists, marriage and family therapists, and school social workers.

d. Personal care services are covered under 42 CFR 440.167 and performed by persons qualified under this subsection. The personal care assistant is supervised by a DMAS recognized school-based health professional who is acting within the scope of licensure. This professional develops a written plan for meeting the needs of the individual, which is implemented by the assistant. The assistant must have qualifications comparable to those for other personal care aides recognized by the Virginia Department of Medical Assistance Services. The assistant performs services such as assisting with toileting, ambulation, and eating. The assistant may serve as an aide on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Individuals requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

e. Medical evaluation services are covered as physicians' services under 42 CFR 440.50 or as medical or other remedial care under 42 CFR 440.60. Persons performing these services shall be licensed physicians, physician assistants, or nurse practitioners. These practitioners shall

identify the nature or extent of an individual's medical or other health related condition.

f. Transportation is covered as allowed under 42 CFR 431.53 and described at State Plan Attachment 3.1-D (12VAC30-50-530). Transportation shall be rendered only by school division personnel or contractors. Transportation is covered for a child who requires transportation on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the individual is receiving a Medicaid-covered service under the IEP. Transportation shall be listed in the individual's IEP. Individuals requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

g. Assessments are covered as necessary to assess or reassess the need for medical services in an individual's IEP and shall be performed by any of the above licensed practitioners within the scope of practice. Assessments and reassessments not tied to medical needs of the individual shall not be covered.

5. DMAS will ensure through quality management review that duplication of services will be monitored. School divisions have a responsibility to ensure that if an individual is receiving additional therapy outside of the school, that there will be coordination of services to avoid duplication of service.

K. Family planning services and supplies for individuals of child-bearing age.

1. Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

2. Family planning services shall be defined as those services that delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility or services to promote fertility. Family planning services shall not cover payment for abortion services and no funds shall be used to perform, assist, encourage, or make direct referrals for abortions.

3. Family planning services as established by § 1905(a)(4)(C) of the Social Security Act include annual family planning exams; cervical cancer screening for women; sexually transmitted infection (STI) testing; lab services for family planning and STI testing; family planning education, counseling, and preconception health; sterilization procedures; nonemergency transportation to a family planning service; and U.S. Food and Drug Administration approved prescription and over-the-counter contraceptives, subject to limits in 12VAC30-50-210.

Regulations

12VAC30-60-65. Electronic visit verification.

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

"Aide" means the person who is employed by an agency to provide hands-on care.

"Agency-directed services" means a model of service delivery where an agency is responsible for providing direct support staff, for maintaining an individual's records, and for scheduling the dates and times of the direct support staff's presence in the individual's home for personal care services, respite care services, and companion services.

"Attendant" means the person who is hired by the individual consumer to provide hands-on care.

"Companion services" means nonmedical care, supervision, and socialization provided to an adult individual (ages 18 years and older). The provision of companion services shall not entail hands-on care but shall be provided in accordance with a therapeutic goal in the individual support plan and is not purely diversional in nature.

"Consumer-directed attendant" means a person who provides consumer-directed personal care services, respite care services, companion services, or any combination of these three services, who is also exempt from workers' compensation.

"Consumer-directed services" or "CD services" means the model of service delivery for which the individual enrolled in the waiver or the individual's employer of record, as appropriate, is responsible for hiring, training, supervising, and firing of an attendant who renders the services that are reimbursed by DMAS.

"DMAS" means the Department of Medical Assistance Services.

"Electronic visit verification" or "EVV" means a system by which personal care services, companion services, or respite care services home visits are electronically verified with respect to (i) the type of service performed, (ii) the individual receiving the service, (iii) the date of the service, (iv) the location of service delivery, (v) the individual providing the service, and (vi) the time the service begins and ends.

"Individual" means the person who has applied for and been approved to receive services for which EVV is required.

"Personal care services" means a range of support services that includes assistance with activities of daily living and instrumental activities of daily living, access to the community, and self-administration of medication or other medical needs and the monitoring of health status and physical condition provided through the agency-directed or consumer-directed model of service. Personal care services shall be provided by a personal care attendant or aide within the scope of the attendant's or aide's license or certification, as appropriate.

"Respite care services" means services provided to waiver individuals who are unable to care for themselves that are furnished on a short-term basis because of the absence of or need for the relief of the unpaid primary caregiver who normally provides the care.

B. Applicable services. All of the requirements for an electronic visit verification system shall apply to all providers, both agency-directed and consumer-directed, of personal care services, respite care services, and companion services [unless exempt under subsection C of this section].

1. Agency providers shall choose the EVV system that best suits the provider business model, meets regulatory requirements established in this section, and provides reliable functionality for the geographic area in which it is to be used.

2. For consumer-directed services, the DMAS designee (the fiscal employer agent) shall select and operate an EVV system to support an individual, or the employer of record, in managing the individual's care, meeting regulatory requirements established in this section, and providing reliable functionality for the geographic area in which it is to be used.

3. Providers of consumer-directed personal care services, respite care services, and companion services shall comply with all EVV requirements.

4. Providers of agency-directed personal care services, respite care services, and companion services shall comply with all EVV requirements.

5. Individuals shall not be restricted from receiving a combination of agency-directed and consumer-directed services. Nothing in this section shall be construed to limit personal care, respite care, or companion services; an individual's selection of a provider attendant or aide; or impede the manner or location in which services are delivered subject to subsection C of this section.

C. The following entities [and individuals] shall be exempt from EVV requirements:

1. A DBHDS-licensed provider in a DBHDS-licensed program site, such as a group home or sponsored residential home or a supervised living, supported living, or similar facility or location licensed to provide respite care services;

2. The Regional Educational Assessment Crisis Response and Habilitation (REACH) Program; [~~and~~]

3. Schools where personal care services are rendered under the authority of an individual education program [; and

4. Live-in caregivers].

D. System requirements.

1. The EVV system shall be capable of capturing required data in real time and producing such data as requested by

DMAS in electronic format. The following information shall be retained:

- a. The type of the service being performed;
 - b. The individual who receives the service;
 - c. The date of the service, including month, day, and year;
 - d. The time the service begins and ends;
 - e. The location of the service delivery at the beginning and the end of the service. EVV systems shall not restrict locations where individuals may receive services; and
 - f. The attendant or aide who provides the service.
2. In the event the time of service delivery needs to be adjusted, the start or end time may be modified by someone who has the provider's authority to adjust the aide's or attendant's hours.
- a. For agency-directed providers, this may be a supervisor or the agency owner or a designee who has authority to make independent verifications. In no case shall workers be allowed to adjust a peer worker's reported time.
 - b. For consumer-directed attendants, the fiscal employer agent shall have this authority.
3. All EVV systems shall be compliant with the requirements of the American with Disabilities Act (42 USC § 12101 et seq.) and Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191).
4. All EVV systems shall employ electronic devices that are capable of recording the required data described in subdivision D 1 of this section, producing it upon demand, and safeguarding the data both physically and electronically.
5. All EVV systems shall be accessible for input or service delivery 24 hours per day, seven days per week.
6. All EVV systems shall provide for data backups in the event of emergencies; disasters, natural or otherwise; and system malfunctions, both in the location services are being delivered and the backup server location.
7. All EVV systems shall be capable of handling:
- a. Multiple work shifts per day per individual or aide or attendant combination;
 - b. Aides or attendants who work for multiple individuals;
 - c. Individuals who use multiple aides or attendants;
 - d. Multiple individuals and multiple aides or attendants or both in the same location at the same time and date. In such situations, the EVV shall be capable of separately documenting the services, as well as the other elements set out in subdivision D 1 of this section, that are provided to each individual; and
 - e. At minimum, daily backups of the most recent data that has been entered.

8. All EVV systems shall be capable of electronically transmitting information to DMAS in the required format or electronically transferring it to the provider's billing system.

E. EVV data shall be submitted to DMAS with the provider's billing claim [in a manner that conforms with agency specifications].

F. Agency-directed provider records, audits, and reports.

1. Providers shall select and obtain an EVV system that meets the functional requirements of DMAS or its designee.

2. All providers shall retain EVV data for at least six years from the last date of service 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 is resolved. Policies regarding retention of records shall apply even if the provider discontinues operation.

a. In the event a provider discontinues services, DMAS shall be notified in writing of the storage location and procedures for obtaining records for review should the need arise.

b. The location, agent, or trustee shall be within the Commonwealth.

3. All providers shall retain records of minor individuals for at least six years after such minor individual has reached 18 years of age.

4. All providers shall produce their archived EVV data in a timely manner and in an electronic format when requested by DMAS or its designee.

5. In the event that a telephone or other verification option that the provider uses is not available or accessible in the individual's home or location, and delayed data input is utilized, the provider shall have information on file documenting the reason that the aide or attendant did not use EVV for the service delivered.

12VAC30-120-924. Covered services; limits on covered services.

A. Covered services in the EDCD Waiver shall include: adult day health care, personal care (both consumer-directed and agency-directed), respite services (both consumer-directed and agency-directed), PERS, PERS medication monitoring, limited assistive technology, limited environmental modifications, transition coordination, and transition services.

1. The services covered in this waiver shall be appropriate and medically necessary to maintain the individual in the community in order to prevent institutionalization and shall be cost effective in the aggregate as compared to the alternative NF placement.

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2. EDCD services shall not be authorized if another entity is required to provide the services (e.g., schools, insurance). Waiver services shall not duplicate services available through other programs or funding streams.

3. Assistive technology and environmental modification services shall be available only to those EDCD Waiver individuals who are also participants in the Money Follows the Person (MFP) demonstration program pursuant to Part XX (12VAC30-120-2000 et seq.).

4. An individual receiving EDCD Waiver services who is also getting hospice care may receive Medicaid-covered personal care (agency-directed and consumer-directed), respite care (agency-directed and consumer-directed), adult day health care, transition services, transition coordination, and PERS services, regardless of whether the hospice provider receives reimbursement from Medicare or Medicaid for the services covered under the hospice benefit. Such dual waiver/hospice individuals shall only be able to receive assistive technology and environmental modifications if they are also participants in the MFP demonstration program.

5. Agency-directed and consumer-directed personal care services and respite care services shall be subject to the electronic visit verification requirements set out in 12VAC30-60-65.

B. ~~Voluntary/involuntary~~ Voluntary or involuntary disenrollment from consumer-directed services. In either voluntary or involuntary disenrollment situations, the waiver individual shall be permitted to select an agency from which to receive his agency-directed personal care and respite services.

1. A waiver individual may be found to be ineligible for CD services by either the Preadmission Screening Team, DMAS-enrolled hospital provider, DMAS, its designated agent, or the CD services facilitator. An individual may not begin or continue to receive CD services if there are circumstances where the waiver individual's health, safety, or welfare cannot be assured, including ~~but not limited to:~~

- a. It is determined that the waiver individual cannot be the EOR and no one else is able to assume this role;
- b. The waiver individual cannot ensure his own health, safety, or welfare or develop an emergency backup plan that will ensure his health, safety, or welfare; or
- c. The waiver individual has medication or skilled nursing needs or medical or behavioral conditions that cannot be met through CD services or other services.

2. The waiver individual may be involuntarily disenrolled from consumer direction if he or the EOR, as appropriate, is consistently unable to retain or manage the attendant as may be demonstrated by, but not necessarily limited to, a pattern of serious discrepancies with the attendant's timesheets.

3. In situations where either (i) the waiver individual's health, safety, or welfare cannot be assured or (ii) attendant timesheet discrepancies are known, the services facilitator shall assist as requested with the waiver individual's transfer to agency-directed services as follows:

- a. Verify that essential training has been provided to the waiver individual or EOR;
- b. Document, in the waiver individual's case record, the conditions creating the necessity for the involuntary disenrollment and actions taken by the services facilitator;
- c. Discuss with the waiver individual or the EOR, as appropriate, the agency-directed option that is available and the actions needed to arrange for such services and offer choice of potential providers, and
- d. Provide written notice to the waiver individual of the right to appeal such involuntary termination of consumer direction. Such notice shall be given at least 10 calendar days prior to the effective date of this change. In cases when the individual's or the provider personnel's safety may be jeopardy, the 10 calendar days notice shall not apply.

C. Adult day health care (ADHC) services. ADHC services shall only be offered to waiver individuals who meet preadmission screening criteria as established in 12VAC30-60-303 and 12VAC30-60-307 and for whom ADHC services shall be an appropriate and medically necessary alternative to institutional care. ADHC services may be offered to individuals in a VDSS-licensed adult day care center (ADCC) congregate setting. ADHC may be offered either as the sole home and community-based care service or in conjunction with personal care (either agency-directed or consumer-directed), respite care (either agency-directed or consumer-directed), or PERS. A multi-disciplinary approach to developing, implementing, and evaluating each waiver individual's POC shall be essential to quality ADHC services.

1. ADHC services shall be designed to prevent institutionalization by providing waiver individuals with health care services, maintenance of their physical and mental conditions, and coordination of rehabilitation services in a congregate daytime setting and shall be tailored to their unique needs. The minimum range of services that shall be made available to every waiver individual shall be: assistance with ADLs, nursing services, coordination of rehabilitation services, nutrition, social services, recreation, and socialization services.

- a. Assistance with ADLs shall include supervision of the waiver individual and assistance with management of the individual's POC.
- b. Nursing services shall include the periodic evaluation, at least every 90 days, of the waiver individual's nursing needs; provision of indicated nursing care and treatment; responsibility for monitoring, recording, and administering prescribed medications; supervision of the

waiver individual in self-administered medication; support of families in their home care efforts for the waiver individuals through education and counseling; and helping families identify and appropriately utilize health care resources. Periodic evaluations may occur more frequently than every 90 days if indicated by the individual's changing condition. Nursing services shall also include the general supervision of provider staff, who are certified through the Board of Nursing, in medication management and administering medications.

c. Coordination and implementation of rehabilitation services to ensure the waiver individual receives all rehabilitative services deemed necessary to improve or maintain independent functioning, to include physical therapy, occupational therapy, and speech therapy.

d. Nutrition services shall be provided to include, ~~but not necessarily be limited to,~~ one meal per day that meets the daily nutritional requirements pursuant to 22VAC40-60-800. Special diets and nutrition counseling shall be provided as required by the waiver individuals.

e. Recreation and social activities shall be provided that are suited to the needs of the waiver individuals and shall be designed to encourage physical exercise, prevent physical and mental deterioration, and stimulate social interaction.

f. ADHC coordination shall involve implementing the waiver individuals' POCs, updating such plans, recording 30-day progress notes, and reviewing the waiver individuals' daily logs each week.

2. Limits on covered ADHC services.

a. A day of ADHC services shall be defined as a minimum of six hours.

b. ADCCs that do not employ professional nursing staff on site shall not be permitted to admit waiver individuals who require skilled nursing care to their centers. Examples of skilled nursing care may include: (i) tube feedings; (ii) Foley catheter irrigations; (iii) sterile dressing changing; or (iv) any other procedures that require sterile technique. The ADCC shall not permit its aide employees to perform skilled nursing procedures.

c. At any time that the center is no longer able to provide reliable, continuous care to any of the center's waiver individuals for the number of hours per day or days per week as contained in the individuals' POCs, then the center shall contact the waiver individuals or ~~family/caregivers~~ their family or caregivers, as appropriate, to initiate other care arrangements for these individuals. The center may either subcontract with another ADCC or may transfer the waiver individual to another ADCC. The center may discharge waiver individuals from the center's services but not from the waiver. Written notice of discharge shall be provided, with the specific reason or reasons for discharge, at least 10

calendar days prior to the effective date of the discharge. In cases when the individual's or the center personnel's safety may be jeopardy, the 10 calendar days notice shall not apply.

d. ADHC services shall not be provided, for the purpose of Medicaid reimbursement, to individuals who reside in NFs, ICFs/IID, hospitals, assisted living facilities that are licensed by VDSS, or group homes that are licensed by DBHDS.

D. Agency-directed personal care services. Agency-directed personal care services shall only be offered to persons who meet the preadmission screening criteria at 12VAC30-60-303 and 12VAC30-60-307 and for whom it shall be an appropriate alternative to institutional care. Agency-directed personal care services shall be comprised of hands-on care of either a supportive or health-related nature and shall include, ~~but shall not necessarily be limited to,~~ assistance with ADLs, access to the community, assistance with medications in accordance with VDH licensing requirements or other medical needs, supervision, and the monitoring of health status and physical condition. Where the individual requires assistance with ADLs, and when specified in the POC, such supportive services may include assistance with IADLs. This service shall not include skilled nursing services with the exception of skilled nursing tasks (e.g., catheterization) that may be delegated pursuant to Part VIII (18VAC90-20-420 through 18VAC90-20-460) of 18VAC90-20. Agency-directed personal care services may be provided in a home or community setting to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities. Personal care may be offered either as the sole home and community-based care service or in conjunction with adult day health care, respite care (agency-directed or consumer-directed), or PERS. The provider shall document, in the individual's medical record, the waiver individual's choice of the agency-directed model.

1. Criteria. In order to qualify for this service, the waiver individual shall have met the NF LOC criteria as set out in 12VAC30-60-303 and 12VAC30-60-307 as documented on the UAI assessment form, and for whom it shall be an appropriate alternative to institutional care.

a. A waiver individual may receive both CD and agency-directed personal care services if the individual meets the criteria. Hours received by the individual who is receiving both CD and agency-directed services shall not exceed the total number of hours that would be needed if the waiver individual were receiving personal care services through a single delivery model.

b. CD and agency-directed services shall not be simultaneously provided but may be provided sequentially or alternately from each other.

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- c. The individual or ~~family/caregiver~~ family or caregiver shall have a backup plan for the provision of services in the event the agency is unable to provide an aide.
2. Limits on covered agency-directed personal care services.
- a. DMAS shall not duplicate services that are required as a reasonable accommodation as a part of the Americans with Disabilities Act (42 USC §§ 12131 through 12165) or the Rehabilitation Act of 1973 (29 USC § 794).
- b. DMAS shall reimburse for services delivered, consistent with the approved POC, for personal care that the personal care aide provides to the waiver individual to assist him while he is at work or postsecondary school.
- (1) DMAS or the designated Srv Auth contractor shall review the waiver individual's needs and the complexity of the disability, as applicable, when determining the services that are provided to him in the workplace or postsecondary school or both.
- (2) DMAS shall not pay for the personal care aide to assist the enrolled waiver individual with any functions or tasks related to the individual completing his job or postsecondary school functions or for supervision time during either work or postsecondary school or both.
- c. Supervision services shall only be authorized to ensure the health, safety, or welfare of the waiver individual who cannot be left alone at any time or is unable to call for help in case of an emergency, and when there is no one else in the home competent and able to call for help in case of an emergency.
- d. There shall be a maximum limit of eight hours per 24-hour day for supervision services. Supervision services shall be documented in the POC as needed by the individual.
- e. Agency-directed personal care services shall be limited to 56 hours of services per week for 52 weeks per year. Individual exceptions may be granted based on criteria established by DMAS.
- f. Electronic visit verification requirements set out in 12VAC30-60-65 shall apply to these agency-directed respite care services.
- E. Agency-directed respite care services. Agency-directed respite care services shall only be offered to waiver individuals who meet the preadmission screening criteria at 12VAC30-60-303 and 12VAC30-60-307 and for whom it shall be an appropriate alternative to institutional care. Agency-directed respite care services may be either skilled nursing or unskilled care and shall be comprised of hands-on care of either a supportive or health-related nature and may include, ~~but shall not be limited to,~~ assistance with ADLs, access to the community, assistance with medications in accordance with VDH licensing requirements or other medical needs, supervision, and monitoring health status and physical condition.

1. Respite care shall only be offered to individuals who have an unpaid primary caregiver who requires temporary relief to avoid institutionalization of the waiver individual. Respite care services may be provided in the individual's home or other community settings.
2. When the individual requires assistance with ADLs, and where such assistance is specified in the waiver individual's POC, such supportive services may also include assistance with IADLs.
3. The unskilled care portion of this service shall not include skilled nursing services with the exception of skilled nursing tasks (e.g., catheterization) that may be delegated pursuant to Part VIII (18VAC90-20-420 through 18VAC90-20-460) of 18VAC90-20.
4. Limits on service.
- a. The unit of service shall be one hour. Respite care services shall be limited to 480 hours per individual per state fiscal year, to be service authorized. If an individual changes waiver programs, this same maximum number of respite hours shall apply. No additional respite hours beyond the 480 maximum limit shall be approved for payment for individuals who change waiver programs. Additionally, individuals who are receiving respite services in this waiver through both the agency-directed and CD models shall not exceed 480 hours per state fiscal year combined.
- b. If agency-directed respite care service is the only service received by the waiver individual, it must be received at least as often as every 30 days. If this service is not required at this minimal level of frequency, then the provider agency shall notify the local department of social services for its redetermination of eligibility for the waiver individual.
- c. The individual or ~~family/caregiver~~ family or caregiver shall have a backup plan for the provision of services in the event the agency is unable to provide an aide.
- d. Electronic visit verification requirements set out in 12VAC30-60-65 shall apply to these agency-directed respite care services.
- F. Services facilitation for consumer-directed services. Consumer-directed personal care and respite care services shall only be offered to persons who meet the preadmission screening criteria at 12VAC30-60-303 and 12VAC30-60-307 and for whom there shall be appropriate alternatives to institutional care.
1. Individuals who choose CD services shall receive support from a DMAS-enrolled CD services facilitator as required in conjunction with CD services. The services facilitator shall document the waiver individual's choice of the CD model and whether there is a need for another person to serve as the EOR on behalf of the individual. The CD services facilitator shall be responsible for assessing the waiver individual's

particular needs for a requested CD service, assisting in the development of the POC, providing training to the EOR on his responsibilities as an employer, and for providing ongoing support of the CD services.

2. Individuals who are eligible for CD services shall have, or have an EOR who has, the capability to hire and train the personal care attendant or attendants and supervise the attendant's performance, including approving the attendant's timesheets.

a. If a waiver individual is unwilling or unable to direct his own care or is younger than 18 years of age, a ~~family/caregiver/designated~~ family, a caregiver, or a designated person shall serve as the EOR on behalf of the waiver individual in order to perform these supervisory and approval functions.

b. Specific employer duties shall include checking references of personal care attendants and determining that personal care attendants meet qualifications.

3. The individual or ~~family/caregiver~~ family or caregiver shall have a backup plan for the provision of services in case the attendant does not show up for work as scheduled or terminates employment without prior notice.

4. The CD services facilitator shall not be the waiver individual, a CD attendant, a provider of other Medicaid-covered services, spouse of the individual, parent of the individual who is a minor child, or the EOR who is employing the CD attendant.

5. DMAS shall either provide for fiscal employer/agent services or contract for the services of a fiscal employer/agent for CD services. The fiscal employer/agent shall be reimbursed by DMAS or DMAS contractor (if the fiscal/employer agent service is contracted) to perform certain tasks as an agent for the EOR. The fiscal employer/agent shall handle responsibilities for the waiver individual including ~~but not limited to~~, employment taxes and background checks for attendants. The fiscal employer/agent shall seek and obtain all necessary authorizations and approvals of the Internal Revenue Service in order to fulfill all of these duties.

G. Consumer-directed personal care services. CD personal care services shall be comprised of hands-on care of either a supportive or health-related nature and shall include assistance with ADLs and may include ~~but shall not be limited to~~, access to the community, monitoring of self-administered medications or other medical needs, supervision, and monitoring health status and physical condition. Where the waiver individual requires assistance with ADLs and when specified in the POC, such supportive services may include assistance with IADLs. This service shall not include skilled nursing services with the exception of skilled nursing tasks (e.g. catheterization) that may be delegated pursuant to Part VIII (18VAC90-20-420 through 18VAC90-20-460) of

18VAC 90-20 and as permitted by Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia. CD personal care services may be provided in a home or community setting to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities. Personal care may be offered either as the sole home and community-based service or in conjunction with adult day health care, respite care (agency-directed or consumer-directed), or PERS.

1. In order to qualify for this service, the waiver individual shall have met the NF LOC criteria as set out in 12VAC30-60-303 and 12VAC30-60-307 as documented on the UAI assessment instrument, and for whom it shall be an appropriate alternative to institutional care.

a. A waiver individual may receive both CD and agency-directed personal care services if the individual meets the criteria. Hours received by the waiver individual who is receiving both CD and agency-directed services shall not exceed the total number of hours that would be otherwise authorized had the individual chosen to receive personal care services through a single delivery model.

b. CD and agency-directed services shall not be simultaneously provided but may be provided sequentially or alternately from each other.

2. Limits on covered CD personal care services.

a. DMAS shall not duplicate services that are required as a reasonable accommodation as a part of the Americans with Disabilities Act (42 USC §§ 12131 through 12165) or the Rehabilitation Act of 1973 (29 USC § 794).

b. There shall be a limit of eight hours per 24-hour day for supervision services included in the POC. Supervision services shall be authorized to ensure the health, safety, or welfare of the waiver individual who cannot be left alone at any time or is unable to call for help in case of an emergency, and when there is no one else in the home who is competent and able to call for help in case of an emergency.

c. Consumer-directed personal care services shall be limited to 56 hours of services per week for 52 weeks per year. Individual exceptions may be granted based on criteria established by DMAS.

d. Electronic visit verification requirements as set out in 12VAC30-60-65 shall apply to these CD personal care services.

3. CD personal care services at work or school shall be limited as follows:

a. DMAS shall reimburse for services delivered, consistent with the approved POC, for CD personal care that the attendant provides to the waiver individual to assist him while he is at work or postsecondary school or both.

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b. DMAS or the designated Srv Auth contractor shall review the waiver individual's needs and the complexity of the disability, as applicable, when determining the services that will be provided to him in the workplace or postsecondary school or both.

c. DMAS shall not pay for the personal care attendant to assist the waiver individual with any functions or tasks related to the individual completing his job or postsecondary school functions or for supervision time during work or postsecondary school or both.

H. Consumer-directed respite care services. CD respite care services are unskilled care and shall be comprised of hands-on care of either a supportive or health-related nature and may include, ~~but shall not be limited to,~~ assistance with ADLs, access to the community, monitoring of self-administration of medications or other medical needs, supervision, monitoring health status and physical condition, and personal care services in a work environment.

1. In order to qualify for this service, the waiver individual shall have met the NF LOC criteria as set out in 12VAC30-60-303 and 12VAC30-60-307 as documented on the UAI assessment instrument, and for whom it shall be an appropriate alternative to institutional care.

2. CD respite care services shall only be offered to individuals who have an unpaid primary caregiver who requires temporary relief to avoid institutionalization of the waiver individual. This service shall be provided in the waiver individual's home or other community settings.

3. When the waiver individual requires assistance with ADLs, and where such assistance is specified in the individual's POC, such supportive services may also include assistance with IADLs.

4. Electronic visit verification requirements as set out in 12VAC30-60-65 shall apply to these CD respite care services.

5. Limits on covered CD respite care services.

a. The unit of service shall be one hour. Respite care services shall be limited to 480 hours per waiver individual per state fiscal year. If a waiver individual changes waiver programs, this same maximum number of respite hours shall apply. No additional respite hours beyond the 480 maximum limit shall be approved for payment. Individuals who are receiving respite [care] services in this waiver through both the agency-directed and CD models shall not exceed 480 hours per state fiscal year combined.

b. CD respite care services shall not include skilled nursing services with the exception of skilled nursing tasks (e.g., catheterization) that may be delegated pursuant to Part VIII (18VAC90-20-420 through 18VAC90-20-460) of 18VAC90-20 and as permitted by Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia).

c. If consumer-directed respite care service is the only service received by the waiver individual, it shall be received at least as often as every 30 days. If this service is not required at this minimal level of frequency, then the services facilitator shall refer the waiver individual to the local department of social services for its redetermination of eligibility for the waiver individual.

I. Personal emergency response system (PERS).

1. Service description. PERS is a service that monitors waiver individual safety in the home and provides access to emergency assistance for medical or environmental emergencies through the provision of a two-way voice communication system that dials a 24-hour response or monitoring center upon activation and via the individual's home telephone line or system. PERS may also include medication monitoring devices.

a. PERS may be authorized only when there is no one else in the home with the waiver individual who is competent or continuously available to call for help in an emergency or when the individual is in imminent danger.

b. The use of PERS equipment shall not relieve the backup caregiver of his responsibilities.

c. Service units and service limitations.

(1) PERS shall be limited to waiver individuals who are ages 14 years and older who also either live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time. PERS shall only be provided in conjunction with receipt of personal care services (either agency-directed or consumer-directed), respite services (either agency-directed or consumer-directed), or adult day health care. A waiver individual shall not receive PERS if he has a cognitive impairment as defined in 12VAC30-120-900.

(2) A unit of service shall include administrative costs, time, labor, and supplies associated with the installation, maintenance, monitoring, and adjustments of the PERS. A unit of service shall be the one-month rental price set by DMAS in its fee schedule. The one-time installation of the unit shall include installation, account activation, individual and ~~family/caregiver~~ family or caregiver instruction, and subsequent removal of PERS equipment when it is no longer needed.

(3) PERS services shall be capable of being activated by a remote wireless device and shall be connected to the waiver individual's telephone line or system. The PERS console unit must provide hands-free voice-to-voice communication with the response center. The activating device must be (i) waterproof, (ii) able to automatically transmit to the response center an activator low battery alert signal prior to the battery losing power, (iii) able to be worn by the waiver individual, and (iv) automatically reset by the response center after each activation, thereby ensuring that subsequent signals can be transmitted

without requiring manual resetting by the waiver individual.

(4) All PERS equipment shall be approved by the Federal Communications Commission and meet the Underwriters' Laboratories, Inc. (UL) safety standard.

(5) Medication monitoring units shall be physician ordered. In order to be approved to receive the medication monitoring service, a waiver individual shall also receive PERS services. Physician orders shall be maintained in the waiver individual's record. In cases where the medical monitoring unit must be filled by the provider, the person who is filling the unit shall be either an RN or an LPN. The units may be filled as frequently as a minimum of every 14 days. There must be documentation of this action in the waiver individual's record.

J. Transition coordination and transition services. Transition coordination and transition services, as defined at 12VAC30-120-2000 and 12VAC30-120-2010, provide for applicants to move from institutional placements or licensed or certified provider-operated living arrangements to private homes or other qualified settings. The applicant's transition from an institution to the community shall be coordinated by the facility's discharge planning team. The discharge planner shall coordinate with the transition coordinator to ensure that EDCD Waiver eligibility criteria shall be met.

1. Transition coordination and transition services shall be authorized by DMAS or its designated agent in order for reimbursement to occur.
2. For the purposes of transition services, an institution must meet the requirements as specified by CMS in the Money Follows the Person demonstration program at http://www.ssa.gov/OP_Home/comp2/F109-171.html#ft262.
3. Transition coordination shall be authorized for a maximum of 12 consecutive months upon discharge from an institutional placement and shall be initiated within 30 days of discharge from the institution.
4. Transition coordination and transition services shall be provided in conjunction with personal care (agency-directed or consumer-directed), respite care (agency-directed or consumer-directed), or adult day health care services.

K. Assistive technology (AT).

1. Service description. Assistive technology (AT), as defined in 12VAC30-120-900, shall only be available to waiver individuals who are participating in the MFP program pursuant to Part XX (12VAC30-120-2000 et seq.).
2. In order to qualify for these services, the individual shall have a demonstrated need for equipment for remedial or direct medical benefit primarily in an individual's primary home, primary vehicle used by the individual, community activity setting, or day program to specifically serve to improve the individual's personal functioning. This shall encompass those items not otherwise covered under the

State Plan for Medical Assistance. AT shall be covered in the least expensive, most cost-effective manner.

3. Service units and service limitations.

- a. All requests for AT shall be made by the transition coordinator to DMAS or the Srv Auth contractor.
- b. The maximum funded expenditure per individual for all AT covered procedure codes (combined total of AT items and labor related to these items) shall be \$5,000 per year for individuals regardless of waiver, or regardless of whether the individual changes waiver programs, for which AT is approved. The service unit shall always be one, for the total cost of all AT being requested for a specific timeframe.
- c. AT may be provided in the individual's home or community setting.
- d. AT shall not be approved for purposes of convenience of the ~~caregiver/provider~~ caregiver or provider or restraint of the individual.
- e. An independent, professional consultation shall be obtained from a qualified professional who is knowledgeable of that item for each AT request prior to approval by the Srv Auth contractor and may include training on such AT by the qualified professional. The consultation shall not be performed by the provider of AT to the individual.
- f. All AT shall be prior authorized by the Srv Auth contractor prior to billing.
- g. Excluded shall be items that are reasonable accommodation requirements, for example, of the Americans with Disabilities Act, the Virginians with Disabilities Act (§ 51.5-1 et seq. of the Code of Virginia), or the Rehabilitation Act (20 USC § 794) or that are required to be provided through other funding sources.
- h. AT services or equipment shall not be rented but shall be purchased.

L. Environmental modifications (EM).

1. Service description. Environmental modifications (EM), as defined herein, shall only be available to waiver individuals who are participating in the MFP program pursuant to Part XX (12VAC30-120-2000 et seq.). Adaptations shall be documented in the waiver individual's POC and may include, ~~but shall not necessarily be limited to,~~ the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electrical and plumbing systems that are necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the waiver individual. Excluded are those adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, flooring, roof repairs, central air conditioning, or decks. Adaptations that add to the total square footage of the

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home shall be excluded from this benefit, except when necessary to complete an authorized adaptation, as determined by DMAS or its designated agent. All services shall be provided in the individual's primary home in accordance with applicable state or local building codes. All modifications must be prior authorized by the Srv Auth contractor. Modifications may only be made to a vehicle if it is the primary vehicle being used by the waiver individual. This service does not include the purchase or lease of vehicles.

2. In order to qualify for these services, the waiver individual shall have a demonstrated need for modifications of a remedial or medical benefit offered in his primary home or primary vehicle used by the waiver individual to ensure his health, welfare, or safety or specifically to improve the individual's personal functioning. This service shall encompass those items not otherwise covered in the State Plan for Medical Assistance or through another program. EM shall be covered in the least expensive, most cost-effective manner.

3. Service units and service limitations.

a. All requests for EM shall be made by the MFP transition coordinator to DMAS or the Srv Auth contractor.

b. The maximum funded expenditure per individual for all EM covered procedure codes (combined total of EM items and labor related to these items) shall be \$5,000 per year for individuals regardless of waiver, or regardless of whether the individual changes waiver programs, for which EM is approved. The service unit shall always be one, for the total cost of all EM being requested for a specific timeframe.

c. All EM shall be authorized by the Srv Auth contractor prior to billing.

d. Modifications shall not be used to bring a substandard dwelling up to minimum habitation standards. Also excluded shall be modifications that are reasonable accommodation requirements of the Americans with Disabilities Act, the Virginians with Disabilities Act (§ 51.5-1 et seq. of the Code of Virginia), and the Rehabilitation Act (20 USC § 794).

e. Transition coordinators shall, upon completion of each modification, meet face-to-face with the waiver individual and his ~~family/caregiver~~ family or caregiver, as appropriate, to ensure that the modification is completed satisfactorily and is able to be used by the individual.

f. EM shall not be approved for purposes of convenience of the ~~caregiver/provider~~ caregiver or provider or restraint of the waiver individual.

12VAC30-120-930. General requirements for home and community-based participating providers.

A. Requests for participation shall be screened by DMAS or the designated DMAS contractor to determine whether the

provider applicant meets the requirements for participation, as set out in the provider agreement, and demonstrates the abilities to perform, at a minimum, the following activities:

1. Screen all new and existing employees and contractors to determine whether any are excluded from eligibility for payment from federal health care programs, including Medicaid (i.e., via the United States Department of Health and Human Services Office of Inspector General List of Excluded Individuals or Entities (LEIE) website). Immediately report in writing to DMAS any exclusion information discovered to: DMAS, ATTN: Program Integrity/Exclusions, 600 East Broad Street, Suite 1300, Richmond, VA 23219, or email to providerexclusions@dmass.virginia.gov;

2. Immediately notify DMAS in writing of any change in the information that the provider previously submitted to DMAS;

3. Except for waiver individuals who are subject to the DMAS Client Medical Management program Part VIII (12VAC30-130-800 et seq.) of 12VAC30-130 or are enrolled in a Medicaid managed care program, ensure freedom of choice to individuals in seeking services from any institution, pharmacy, practitioner, or other provider qualified to perform the ~~service or~~ services required and participating in the Medicaid Program at the time the ~~service or~~ services are performed;

4. Ensure the individual's freedom to refuse medical care, treatment, and services;

5. Accept referrals for services only when staff is available to initiate and perform such services on an ongoing basis;

6. Provide services and supplies to individuals in full compliance with Title VI (42 USC § 2000d et seq.) of the Civil Rights Act of 1964 which prohibits discrimination on the grounds of race, color, religion, 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 (29 USC § 794), which prohibits discrimination on the basis of a disability; and the Americans with Disabilities Act of 1990 (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;

7. Provide services and supplies to individuals of the same quality and in the same mode of delivery as are provided to the general public;

8. Submit charges to DMAS for the provision of services and supplies to individuals in amounts not to exceed the provider's usual and customary charges to the general public and accept as payment in full the amount established by

DMAS payment methodology beginning with the individual's authorization date for the waiver services;

9. Use only DMAS-designated forms for service documentation. The provider shall not alter the DMAS forms in any manner without prior written approval from DMAS;

10. Use DMAS-designated billing forms for submission of charges;

11. Perform no type of direct marketing activities to Medicaid individuals;

12. 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 a period of at least six years from the last date of service 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 a period of at least six years after such minor has reached 18 years of age.

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 should the need arise. The location, agent, or trustee shall be within the Commonwealth;

13. Furnish information on the request of and in the form requested to DMAS, the Attorney General of Virginia or their 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;

14. 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 recipients of Medicaid;

15. Pursuant to 42 CFR 431.300 et seq., § 32.1-325.3 of the Code of Virginia, and the Health Insurance Portability and Accountability Act (HIPAA), safeguard and hold confidential all information associated with an applicant or enrollee or individual that could disclose the ~~applicant's/enrollee's/individual's~~ applicant's, enrollee's, or [~~individual's individual's~~] identity. Access to information concerning the ~~applicant/enrollee/individual~~ applicant, enrollee, or individual shall be restricted to persons or agency representatives who are subject to the standards of confidentiality that are consistent with that of the agency and

any such access must be in accordance with the provisions found in 12VAC30-20-90;

16. When ownership of the provider changes, notify DMAS in writing at least 15 calendar days before the date of change;

17. Pursuant to §§ 63.2-100, 63.2-1509, and 63.2-1606 of the Code of Virginia, if a participating provider or the provider's staff knows or suspects that a home and community-based waiver services individual is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation shall report this immediately from first knowledge or suspicion of such knowledge to the local department of social services adult or child protective services worker as applicable or to the toll-free, 24-hour hotline as described on the local department of social services' website. Employers shall ensure and document that their staff is aware of this requirement;

18. In addition to compliance with the general conditions and requirements, adhere to the conditions of participation outlined in the individual provider's participation agreements, in the applicable DMAS provider manual, and in other DMAS laws, regulations, and policies. 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;

19. Meet minimum qualifications of staff.

a. For reasons of Medicaid individuals' safety and welfare, all employees shall have a satisfactory work record, as evidenced by at least two references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults or children. In instances of employees who have worked for only one employer, such employees shall be permitted to provide one appropriate employment reference and one appropriate personal reference including no evidence of abuse, neglect, or exploitation of incapacitated or older adults or children.

b. Criminal record checks for both employees and volunteers conducted by the Virginia State Police. Proof that these checks were performed with satisfactory results shall be available for review by DMAS staff or its designated agent who are authorized by the agency to review these files. DMAS shall not reimburse the provider for any services provided by an employee or volunteer who has been convicted of committing a barrier crime as defined in § 32.1-162.9:1 of the Code of Virginia. Providers shall be responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. Provider staff shall not be reimbursed for services provided to the waiver individual effective on the date and thereafter that the criminal record check confirms the

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provider's staff person or volunteer was convicted of a barrier crime.

c. Provider staff and volunteers who serve waiver individuals who are minor children shall also be screened through the VDSS Child Protective Services (CPS) Central Registry. Provider staff and volunteers shall not be reimbursed for services provided to the waiver individual effective on the date and thereafter that the VDSS CPS Central Registry check confirms the provider's staff person or volunteer has a finding.

20. Comply with the electronic visit verification requirements set out in 12VAC30-60-65.

B. DMAS shall terminate the provider's Medicaid provider agreement pursuant to § 32.1-325 of the Code of Virginia and as may be required for federal financial participation. A provider who has been convicted of a felony, or who has otherwise pled guilty to a felony, in Virginia or in any other of the 50 states, the District of Columbia, or the U.S. territories shall within 30 days of such conviction notify DMAS of this conviction and relinquish its provider agreement. Such provider agreement terminations, subject to applicable appeal rights, shall conform to § 32.1-325 D and E of the Code of Virginia and Part XII (12VAC30-20-500 et seq.) of 12VAC30-20.

C. For DMAS to approve provider agreements with home and community-based waiver providers, the following standards shall be met:

1. Staffing, financial solvency, disclosure of ownership, and ensuring comparability of services requirements as specified in the applicable provider manual;
2. The ability to document and maintain waiver individuals' case records in accordance with state and federal requirements;
3. Compliance with all applicable laws, regulations, and policies pertaining to EDCD Waiver services.

D. The waiver individual shall have the option of selecting the provider of his choice from among those providers who are approved and who can appropriately meet his needs.

E. A participating provider may voluntarily terminate his participation in Medicaid by providing 30 days' written notification to DMAS.

F. DMAS may terminate at will a provider's participation agreement on 30 days' written notice as specified in the DMAS participation agreement. DMAS may immediately terminate a provider's participation agreement if the provider is no longer eligible to participate in the Medicaid program. Such action precludes further payment by DMAS for services provided to individuals on or after the date specified in the termination notice.

G. The provider shall be responsible for completing the DMAS-225 form. The provider shall notify the designated Srv Auth contractor, as appropriate, and the local department of social services, in writing, when any of the following events occur. Furthermore, it shall be the responsibility of the designated Srv Auth contractor to also update DMAS, as requested, when any of the following events occur:

1. Home and community-based waiver services are implemented;
2. A waiver individual dies;
3. A waiver individual is discharged from the provider's EDCD Waiver services;
4. Any other events (including hospitalization) that cause home and community-based waiver services to cease or be interrupted for more than 30 consecutive calendar days; or
5. The initial selection by the waiver individual or ~~family/caregiver~~ family or caregiver of a provider to provide services, or a change by the waiver individual or ~~family/caregiver~~ family or caregiver of a provider, if it affects the individual's patient pay amount.

H. Changes or termination of services.

1. The provider may decrease the amount of authorized care if the revised POC is appropriate and based on the medical needs of the waiver individual. The participating provider shall collaborate with the waiver individual or the ~~family/caregiver/EOR~~ family, caregiver, or EOR, or both as appropriate, to develop the new POC and calculate the new hours of service delivery. The provider shall discuss the decrease in care with the waiver individual or ~~family/caregiver/EOR~~ family, caregiver, or EOR, document the conversation in the waiver individual's record, and notify the designated Srv Auth contractor. The Srv Auth contractor shall process the decrease request and the waiver individual shall be notified of the change by letter. This letter shall clearly state the waiver individual's right to appeal this change.

2. If a change in the waiver individual's condition necessitates an increase in care, the participating provider shall assess the need for the increase and, collaborate with the waiver individual and ~~family/caregiver/EOR~~ family, caregiver, or EOR, as appropriate, to develop a POC for services to meet the changed needs. The provider may implement the increase in ~~personal/respite~~ personal care or respite care hours without approval from DMAS, or the designated Srv Auth contractor, if the amount of services does not exceed the total amount established by DMAS as the maximum for the level of care designated for that individual on the plan of care.

3. Any increase to a waiver individual's POC that exceeds the number of hours allowed for that individual's level of care or any change in the waiver individual's level of care

shall be authorized by DMAS or the designated Srv Auth contractor prior to the increase and be accompanied by adequate documentation justifying the increase.

4. In an emergency situation when either the health, safety, or welfare of the waiver individual or provider personnel is endangered, or both, DMAS, or the designated Srv Auth contractor, shall be notified prior to discontinuing services. The written notification period set out below shall not be required. If appropriate, local department of social services adult or child protective services, as may be appropriate, shall be notified immediately. Appeal rights shall be afforded to the waiver individual.

5. In a nonemergency situation, when neither the health, safety, nor welfare of the waiver individual or provider personnel is endangered, the participating provider shall give the waiver individual at least 10 calendar days' written notification (plus three days for mail transit for a total of 13 calendar days from the letter's date) of the intent to discontinue services. The notification letter shall provide the reasons for and the effective date the provider will be discontinuing services. Appeal rights shall be afforded to the waiver individual.

I. Staff education and training requirements.

1. RNs shall (i) be currently licensed to practice in the Commonwealth as an RN, or shall hold multi-state licensure privilege pursuant to Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia; (ii) have at least one year of related clinical nursing experience, which may include work in an acute care hospital, public health clinic, home health agency, rehabilitation hospital, or NF, or as an LPN who worked for at least one year in one of these settings; and (iii) submit to a criminal records check and consent to a search of the VDSS Child Protective Services Central Registry if the waiver individual is a minor child. The RN shall not be compensated for services provided to the waiver individual if this record check verifies that the RN has been convicted of a barrier crime described in § 32.1-162.9:1 of the Code of Virginia or if the RN has a founded complaint confirmed by the VDSS Child Protective Services Central Registry.

2. LPNs shall work under supervision as set out in 18VAC90-20-37. LPNs shall (i) be currently licensed to practice in the Commonwealth as an LPN, or shall hold multi-state licensure privilege pursuant to Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia; (ii) shall have at least one year of related clinical nursing experience, which may include work in an acute care hospital, public health clinic, home health agency, rehabilitation hospital, or NF. The LPN shall meet the qualifications and skills, prior to being assigned to care for the waiver individual, that are required by the individual's POC; and (iii) submit to a criminal records check and consent to a search of the VDSS Child Protective Services

Central Registry if the waiver individual is a minor child. The LPN shall not be compensated for services provided to the waiver individual if this record check verifies that the LPN has been convicted of a barrier crime described in § 32.1-162.9:1 of the Code of Virginia or if the LPN has a founded complaint confirmed by the VDSS Child Protective Services Central Registry.

3. Personal care aides who are employed by personal care agencies that are licensed by VDH shall meet the requirements of 12VAC5-381. In addition, personal care aides shall also receive annually a minimum of 12 documented hours of agency-provided training in the performance of these services.

4. Personal care aides who are employed by personal care agencies that are not licensed by the VDH shall have completed an educational curriculum of at least 40 hours of study related to the needs of individuals who are either elderly or who have disabilities, as ensured by the provider prior to being assigned to the care of an individual, and shall have the required skills and training to perform the services as specified in the waiver individual's POC and related supporting documentation.

a. Personal care aides' required initial (that is, at the onset of employment) training, as further detailed in the applicable provider manual, shall be met in one of the following ways: (i) registration with the Board of Nursing as a certified nurse aide; (ii) graduation from an approved educational curriculum as listed by the Board of Nursing; or (iii) completion of the provider's educational curriculum, which must be a minimum of 40 hours in duration, as taught by an RN who meets the same requirements as the RN listed in subdivision 1 of this subsection.

b. In addition, personal care aides shall also be required to receive annually a minimum of 12 documented hours of agency-provided training in the performance of these services.

5. Personal care aides shall:

a. Be at least 18 years of age or older;

b. Be able to read and write English to the degree necessary to perform the expected tasks and create and maintain the required documentation;

c. Be physically able to perform the required tasks and have the required skills to perform services as specified in the waiver individual's supporting documentation;

d. Have a valid social security number that has been issued to the personal care aide by the Social Security Administration;

e. Submit to a criminal records check and, if the waiver individual is a minor, consent to a search of the VDSS Child Protective Services Central Registry. The aide shall not be compensated for services provided to the waiver

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individual effective the date in which the record check verifies that the aide has been convicted of barrier crimes described in § 32.1-162.9:1 of the Code of Virginia or if the aide has a founded complaint confirmed by the VDSS Child Protective Services Central Registry;

f. Understand and agree to comply with the DMAS EDCD Waiver requirements; and

g. Receive tuberculosis (TB) screening as specified in the criteria used by the VDH.

6. Consumer-directed personal care attendants shall:

a. Be 18 years of age or older;

b. Be able to read and write in English to the degree necessary to perform the tasks expected and create and maintain the required documentation;

c. Be physically able to perform the required tasks and have the required skills to perform consumer-directed services as specified in the waiver individual's supporting documentation;

d. Have a valid social security number that has been issued to the personal care attendant by the Social Security Administration;

e. Submit to a criminal records check and, if the waiver individual is a minor, consent to a search of the VDSS Child Protective Services Central Registry. The attendant shall not be compensated for services provided to the waiver individual effective the date in which the record check verifies that the attendant has been convicted of barrier crimes described in § 32.1-162.9:1 of the Code of Virginia or if the attendant has a founded complaint confirmed by the VDSS Child Protective Services Central Registry;

f. Understand and agree to comply with the DMAS EDCD Waiver requirements;

g. Receive tuberculosis (TB) screening as specified in the criteria used by the VDH; and

h. Be willing to attend training at the individual's or family/caregiver's family or caregiver's request.

12VAC30-122-125. Electronic visit verification.

A. Except as specified in subsection B of this section, the requirements of 12VAC30-60-65 shall apply for personal care services, respite care services, and companion services.

B. EVV requirements shall not apply to respite care services provided by a DBHDS-licensed provider in a DBHDS-licensed program site, such as a group home or sponsored residential home or a supervised living, supported living, or similar facility or location licensed to provide respite care services as permitted by the Centers for Medicare and Medicaid Services.

VA.R. Doc. No. R19-5467; Filed June 22, 2021, 3:13 p.m.

Fast-Track Regulation

Title of Regulation: 12VAC30-135. Demonstration Waiver Services (repealing 12VAC30-135-400 through 12VAC30-135-498).

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: August 18, 2021.

Effective Date: September 2, 2021.

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

Basis: Section 32.1 325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance and to promulgate regulations according to the board's requirements.

Purpose: The Governor's Access Plan (GAP) was a Medicaid program implemented in 2015 to provide low-income individuals with a serious mental illness access to medical and behavioral health care. On June 7, 2018, Governor Northam signed the 2018 Virginia Appropriations Act authorizing DMAS to amend Virginia's Medicaid State Plan to expand coverage to newly eligible adults ages 19 to 64 with income up to 138% of the federal poverty level who were not eligible for Medicare. This expansion was effective on January 1, 2019. The majority of individuals enrolled in the GAP program were eligible under the Medicaid Expansion benefit, thus the Commonwealth no longer requires GAP and has transitioned GAP members to full Medicaid coverage effective March 31, 2019. The few individuals who did not meet Medicaid Expansion eligibility due to immigration or citizenship status and federal requirements were transitioned to the community services boards for continuing care. This regulatory change protects the health, safety, and welfare of Medicaid recipients by ensuring that DMAS regulations and DMAS practices are aligned.

Rationale for Using Fast-Track Rulemaking Process: This action is expected to be noncontroversial because the Commonwealth no longer requires GAP for members and has transitioned former GAP members to full Medicaid coverage effective March 31, 2019.

Substance: This action repeals the GAP program.

Issue: The changes ensure that DMAS remains in compliance with federal regulations to continue to obtain federal financial participation; there are no disadvantages in this regulatory change.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Director of the Department of Medical Assistance Services (DMAS) proposes to repeal this regulation.

Background. The Governor's Access Plan (GAP) was a Medicaid program implemented in 2015 to provide low-income individuals with a serious mental illness access to medical and behavioral health care. On June 7, 2018, Governor Northam signed the 2018 Appropriation Act authorizing DMAS to amend Virginia's Medicaid State Plan to expand coverage to newly eligible adults ages 19 to 64 with income up to 138 percent of the Federal Poverty Level¹ who were not eligible for Medicare. This expansion was effective on January 1, 2019. The majority of individuals enrolled in the GAP program were eligible under the Medicaid Expansion benefit; thus the Commonwealth no longer requires GAP and has transitioned GAP members to full Medicaid coverage effective March 31, 2019. The few individuals who did not meet Medicaid Expansion eligibility due to immigration/citizenship status and federal requirements were transitioned to the community services boards for continuing care.

The 12VAC30-135 Demonstration Waiver Services regulation formerly consisted of three parts. The first two parts have already been repealed. DMAS proposes to repeal the remainder of the regulation, which addresses the third part on GAP.

Estimated Benefits and Costs. Since the text proposed for repeal is on a program that no longer exists, the proposal would have no impact beyond eliminating potential confusion among readers of the Virginia Administrative Code.

Businesses and Other Entities Affected. The proposal potentially readers of the Virginia Administrative Code. The proposal does not produce any cost.

Small Businesses² Affected:

The proposal does not adversely affect small businesses. .

Localities³ Affected.⁴ The proposal does not disproportionately affect any particular locality. The proposal does not introduce costs for local governments.

Projected Impact on Employment. The proposal does not affect employment.

Effects on the Use and Value of Private Property. The proposal does not substantively affect the use and value of private property. The proposal does not affect real estate development costs.

¹See the following for specifics on the Federal Poverty Level: <https://www.healthcare.gov/glossary/federal-poverty-level-fpl/>

²Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

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

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

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

Summary:

The amendments repeal the Governor's Access Plan as the program is no longer necessary.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

Final Regulation

Title of Regulation: 18VAC10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations (amending 18VAC10-20-10, 18VAC10-20-20, 18VAC10-20-25, 18VAC10-20-35, 18VAC10-20-50 through 18VAC10-20-75, 18VAC10-20-110 through 18VAC10-20-160, 18VAC10-20-200 through 18VAC10-20-270, 18VAC10-20-295 through 18VAC10-20-382, 18VAC10-20-392, 18VAC10-20-420 through 18VAC10-20-460, 18VAC10-20-490, 18VAC10-20-495, 18VAC10-20-505, 18VAC10-20-627 through 18VAC10-20-683, 18VAC10-20-740, 18VAC10-20-760, 18VAC10-20-790, 18VAC10-20-795, adding 18VAC10-20-345; repealing 18VAC10-20-190, 18VAC10-20-215, 18VAC10-20-510 through 18VAC10-20-620, 18VAC10-20-750).

Statutory Authority: §§ 54.1-201 and 54.1-404 of the Code of Virginia.

Effective Date: September 2, 2021.

Agency Contact: Kathleen R. Nobsch, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email apelscidla@dpor.virginia.gov.

Summary:

The amendments include (i) adding a reference component to align landscape architects and land surveyor application requirements with other board regulants, (ii) allowing engineers-in-training and surveyors-in-training to take the fundamentals exam prior to submitting an application, (iii)

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considering 30 hours per week full-time employment for determining length of experience, (iv) providing additional options to applicants who have been living and practicing in the United States to demonstrate their competency in English, and (v) streamlining the registration process by having one category for all types of business entities with a single fee schedule. The amendments also simplify explanations of requirements, streamline processes, and clarify the regulation.

18VAC10-20-10. Definitions.

Section 54.1-400 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

Architect

Board

Certified interior designer

Interior design. When used in this chapter, interior design shall only be applicable to interior design performed by a certified interior designer.

Land surveyor. When used in this chapter, land surveyor shall include surveyor photogrammetrist unless stated otherwise or the context requires a different meaning.

Landscape architect

Practice of architecture

Practice of engineering

Practice of land surveying

Practice of landscape architecture

Professional engineer

The following words, terms, and phrases when used in this chapter shall have the meanings ascribed to them except where the context clearly indicates or requires different meanings:

"Application" means a completed application with the appropriate fee and any other required documentation including, ~~but not limited to,~~ references, experience verification, degree verification, and verification of examination and licensure or certification.

~~"Certified" means an individual holding a valid certification issued by the board and in good standing.~~

"Comity" means the recognition of licenses or certificates issued by other states or other jurisdictions of the United States as permitted by § 54.1-103 C of the Code of Virginia.

"Department" means the Department of Professional and Occupational Regulation.

"Direct control and personal supervision" means supervision by a professional who oversees and is responsible for the work of another individual.

"Good moral character" may be established if the applicant or regulant:

1. Has not been convicted of a ~~felony or misdemeanor~~ in the last 10 years or has ever been convicted of a felony that would render the applicant unfit or unsuited to engage in the occupation or profession applied for in accordance with § 54.1-204 of the Code of Virginia;

2. Has not committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, negligence, or incompetence reasonably related to:

a. The proposed area of practice within 10 years prior to application for licensure, certification, or registration; or

b. The area of practice related to licensure, certification, or registration by the board while under the authority of the board;

3. Has not engaged in fraud or misrepresentation in connection with the application for licensure, certification, or registration, or related ~~examination~~ exam;

4. Has not had a license, certification, or registration revoked or suspended for cause or been disciplined by this the Commonwealth or by any other jurisdiction, or surrendered or has surrendered a license, certificate, or registration in lieu of disciplinary action; or

5. Has not practiced without the required license, registration, or certification ~~in this the Commonwealth or in another jurisdiction within the five years immediately preceding the filing of the application for licensure, certification, or registration by this the Commonwealth.~~

"Good standing" means that the regulant holds a current or active license, certificate, or registration issued by a any regulatory body that is not ~~revoked, suspended, or surrendered~~ subject to a current sanction. The regulant shall be in good standing in every jurisdiction where licensed, certified, or registered.

~~"Licensed" means an individual who holds a valid license issued by the board.~~

"Place of business" means any location that, through professionals, offers or provides the services of architecture, engineering, land surveying, landscape architecture, ~~certified~~ interior design, or any combination thereof. A temporary field office established and utilized for the duration of a specific project shall not qualify as a place of business under this chapter.

"Profession" means the practice of architecture, engineering, land surveying, landscape architecture, or ~~certified~~ interior design.

"Professional" means an architect, professional engineer, land surveyor, landscape architect, or certified interior designer who holds a ~~valid~~ license or certificate issued by the board pursuant to the provisions of this chapter and is in good

standing with the board to practice his profession in ~~this the~~ Commonwealth.

"Registrant" means a business holding a ~~valid~~ registration issued by the board; and in good standing; to offer or provide one or more of the professions regulated by the board.

"Regulant" means an architect, professional engineer, land surveyor, or landscape architect holding a ~~valid~~ license issued by the board ~~an~~ and is in good standing; a certified interior designer holding a valid certification issued by the board and is in good standing; or a registrant.

"Resident" means physically present at the place of business a majority of its operating hours.

"Responsible person" means the professional named by the registrant to be responsible and have control of the registrant's regulated services offered, rendered, or both. A professional can only be the responsible person for the ~~professions~~ profession indicated on his ~~license licenses~~ or ~~certification certifications~~.

"Surveyor photogrammetrist" means a person who by reason of specialized knowledge in the area of photogrammetry has been granted a license by the board to survey land in accordance with Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia for the determination of topography, contours, or location of planimetric features using photogrammetric methods or similar remote sensing technology.

18VAC10-20-20. General application requirements.

A. Applicants must be of good moral character.

B. Applications shall be completed in accordance with instructions contained in this ~~section~~ chapter and on the application.

C. Applications for licensure requiring an exam shall be received in the board's office by the application deadline established in Part III (18VAC10-20-90 et seq.) of this chapter for each profession's exam. The date the ~~fully documented~~ application is received in the board's office shall determine if the application has been received on time. Applications, accompanying materials, and references become the property of the board upon receipt by the board.

D. Applicants shall meet all entry requirements at the time application is made.

E. Applicants shall provide the board with all required documentation and fees to complete the application for licensure or certification no later than three years from the date of the board's receipt of the initial application fee. Applications that remain incomplete after that time will no longer be processed by the board and the applicant shall submit a new application.

F. The board may make further inquiries and investigations with respect to an applicant's qualifications and documentation to confirm or amplify information supplied.

G. Failure of an applicant to comply with a written request from the board for additional evidence or information within 60 days of receiving such notice, except in such instances where the board has determined ineligibility for a clearly specified period of time, may be sufficient and just cause for disapproving the application.

H. Applicants who do not meet the requirements of 18VAC10-20-20 or 18VAC10-20-40 may be approved following consideration by the board in accordance with the provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia)

18VAC10-20-25. References.

In addition to the requirements found in 18VAC10-20-130, 18VAC10-20-220, 18VAC10-20-345, and 18VAC10-20-425, as applicable, references that are submitted as part of an application must comply with the following:

1. Written references shall be on the board-approved form and shall be no more than one year old at the time the application is received in the board's office; and

2. The individual providing ~~the~~ this reference must have known the applicant within the last five years from the date of this application and for at least one year;

~~3. The individual providing the reference must have known the applicant within the last five years from the date of application to the board; and~~

~~4. Individuals who provide references shall not also verify experience.~~

18VAC10-20-35. Experience.

All experience or training requirements contained in this chapter shall be on the board-approved form and will be evaluated based on the ~~rate of an applicant working a minimum of 35 hours per week~~ applicant working a minimum of 30 hours per week. Any experience gained at ~~a rate of less than 35 less than 30~~ hours per week may be prorated at the sole discretion of the board.

18VAC10-20-50. Transfer of scores to other boards.

The board, at its discretion and upon proper application, may forward the ~~grades~~ scores achieved by an applicant in the various exams given under the board's jurisdiction to any other duly constituted registration board for use in evaluating the applicant's eligibility for registration within another board's jurisdiction or evaluation of the applicant's national certification. An applicant requesting that his score be transferred to another registration board shall state his reason for the request in writing.

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18VAC10-20-55. Language and comprehension.

Applicants for licensure or certification shall be able to speak and write English to the satisfaction of the board. Applicants whose primary language has not always been English, or who have not graduated from a college or university in which English is the language of instruction, shall submit to the board a Test of English as a Foreign Language Internet-based Test (TOEFL iBT) score report. Score reports shall not be over two years old at the time of application and must reflect a score acceptable to the board. In lieu of the TOEFL, other evidence such as significant academic or work experience in English may be acceptable as determined by the board.

18VAC10-20-70. Modifications to examination administration.

The board and the department support and comply with the provisions of the Americans with Disabilities Act (ADA), 42 USC § 12101 et seq. Contracts between the board, department, and vendors for ~~examinations~~ exams contain provisions for compliance with the ADA. Requests for accommodations must be in writing and received in the board's office within a reasonable time before the ~~examination~~ exam. The board may require a report from a medical professional along with supporting data confirming the nature and extent of the disability. The applicant is responsible for providing the required information in a timely manner including the costs for providing the information. The board or its ~~agents~~ designee will determine, consistent with applicable law, any accommodations to be made.

18VAC10-20-75. Conduct at examination.

Applicants approved for an exam will be given specific instructions as to the conduct of each division of the exam at the exam site. Applicants are required to follow these instructions to ~~assure~~ ensure fair and equal treatment to all applicants during the course of the exam. ~~Evidence of misconduct~~ Misconduct may result in removal from the exam site, voided exam scores, ~~or both~~ and restriction from future exam access.

18VAC10-20-110. Education.

A. Applicants for original licensure shall hold a professional degree in architecture from a program accredited by the National Architectural Accrediting Board (NAAB) [~~or be actively participating in an integrated path accepted by the National Council of Architectural Registration Boards (NCARB) to architectural licensure option within a NAAB accredited professional degree program in architecture~~]. The degree program must have been accredited by NAAB no later than two years after the date of the applicant's graduation from the program.

B. Applicants seeking credit for a degree or coursework that is not NAAB-accredited, whether foreign or domestic, shall establish an [~~NCARB~~ National Council of Architectural

Registration Boards] record and have that degree or coursework evaluated for equivalency to a NAAB-accredited professional degree in architecture through NAAB's evaluation service. The board reserves the right to reject, ~~for good cause, any evaluation submitted. Any cost of translation and any evaluation submitted. Any costs attributable to~~ evaluation shall be borne by the applicant.

18VAC10-20-120. Experience.

A. Applicants for original licensure shall successfully complete the National Council of Architectural Registration Boards (NCARB) ~~Intern Development Program (IDP) IDP training requirements shall be in accordance with NCARB's Intern Development Program Guidelines, December 2013 Edition.~~ administered architectural experience program [, which satisfies the experience requirement outlined in 18VAC10-20-35].

~~B. Applicants must have a minimum of 36 months experience/training in architecture. Any experience/training of less than eight consecutive weeks will not be considered in satisfying this requirement.~~

~~C. Of the 36 months of required experience/training in architecture, at least 12 months shall have been obtained as an employee in the office of a licensed architect. An organization will be considered to be an office of a licensed architect if:~~

~~1. The architectural practice of the organization in which the applicant works is under the charge of a person practicing as a principal, where a principal is a licensed architect in charge of an organization's architectural practice either alone or with other licensed architects, and the applicant works under the direct supervision of a licensed architect; and~~

~~2. The practice of the organization encompasses the comprehensive practice of architecture including the categories set forth in the NCARB IDP requirements.~~

~~D. C. Applicants with a [NAAB-accredited National Architectural Accrediting Board-accredited] degree or who are actively participating in or who have completed the NCARB-accepted integrated path to architectural licensure option are required to document their experience or training in architecture before licensure.~~

18VAC10-20-130. References.

Applicants shall submit three references with the application, all of which shall be from currently licensed architects in a state or other jurisdiction of the United States or a ~~province of Canada,~~ country in which a mutual recognition agreement has been executed between itself and [NCARB National Council of Architectural Registration Boards] and accepted by the board. In addition to the requirements found in 18VAC10-20-25, the applicant shall only submit references from licensed architects who have personal knowledge of the applicant's architectural experience that demonstrates the applicant's competence and integrity.

18VAC10-20-140. Examination.

A. The board is a member board of [~~NCARB National Council of Architectural Registration Boards (NCARB)~~] and is authorized to make available the NCARB-prepared exam. Applicants for original licensure are required to pass this exam.

B. Applications for original licensure shall be approved by the board before applicants will be allowed to sit for the exam. Applicants who have satisfied the requirements of 18VAC10-20-110 and 18VAC10-20-130 and who are currently enrolled in ~~the NCARB IDP or have completed the NCARB-administered architectural experience program [or are actively participating in an integrated path accepted by NCARB to architectural licensure option with a National Architectural Accrediting Board-accredited professional degree program in architecture option]~~ shall be admitted to the exam.

C. Applicants approved by the board to sit for the exam shall register and submit the required exam fee and follow NCARB procedures when taking the exam. Applicants not properly registered will not be allowed to sit for the exam.

D. Applicants approved to sit for the exam shall be eligible for a period of three years from the date of their initial approval. Applicants who do not pass all sections of the exam during their eligibility period are no longer eligible to sit for the exam. To become exam-eligible again, applicants shall reapply to the board as follows:

1. Applicants who have taken at least one section of the exam and who reapply to the board no later than six months after the end of their eligibility may be approved to sit for the exam for an additional three years. The original application requirements shall apply.
2. Applicants who do not meet the criteria of subdivision 1 of this subsection shall reapply to the board and meet all entry requirements current at the time of reapplication.

E. Applicants will be notified ~~by the board~~ of whether they passed or failed the exam. The exam ~~may~~ shall not be reviewed by applicants. Unless authorized by NCARB rules and procedures, exam Exam scores are final and not subject to change.

F. Grading Scoring of the exam shall be in accordance with the national grading procedure administered by NCARB. ~~The board shall utilize the scoring procedures recommended by NCARB. Grades for each division of the exam passed on or after January 1, 2006, shall be valid in accordance with the procedure established by NCARB.~~

G. The board may approve transfer credits for parts of the exam taken and passed in accordance with national standards.

H. Applicants who have been approved for and subsequently pass the exam and who have satisfied 18VAC10-20-110, 18VAC10-20-120, and 18VAC10-20-130 shall be issued an architect license.

18VAC10-20-150. Licensure by comity.

A. Applicants who hold a valid active license in another state or other jurisdiction of the United States, ~~a province of Canada, or another foreign country or a country in which a mutual recognition agreement has been executed between itself and~~ [~~NCARB National Council of Architectural Registration Boards (NCARB)~~] and accepted by the board may be granted a license provided that they meet the requirements of 18VAC10-20-25 and:

1. They possess an NCARB certificate; or
2. They met the requirements for licensure that were substantially equivalent to those in effect in Virginia ~~that were in effect~~ at the time they were originally licensed.

B. Applicants who do not satisfy the requirements of subsection A of this section shall meet the entry requirements for initial licensure pursuant to this chapter.

18VAC10-20-160. Definitions.

The following words, terms, and phrases when used in this part shall have the meanings ascribed to them except where the context clearly indicates or requires different meanings:

"ABET" means the Accreditation Board for Engineering and Technology.

"Approved engineering ~~curriculum~~ program" means an undergraduate engineering ~~curriculum~~ program of four years or more; or a graduate engineering ~~curriculum~~ program approved by the board. ABET-approved ~~engineering EAC curricula~~ EAC programs are approved by the board. ~~Curricula Programs~~ that are accredited by ABET not later than two years after an applicant's graduation shall be deemed as ABET-approved.

"Approved engineering technology ~~curriculum~~ program" means an undergraduate engineering technology ~~curriculum~~ program of four years or more approved by the board. ABET-approved ~~engineering technology TAC curricula~~ ETAC programs of four years or more are approved by the board. ~~Curricula Programs~~ that are accredited by ABET not later than two years after an applicant's graduation shall be deemed as ABET-approved.

"EAC" means Engineering Accreditation Commission.

"Engineer-in-training" or "EIT" means an applicant who has completed any one of several combinations of education, or education and experience, and has passed the Fundamentals of Engineering exam.

"ETAC" means Engineering Technology Accreditation Commission.

"Related science ~~curriculum~~ includes, but is not limited to, program" means a four-year ~~curriculum~~ program in biology, chemistry, geology, geophysics, mathematics, physics, or other ~~curriculum~~ approved by the board. Curriculums

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programs approved by the board. Programs must have a minimum of six semester hours of mathematics courses beyond algebra and trigonometry and a minimum of six semester hours of science courses in calculus-based physics in order to be considered a related science curriculum program.

"Qualifying engineering experience" means a record of progressive experience on engineering work during which the applicant has made a practical utilization of acquired knowledge and has demonstrated progressive improvement, growth, and development through the utilization of that knowledge as revealed in the complexity and technical detail of the applicant's work product or work record. The applicant must show progressive assumption of greater individual responsibility for the work product over the relevant period. The progressive experience on engineering work shall be of a ~~grade and character~~ type and quality that indicates to the board that the applicant is minimally competent to practice engineering. Qualifying engineering experience shall be progressive in complexity and based on a knowledge of engineering mathematics, physical and applied sciences, properties of materials, and fundamental principles of engineering design.

~~"TAC" means "Technology Accreditation Commission.~~

18VAC10-20-190. Requirements for the Fundamentals of Engineering (FE) exam. (Repealed.)

~~In order to be approved to sit for the Fundamentals of Engineering (FE) exam, applicants must satisfy one of the subsections (A through E) of this section. Applicants shall:~~

EDUCATIONAL REQUIREMENTS	NUMBER OF REQUIRED YEARS OF QUALIFYING ENGINEERING EXPERIENCE
A. Student applicants.	0
1. Be enrolled in an ABET-accredited undergraduate EAC or TAC curriculum, have 12 months or less remaining before completion of the degree, and provide a certificate of good standing from the dean of the engineering school or his designee; 2. Be enrolled in an ABET-accredited graduate or doctorate EAC or TAC curriculum, have six months or less remaining before completion of the degree, and provide a certificate of good	0

standing from the dean of the engineering school or his designee; or 3. Be enrolled in a graduate curriculum that is ABET-accredited TAC or EAC at the undergraduate level at the institution at which the graduate degree is being sought, have six months or less remaining before completion of the degree, and provide a certificate of good standing from the dean of the engineering school or his designee.	
B. Have graduated from an approved engineering or an approved engineering technology curriculum.	0
C. Dual degree holders.	0
1. Have graduated from a non-ABET accredited undergraduate engineering curriculum of four years or more; and 2. Have graduated from a graduate or doctorate engineering curriculum that is ABET accredited at the undergraduate level.	0
D. Have graduated from a nonapproved engineering curriculum or from a related science curriculum of four years or more.	2
E. Have obtained, by documented academic coursework, the equivalent of education that meets the requirements of ABET accreditation for the baccalaureate engineering technology curricula. Whether an education is considered to be equivalent shall be determined by the judgment of the board.	6

18VAC10-20-200. Requirements for engineer-in-training (EIT) designation.

Upon passing the FE exam, an applicant who qualified for the exam under 18VAC10-20-190 A will receive the EIT designation only after he provides verification of his degree to the board. All other applicants will receive the EIT designation upon passing the FE exam. The EIT designation will remain valid indefinitely.

In order to receive the EIT designation, applicants shall:

1. Graduate from an engineering program of four years or more accredited by the Engineering Accreditation Commission of ABET (EAC/ABET), graduate from an engineering master's program accredited by EAC/ABET, or meet the requirements of the NCEES Engineering Education Standard;
2. Pass the NCEES Fundamentals of Engineering (FE) exam; and
3. Apply to the board.

18VAC10-20-210. Requirements for the Principles and Practice of Engineering (PE) exam licensure as a professional engineer.

A. In order to be approved to sit for the Principles and Practice of Engineering (PE) exam, applicants shall satisfy one of the subsections (A through F) within this section. Applicants shall be licensed as a professional engineer, applicants shall:

1. Satisfy one requirement of subdivisions B 1 through B 4 of this section;
2. Pass the Principles and Practice of Engineering (PE) exam;
3. Meet all the requirements of this chapter; and
4. Apply to and be approved by the board.

B. In general, the required education shall be applied as follows:

EDUCATIONAL REQUIREMENTS Educational Requirements	EIT REQUIRED? EIT Required?	NUMBER OF REQUIRED YEARS OF QUALIFYING ENGINEERING EXPERIENCE Number of Required Years of Qualifying Engineering Experience
A. 1. Have graduated from an approved engineering curriculum program.	YES	4

B. 2. Dual degree holders. 1. a. Have graduated from an ABET-accredited undergraduate engineering curriculum program; and 2. b. Have graduated from a doctorate engineering curriculum program that is ABET accredited at the undergraduate level.	NO	4
C. 3. Have graduated from a nonapproved engineering curriculum program of four years or more, a related science curriculum program, or an approved engineering technology curriculum program.	YES	6
D. 4. Have graduated from a nonapproved engineering technology curriculum program of four years or more.	YES	10
E. Have obtained, by documented academic coursework, the equivalent of education that meets that requirements of ABET accreditation for the baccalaureate engineering technology curricula. Whether an education is considered to be equivalent shall be determined by the judgment of the board.	YES	40
F. Have graduated from an engineering, engineering technology, or related science curriculum of four years or more.	NO	20

18VAC10-20-215. Requirements for the PE license. (Repealed.)

An applicant who has satisfied the requirements of this chapter will receive the professional engineer license upon successful completion of the PE exam.

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18VAC10-20-220. References.

In addition to the requirements found in 18VAC10-20-25, applicants shall satisfy one of the following:

1. An applicant for the ~~Fundamentals of Engineering exam~~ engineer-in-training designation shall provide one reference that indicates ~~his~~ the applicant's personal integrity from one of the following:
 - a. A professional engineer;
 - b. The dean, or ~~his~~ the dean's designee, of the engineering school attended by the applicant; or
 - c. An immediate work supervisor.

2. An applicant for ~~the Principles and Practice of Engineering exam~~ licensure as a professional engineer shall submit three references from professional engineers currently licensed in a state or other jurisdiction of the United States. The applicant shall only submit references given by professional engineers who have personal knowledge of the applicant's competence and integrity relative to his engineering experience.

~~3. An applicant for licensure by comity shall submit three references from professional engineers currently licensed in a state or other jurisdiction of the United States. The applicant shall only submit references given by professional engineers who have personal knowledge of the applicant's competence and integrity relative to his engineering experience.~~

18VAC10-20-230. Education.

A. An applicant who is seeking credit for a degree that is not ABET accredited ~~TAC~~ as ETAC or EAC and was earned from an institution outside the United States, shall have the degree authenticated and evaluated by an educational credential evaluation service. ~~If the evaluation is rigorous and meets appropriate ABET accreditation standards, the~~ The board may consider the degree as an approved engineering ~~curriculum or approved engineering technology curriculum program or approved engineering technology program~~. The board reserves the right to reject, ~~for good cause,~~ any evaluation submitted by the applicant.

B. Degrees earned within the United States for any nonapproved engineering ~~curriculum, related science curriculum, or nonapproved engineering technology curriculum program, related science program, or nonapproved engineering technology program~~ of four years or more shall be from an accredited college or university that is approved or accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education.

18VAC10-20-240. Experience.

A. Each applicant shall complete the board's Professional Engineer and Engineer-in-Training Experience Verification

Form, documenting all of his engineering experience. The information provided on the form shall clearly describe the engineering work or research that ~~he~~ the applicant personally performed; delineate his role in any group engineering activity; provide an overall description of the nature and scope of his work; and include a detailed description of the engineering work personally performed by him. The experience must be obtained in an organization with an engineering practice and must be verified on the board's experience verification form by a licensed professional engineer in the organization's engineering practice.

B. In general, the required experience shall be applied as follows:

Type of Experience	Qualifying	Nonqualifying
1. <u>1.</u> Design experience.	<u>A demonstrated use of engineering computation and problem-solving skills.</u>	<u>Drafting of design by others.</u>
2. <u>2.</u> Construction experience.	A demonstrated use of engineering computation and problem-solving skills.	The mere execution as a contractor of work designed by others, the supervision of construction, and similar nonengineering tasks.
3. <u>3.</u> Military experience.	Engineering of a character substantially equivalent to that required in the civilian sector for similar work.	Nonengineering military training and supervision.
4. <u>4.</u> Sales experience.	A demonstrated use of engineering computational and problem-solving skills.	The mere selection of data or equipment from a company catalogue, similar publication, or database.
5. <u>5.</u> Industrial experience.	Work directed toward the identification and solution of practice problems in the applicant's area of engineering specialization	The mere performance of maintenance of existing systems, replacement of parts or components, and other

	including engineering analysis of existing systems or the design of new ones.	nonengineering tasks.
5. 6. Graduate or doctorate's doctoral degree.	The successful completion of a graduate or doctorate degree in an engineering curriculum may be accepted as one year of equivalent engineering experience credit. Only one year of qualifying experience will be given for any combination of advanced degrees in an engineering program. In addition, if a degree is used to satisfy the education requirement, it cannot also be used toward satisfying the experience requirement.	Research conducted as part of a graduate or doctorate doctoral degree shall not count as additional experience if credit for the degree is granted pursuant to 18VAC10-20-190 or 18VAC10-20-210.
6. 7. Teaching.	For teaching experience to be considered qualifying by the board, the applicant shall have taught in an engineering curriculum program approved by the board and shall have been employed in the grade level of instructor or higher.	

7. Co-op program 8. Co-op or internship.	Engineering experience gained during a board-approved co-op program co-op or internship may be deemed qualifying engineering experience to a maximum of one year of credit.	
8. 9. General.		Experience in claims consulting, drafting, estimating, and field surveying.

C. The board, in its sole discretion, may permit partial credit for approved qualifying engineering experience obtained prior to graduation from an engineering ~~curriculum~~ program. Partial credit shall not exceed one-half of that required for any method of initial licensure.

18VAC10-20-260. Examinations.

A. ~~Applications for original licensure or EIT designation shall be received by the board in accordance with the following deadlines~~ Applicants who do not complete their application and receive their designation within the three years from the date that they apply must reapply to the board as follows:

1. ~~Students applying pursuant to 18VAC10-20-190 A shall submit their applications to be received in the board's office no later than 60 days prior to the scheduled exam~~ Applicants who reapply to the board no later than six months after the end of their eligibility may be approved to sit for the exam for an additional three years. The original application requirements shall apply.
2. ~~All other applications shall be received in the board's office no later than 130 days prior to the scheduled exam~~ Applicants who do not meet the criteria of subdivision 1 of this subsection shall reapply to the board and meet all entry requirements current at the time of reapplication.
3. All professional engineer applications shall be received in the board's office no later than 130 days prior to the scheduled exam.

B. The board is a member board of the National Council of Examiners for Engineering and Surveying (NCEES) and is authorized to administer the NCEES exams including the Fundamentals of Engineering exam and the Principles and Practice of Engineering exam.

C. ~~Applicants approved by the board to sit for an exam shall register and submit the required exam fee to be received by the board's designee and shall follow NCEES procedures.~~

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~~Applicants not properly registered will not be allowed to sit for the exam.~~

~~D. Applicants eligible for admission to both exams must first successfully complete the Fundamentals of Engineering exam before being admitted to the Principles and Practice of Engineering exam.~~

~~E. C.~~ The exam may not be reviewed by applicants. Unless authorized by NCEES rules and procedures, exam scores are final and are not subject to change.

~~F. Applicants approved to sit for the exam shall be eligible for a period of three years from the date of their initial approval. Applicants who do not pass the exam during their eligibility period are no longer eligible to sit for the exam. To become exam eligible again, applicants shall reapply to the board and meet all current entry requirements at the time of reapplication. In addition to meeting current entry requirements upon reapplication, applicants shall demonstrate successful completion of 16 hours of educational activities that meet the requirements of 18VAC10-20-683 E and F.~~

18VAC10-20-270. Licensure by comity.

A. Applicants holding a valid license to practice engineering in other states or jurisdictions of the United States may be licensed provided they satisfy the provisions of this subsection. Applicants shall:

1. Submit to the board verifiable documentation that the education, experience, and exam requirements by which they were first licensed in the original jurisdiction were substantially equivalent to the requirements in Virginia at the same time;
2. Have passed an exam in another jurisdiction that was substantially equivalent to that approved by the board at the time of their original licensure;
3. Be in good standing in all jurisdictions where they are currently licensed; ~~and~~
4. Submit three references from professional engineers currently licensed in a state or other jurisdiction of the United States. The applicant shall only submit references given by professional engineers who have personal knowledge of the applicant's competence and integrity relative to his engineering experience; and
5. Satisfy all other applicable requirements of this chapter.

B. Applicants who do not meet the requirements for licensure in Virginia that were in effect at the time of their original licensure shall be required to meet the entry requirements current at the time the completed application for comity is received in the board's office.

18VAC10-20-295. Definitions.

"Absolute horizontal positional accuracy" means the value expressed in feet or meters that represents the uncertainty due

to systematic and random errors in measurements in the location of any point on a survey relative to the defined datum at the 95% confidence level.

"Approved land surveying experience" means progressive and diversified office and field training and experience under the direct control and personal supervision of a licensed land surveyor. This experience shall have been acquired in positions requiring the exercise of independent judgment, initiative, and professional skill ~~in the office and field and written~~. Written verification of such work experience shall be on forms provided by the board. Experience may be gained either prior to or after education is obtained. Notwithstanding the definition of "approved land surveying experience," the requirements set forth in 18VAC10-20-310 shall not be waived.

"Approved photogrammetric surveying or similar remote sensing technology experience" means progressive and diversified office and field training and experience in photogrammetric surveying or similar remote sensing technology under the direct control and personal supervision of a licensed land surveyor or licensed surveyor photogrammetrist. This experience shall have been acquired in positions requiring the exercise of independent judgment, initiative, and professional skill ~~in the office and field and written~~. Written verification of such work experience shall be on forms provided by the board. Experience may be gained either prior to or after education is obtained. Notwithstanding the definition of "approved photogrammetric surveying or similar remote sensing technology experience," the requirements set forth in 18VAC10-20-310 shall not be waived.

"Relative horizontal positional accuracy" means the value expressed in feet or meters that represents the uncertainty due to random errors in measurements in the location of any point on a survey relative to any other point on the same survey at the 95% confidence level.

18VAC10-20-300. Requirements for surveyor-in-training (SIT) designation.

~~A. In order to be approved to sit for the Fundamentals of Land Surveying (FLS) exam, applicants must~~ Applicants who do not complete their applications and receive their designations within the three years from the date that they apply must reapply and satisfy one of the following:

1. Be enrolled in a ~~board approved or ABET accredited~~ an EAC/ABET-accredited surveying or surveying technology ~~curriculum~~ program acceptable to the board, have 12 months or less remaining before completion of degree requirements, and provide a certificate of good standing from the dean of the school or ~~his~~ the dean's designee;
2. Have earned an undergraduate degree from a ~~board approved or ABET accredited~~ an EAC/ABET-accredited

surveying or surveying technology ~~curriculum program~~ acceptable to the board;

3. Have earned a ~~board-approved~~ an undergraduate degree related to surveying acceptable to the board and possess a minimum of one year of approved land surveying experience;

4. Have earned an undergraduate degree in a field unrelated to surveying in conjunction with an additional 30 credit hours in an approved surveying program acceptable to the board and possess a minimum of two years of approved land surveying experience;

5. Have earned a board-approved undergraduate degree in a field unrelated to surveying and possess a minimum of two years of approved land surveying experience;

~~5.~~ 6. Have earned a board-approved associate's degree related to surveying and possess a minimum of four years of approved land surveying experience;

~~6.~~ 7. Have successfully completed a board-approved survey apprenticeship program. The apprenticeship program shall include a minimum of 480 hours of surveying-related classroom instruction with a minimum of six years of approved land surveying experience; or

~~7.~~ 8. Have graduated from high school with evidence of successful completion of courses in algebra, geometry, and trigonometry; and possess a minimum of eight years of approved land surveying experience.

B. Applicants seeking approval to sit for the ~~FLS~~ Fundamentals of Surveying (FS) exam pursuant to subdivisions A 3 through ~~7~~ A 8 of this section may apply board-approved college credits to help meet the experience requirement. The maximum rate of college credit substitution for experience shall be one year of experience credit for each 40 credit hours of board-approved college credits completed. College credits applicable toward the completion of any degree used to satisfy a requirement of subsection A of this section shall not be eligible for experience substitution.

~~C. An applicant who qualified for the FLS exam under subdivision A 1 of this section will be issued the SIT designation upon the board's receipt of the applicant's degree verification. All other applicants shall receive the SIT designation upon passing the FLS FS exam, receiving approval from a board reviewed application, and meeting all other board requirements.~~

18VAC10-20-310. Requirements for the land surveyor and surveyor photogrammetrist licenses.

A. Land surveyor license.

1. ~~An SIT~~ A surveyor-in-training (SIT) who has met the requirements of 18VAC10-20-300 and has a minimum of four years of approved land surveying experience shall be approved to sit for ~~an exam in the Principles and Practice of~~

~~Land Surveying and the Virginia-specific land surveying exam;~~

a. The Principles and Practice of Land Surveying exam;

b. The Virginia-specific land surveying exam; and

c. The board supplied exam on regulations.

2. A qualified applicant shall be granted a license to practice land surveying upon passing ~~both exams~~ all three exams and meeting all other board requirements.

B. Surveyor photogrammetrist license.

1. An SIT who has met the requirements of 18VAC10-20-300 and has a minimum of four years of approved photogrammetric surveying or similar remote sensing technology experience shall be approved to sit for ~~the board-approved surveyor photogrammetrist exam and the Virginia-specific photogrammetrist exam.~~ the following board-approved exams:

a. The Principles and Practice of Land Surveying;

b. The Virginia-specific land surveying exam; and

c. The board supplied exam on regulations.

2. A qualified applicant shall be granted a license to practice photogrammetric surveying upon passing ~~both exams~~ all three exams and meeting all other board requirements.

18VAC10-20-320. Requirements for the land surveyor B license.

A. An applicant shall:

1. Hold a valid Virginia license as a land surveyor ~~for two years;~~

2. Present satisfactory evidence of a minimum of two years of land surveying experience that is progressive in complexity in land surveyor B land surveying, as provided in § 54.1-408 of the Code of Virginia, under the direct control and personal supervision of a licensed land surveyor B or professional engineer;

3. Present satisfactory evidence of having passed college-level courses in hydrology and hydraulics that are acceptable to the board; and

4. Pass an exam developed by the board.

B. A qualified applicant shall be issued a land surveyor B license upon passing the board-developed exam.

18VAC10-20-330. Education.

An applicant who is seeking credit for a degree earned from an institution outside of the United States shall have his degree authenticated and evaluated by an education evaluation service approved by the board. The board reserves the right to reject; ~~for good cause,~~ any evaluation submitted by the applicant. Any cost of evaluation shall be borne by the applicant.

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18VAC10-20-340. Experience standards.

In order to demonstrate meeting the experience requirements of 18VAC10-20-300, 18VAC-10-20-310, and 18VAC10-20-320, applicants shall document experience that has been gained under the direct control and personal supervision of a licensed land surveyor or licensed surveyor photogrammetrist on the appropriate board-provided forms. Experience shall be verified by a licensed land surveyor or licensed surveyor photogrammetrist in an organization with a surveying practice and will be evaluated by the board in accordance with 18VAC10-20-35.

18VAC10-20-345. References.

Applicants shall submit three references on a board-approved form with the application, all of which shall be from currently licensed land surveyors in a state or other jurisdiction of the United States. In addition to the requirements found in 18VAC10-20-25, the applicant shall only submit references from licensed land surveyors who have personal knowledge of the applicant's surveying experience that demonstrates the applicant's competence and integrity.

18VAC10-20-350. Examinations.

A. Applications for ~~original~~ initial licensure shall be received by the board in accordance with the following deadlines:

- ~~Applications~~ Applicants for the ~~SIT~~ surveyor-in-training designation submitted pursuant to 18VAC10-20-300 A ~~shall be received in the board's office no later than 60 days prior to the scheduled exam~~ are eligible to sit for the Fundamentals of Surveying (FS) exam.
- Upon successful completion of the FS exam, applicants who qualify may apply to sit for the other surveying exams.
- ~~All other~~ applications for the Virginia-specific exam shall be received in the board's office no later than 130 days prior to the scheduled exam.

B. The board is a member board of the National Council of Examiners for Engineering and Surveying (NCEES) and ~~is authorized to administer the NCEES exams including the Fundamentals of Land Surveying exam and the Principles and Practice of Land Surveying exam~~ Applicants approved to sit authorizes NCEES to administer the national surveying related exam. Applicants sitting for the exam shall follow NCEES procedures.

C. The ~~exam~~ exams for Virginia board regulations, the Virginia-specific, the surveyor photogrammetrist, and the land surveyor B shall be given at times designated by the board.

D. Unless otherwise stated, applicants approved to sit for an exam must register and submit the required exam fee to be received by the board or the board's designee at a time designated by the board. Applicants not properly registered will not be allowed to sit for the exam.

E. The exam shall not be reviewed by applicants. Unless authorized by NCEES rules and procedures, exam scores are final and are not subject to change.

F. Applicants approved to sit for the exam shall be eligible for a period of three years from the date of their initial approval. Applicants who do not pass the exam during their eligibility period are no longer eligible to sit for the exam. To become exam-eligible again, applicants shall reapply to the board ~~and meet all current entry requirements at the time of reapplication. In addition to meeting the current entry requirements upon reapplication, applicants shall, meet all current entry requirements, and~~ demonstrate successful completion of 16 hours of educational activities that meet the requirements of 18VAC10-20-683 E and F.

18VAC10-20-360. Licensure by comity.

A. Applicants holding a valid license to practice land surveying in another state or other jurisdiction of the United States may be licensed as a land surveyor in Virginia. To become licensed, applicants shall:

- Submit to the board verifiable documentation that the education, experience, and exam requirements by which they were first licensed in the original jurisdiction were substantially equivalent to the requirements in Virginia at the same time;
- Have passed an exam in another jurisdiction that was substantially equivalent to that approved by the board at the time of the original licensure;
- Be in good standing in all jurisdictions where licensed;
- Pass a the Virginia-specific exam; and
- Satisfy all other applicable requirements of this chapter.

B. Applicants who do not meet the requirements for licensure in Virginia that were in effect at the time of their original licensure shall be required to meet the entry requirements current at the time the completed application for comity is received in the board's office;

C. Applicants holding a current license to practice land surveying or photogrammetric surveying issued by another state or other jurisdiction of the United States may be licensed in Virginia as a surveyor photogrammetrist provided they meet one of the following criteria:

- Applicants who were originally licensed prior to December 1, 2009, shall meet the requirements of the board's regulations effective December 1, 2008, and pass the Virginia-specific exam; or
- Applicants who were originally licensed on or after December 1, 2009, shall meet the requirements of the board's regulations effective at the time of original licensure and pass the Virginia-specific exam.

18VAC10-20-370. Minimum standards and procedures for land boundary surveying practice.

A. The minimum standards and procedures set forth in this section are to be used for land boundary surveys performed in the Commonwealth of Virginia. The application of the professional's seal, signature, and date as required by these regulations shall be evidence that the land boundary survey is correct to the best of the professional's knowledge, information, and belief, and complies with the minimum standards and procedures set forth in this chapter.

B. Research procedure. The professional shall search the land records for the proper description of the land to be surveyed and obtain the description of adjoining ~~land(s)~~ land as it pertains to the common boundaries. The professional shall have the additional responsibility to utilize such other available data pertinent to the survey being performed from any other known sources. Evidence found, from all known sources, including evidence found in the field, shall be carefully compared in order to aid in the establishment of the correct boundaries of the land being surveyed. The professional shall clearly identify on the plats, maps, and reports inconsistencies found in the research of common boundaries between the land being surveyed and the adjoining ~~land(s)~~ land. It is not the intent of this regulation to require the professional to research the question of title or encumbrances on the land involved.

C. Minimum field procedures.

1. Angular measurement. Angle measurements made for traverse or land boundary survey lines will be made by using a properly adjusted transit-type instrument ~~which that~~ allows a direct reading to a minimum accuracy of ~~30~~ 20 seconds of arc or ~~metric~~ equivalent. The number of angles turned at a given station or corner will be the number ~~which that~~, in the judgment of the professional, can be used to substantiate the average true angle considering the condition of the instrument being used and the existing field conditions.

2. Linear measurement. Distance measurement for the lines of traverse or lines of the land boundary survey shall be made (i) with metal tapes ~~which that~~ have been checked and are properly calibrated as to incremental distances, or (ii) with properly calibrated electronic distance measuring equipment following instructions and procedures established by the manufacturer of such equipment. All linear measurements shall be reduced to the horizontal plane, and other necessary corrections shall be performed before using such linear measurements for computing purposes.

3. Field traverse and land boundary closure and accuracy standards. For a land boundary survey located in a rural area, the maximum permissible error of closure for a field traverse shall be one part in 10,000 (1/10,000). The attendant angular closure shall be that which will sustain the one part in 10,000 (1/10,000) maximum error of closure. For a land boundary survey located in an urban area, the maximum permissible

error of closure for a traverse shall be one part in 20,000 (1/20,000). The attendant angular closure shall be that which will sustain the one part in 20,000 (1/20,000) maximum error of closure.

The maximum permissible positional uncertainty based on the 95% confidence level of any independent boundary corner or independent point located on a boundary that has been established by utilizing global positioning systems shall not exceed the positional tolerance of 0.07 feet (or 20 mm + 50 ppm).

4. Monumentation. As a requisite for completion of the work product, each land boundary survey of a tract or parcel of land shall be monumented with objects made of permanent material at all corners and changes of direction on the land boundary with the exceptions of meanders, such as meanders of streams, tidelands, lakes, swamps and prescriptive rights-of-way, and each such monument, other than a natural monument, shall, when physically feasible, be identified by a temporary witness marker. Where it is not physically feasible to set actual corners, appropriate reference monuments shall be set, preferably on line, and the location of each shall be shown on the plat or map of the land boundary.

All boundaries, both exterior and interior, of the original survey for any division or partition of land shall be monumented in accordance with the provisions of this subdivision, when such monumentation is not otherwise regulated by the provisions of a local subdivision ordinance.

5. For land boundary surveys providing for a division when only the division, in lieu of the entire parcel, is being surveyed, any new corners established along existing property lines shall require that those existing property lines be established through their entire length. This shall include the recovery or reestablishment of the existing corners for each end of the existing property lines.

D. Office procedures.

1. Computations. The computation of field work data shall be accomplished by using the mathematical routines that produce closures and mathematical results that can be compared with descriptions and data of record. Such computations shall be used to determine the final land boundary of the land involved.

2. Plats and maps. The following information shall be shown on all plats and maps used to depict the results of the land boundary survey:

- a. The title of the land boundary plat identifying the land surveyed and showing the district, town, and county or city in which the land is located and scale of drawing.
- b. The name of the owner of record and recording references.

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- c. Names of all adjoining owners of record with recording references, or with subdivision name and lot designations and recording references.
- d. Inconsistencies found in the research of common boundaries between the land being surveyed and the adjoining ~~land(s)~~ land. The inconsistencies shall be clearly noted by the professional.
- e. Names of highways and roads with route number, and widths of right-of-way, or distance to the center of the physical pavement and pavement width, name of railroads, streams adjoining, crossing, or in close proximity to the boundary and other prominent or well-known objects that are informative as to the location of the land boundary.
- f. A distance to the nearest road intersection, or prominent or well-known object. In cases of remote areas, a scaled position with the latitude and longitude must be provided.
- g. Items crossing any property lines such as, but not limited to, physical encroachments, and evidence of easements such as utilities and other physical features pertinent to the boundary of the property.
- h. Bearings of all property lines and meanders to nearest ~~40 seconds~~ one second of arc or ~~metrie~~ equivalent.
- i. Adequate curve data to accomplish mathematical closures.
- j. Distances of all property lines and meanders to the nearest one hundredth (.01) of a foot or ~~metrie~~ equivalent.
- k. Pursuant to subdivision C 5 of this section, the bearing and distances from the new corners to the existing corners on each end of the existing property lines.
- l. For property located in rural areas, area to the nearest hundredth (.01) of an acre or ~~metrie~~ equivalent.
- m. For property located in urban areas, area to the nearest square foot or thousandth (0.001) of an acre or ~~metrie~~ equivalent.
- n. North arrow and source of meridian used for the survey.
- o. For interior surveys, a reference bearing and distance to a property corner of an adjoining owner or other prominent object, including, ~~but not limited to,~~ intersecting streets or roads.
- p. Tax map designation or geographic parcel identification number if available, for surveyed parcel and adjoining parcels.
- q. Description of each monument found and each monument set by the professional.
- r. A statement that the land boundary survey shown is based on a current field survey or a compilation from deeds, plats, surveys by others, or combination thereof. If the land boundary shown is a compilation from deeds or plats, or a survey by others, the title of the plat shall clearly depict that the plat does not represent a current land boundary survey.

- s. A statement as to whether a current title report has been furnished to the professional.
- t. A statement as to whether any or all easements, encroachments, and improvements are shown on the plat.
- u. Name ~~and~~ address ~~of,~~ and contact information for the land surveyor or the registered business.
- v. The professional's seal, signature and date.

3. Metes and bounds description. The professional shall prepare a metes and bounds description in narrative form, if requested by the client or ~~his~~ the client's agent, for completion of any newly performed land boundary survey. The description shall reflect all metes and bounds, the area of the property described, all pertinent monumentation, names of record owners or other appropriate identification of all adjoiners, and any other data or information deemed as warranted to properly describe the property. Customarily, the metes and bounds shall be recited in a clockwise direction around the property. The professional shall clearly identify in the metes and bounds description any inconsistencies found in the research of common boundaries between land being surveyed and the adjoining land ~~or lands~~. For subdivisions, the professional shall prepare a metes and bounds description in narrative form for only the exterior boundaries of the property.

No metes and bounds description shall be required for the verification or resetting of the corners of a lot or other parcel of land in accordance with a previously performed land boundary survey, such as a lot in a subdivision where it is unnecessary to revise the record boundaries of the lot.

18VAC10-20-380. Minimum standards and procedures for surveys determining the location of physical improvements; field procedures; office procedures.

A. The following minimum standards and procedures are to be used for surveys determining the location of physical improvements on any parcel of land or lot containing less than two acres or ~~metrie~~ equivalent (sometimes also known as "building location survey," "house location surveys," "physical surveys," ~~and the like~~) etc.) in the Commonwealth of Virginia. The application of the professional's seal, signature, and date as required by ~~these regulations~~ this chapter shall be evidence that the survey determining the location of physical improvements is correct to the best of the professional's knowledge, information, and belief, and complies with the minimum standards and procedures set forth in this chapter.

B. The professional shall determine the position of the lot or parcel of land in accordance with the intent of the original survey and shall set or verify permanent monumentation at each corner of the property, consistent with the monumentation provisions of subdivision C 4 of 18VAC10-20-370. All such monumentation, other than natural monumentation shall, when physically feasible, be identified by temporary witness markers.

When the professional finds discrepancies of sufficient magnitude to warrant, in his opinion, the performance of a land boundary survey (pursuant to the provisions of 18VAC10-20-370), he shall so inform the client or the client's agent that such land boundary survey is deemed warranted as a requisite to completion of the physical improvements survey.

The location of the following shall be determined in the field:

1. Fences in near proximity to the land boundary lines and other fences ~~which~~ that may reflect lines of occupancy or possession.
2. Other physical improvements on the property and all man-made or installed structures, including buildings, stoops, porches, chimneys, visible evidence of underground features (such as manholes, catch basins, telephone pedestals, power transformers, etc.), utility lines, and poles.
3. Cemeteries, if known or disclosed in the process of performing the survey; roads or ~~travelways~~ traveled ways crossing the property ~~which~~ that serve other properties; and streams, creeks, and other defined drainage ways.
4. Other visible evidence of physical encroachment on the property.

C. The plat reflecting the work product shall be drawn to scale and shall show the following, unless requested otherwise by the client and so noted on the plat:

1. The bearings and distances for the boundaries and the area of the lot or parcel of land shall be shown in accordance with record data, unless a current, new land boundary survey has been performed in conjunction with the physical improvements survey. If needed to produce a closed polygon, the meander lines necessary to verify locations of streams, tidelands, lakes, and swamps shall be shown. All bearings shall be shown in a clockwise direction, unless otherwise indicated.
2. North arrow, in accordance with record data.
3. Fences in the near proximity to the land boundary lines and other fences ~~which~~ that may reflect lines of occupancy or possession.
4. Improvements and other pertinent features on the property as located in the field pursuant to subsection B of this section.
5. Physical encroachment, including fences, across a property line shall be identified and dimensioned with respect to the property line.
6. The closest dimension (to the nearest 0.1 foot or ~~metric~~ metric equivalent) from the front property line, side property line, and if pertinent, rear property line to the principal walls of each building. Also, all principal building dimensions (to the nearest 0.1 foot or ~~metric~~ metric equivalent).

7. Building street address numbers, as displayed on the premises, or so noted if no numbers are displayed.
8. Stoops, decks, porches, chimneys, balconies, floor projections, and other similar type features.
9. Street ~~name(s)~~ names, as posted or currently identified, and as per record data; if different from posted name.
10. Distance to nearest intersection from a property corner, based upon record data. If not available from record data, distance to nearest intersection may be determined from best available data, and so qualified.
11. Building restriction or setback ~~line(s)~~ lines per restrictive covenants; if shown or noted on the record subdivision plat.
12. The caption or title of the plat shall include the type of survey performed; lot number, block number, section number, and name of subdivision, as appropriate, or if not in a subdivision, the ~~name(s)~~ names of the record owner; town ~~or~~ county, or city; date of survey; and scale of drawing.
13. Adjoining property identification.
14. Easements and other encumbrances set forth on the record subdivision plat, and those otherwise known to the professional.
15. A statement as to whether or not a current title report has been furnished to the professional.
16. Inconsistencies found in the research or field work of common boundaries between the land being surveyed and the adjoining land ~~or lands~~ shall be clearly noted.
17. Name, address, and contact information for the individual or entity for whom the survey is being performed.
18. Professional's seal, signature, and date.
- ~~18.~~ 19. Name and address of, and contact information for the land surveyor or registered business.

D. In performing a physical improvements survey, a professional shall not be required to set corner monumentation on any property when:

1. It is otherwise required to be set pursuant to the provisions of a local subdivision ordinance as mandated by § 15.2-2240 of the Code of Virginia or by subdivision A 7 of § 15.2-2241 of the Code of Virginia;
2. ~~Its~~ Eventual placement is covered by a surety bond, cash escrow, set-aside letter, letter of credit, or other performance guaranty; or
3. Exempt by § 54.1-407 of the Code of Virginia.

E. A professional performing a physical improvements survey when monumentation is not required as stated in subsection D of this section shall clearly note on the plat "no corner markers set," the reason why it is not required, and the name of guarantors.

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18VAC10-20-382. Minimum standards and procedures for surveys determining topography; field procedures; office procedures.

A. The minimum standards and procedures set forth in this section are to be used for topographic surveys performed in the Commonwealth of Virginia pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia. The application of the professional's seal, signature, and date as required by ~~these regulations~~ this chapter shall be evidence that the topographic survey is correct to the best of the professional's knowledge and belief and complies with the minimum standards and procedures.

B. Minimum field and office procedures. The following information shall be shown on, or contained in, all plats, maps, or digital geospatial data including metadata used to depict the results of the topographic survey:

1. Physical improvements on the property, all man-made or installed structures, as well as visible evidence of underground features (such as manholes, catch basins, telephone pedestals, power transformers, etc.), and utility lines and poles shall be shown or depicted when they are visible based on the methodology and scale. If the methodology or scale prevents depiction of the ~~above~~ improvements as described in this subdivision, then notice shall be clearly stated on or contained in the map, plat, or digital geospatial data including metadata indicating the improvements that are not depicted.

2. Elevations shall be provided as spot elevations, contours, or digital terrain models.

3. Onsite, or in close proximity, ~~bench mark(s)~~ benchmarks shall be established with reference to vertical datum, preferably North American Vertical Datum (NAVD), and shown in the correct location.

4. The title of the topographic survey identifying the land surveyed and showing the state, county, or city in which property is located.

5. Name, address, and contact information of the individual or entity for whom the survey is being performed.

6. Name, address, and contact information for the land surveyor or registered business.

7. Date, graphic scale, numerical scale, and contour interval of plat, map, or digital geospatial data including metadata.

~~7.~~ 8. North arrow and source of meridian used for the survey.

~~8.~~ 9. Names or route numbers of highways, streets and named waterways shall be shown.

~~9.~~ 10. The horizontal and vertical unit of measurement, coordinate system, and data, including adjustments if applicable.

~~10.~~ 11. A statement, in the following form, shall be shown on or contained in plats, maps, or digital geospatial data including metadata:

This _____ (provide description of the project) was completed under the direct and responsible charge of _____ (Name of Professional) from an actual • Ground or • ~~Airborne~~ Remote Sensing (check the one that is applicable) survey made under my supervision; that the imagery and/or original data was obtained on _____ (Date); and that this plat, map, or digital geospatial data including metadata meets minimum accuracy standards unless otherwise noted.

C. Minimum positional accuracies shall be met in accordance with the tables in subdivisions 1, 2, and 3 of this subsection. These tables are not intended to be acceptable in all situations, and the professional shall be responsible to perform the work to the appropriate quality and extent that is prudent or warranted under the existing field conditions and circumstances. Metric or other unit of measurements shall meet an equivalent positional accuracy. Map or plat scales, or contour intervals, other than those defined in these tables shall meet an equivalent positional accuracy. The minimum positional accuracy tables are as follows:

1. Scale and contour interval combinations.

Map or Plat Scale	Contour Interval
1" = 20'	1 or 2 feet
1" = 30'	1 or 2 feet
1" = 40'	1 or 2 feet
1" = 50'	1 or 2 feet
1" = 100'	1 or 2 feet
1" = 200'	2, 4, or 5 feet
1" = 400'	4, 5, or 10 feet

2. Vertical accuracy standards.

	Contours - Vertical Positional Accuracy	Spot Elevations - Vertical Positional Accuracy
Contour line 1' interval	± 0.60 feet	± 0.30 feet
Contour line 2' interval	± 1.19 feet	± 0.60 feet
Contour line 4' interval	± 2.38 feet	± 1.19 feet
Contour line 5' interval	± 2.98 feet	± 1.49 feet

Contour line 10' interval	± 5.96 feet	± 2.98 feet
Positional Accuracy is given at the 95% confidence level.		

3. Horizontal accuracy standards.

Well defined ground points - Horizontal (Radial) Positional Accuracy		
Map or Plat Scale	Absolute Horizontal Positional Accuracy	Relative Horizontal Positional Accuracy
1" = 20'	± 0.8 feet	± 0.20 feet
1" = 30'	± 1.1 feet	± 0.30 feet
1" = 40'	± 1.5 feet	± 0.40 feet
1" = 50'	± 1.9 feet	± 0.50 feet
1" = 100'	± 3.8 feet	± 1.00 feet
1" = 200'	± 7.6 feet	± 2.00 feet
1" = 400'	± 15.2 feet	± 4.00 feet
Positional Accuracy is given at the 95% confidence level.		

18VAC10-20-392. Photogrammetric surveys or similar remote sensing technology.

The use of photogrammetric methods or similar remote sensing technology to perform any part of the practice of land surveying as defined in Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia, shall be performed under the direct control and supervision of a licensed land surveyor or a licensed surveyor photogrammetrist.

18VAC10-20-420. Requirements for licensure.

~~A.~~ Applicants for licensure as a landscape architect shall satisfy the requirements of ~~subsection B or C~~ subdivision 1 or 2 of this section.

~~B. 1.~~ An applicant who has graduated from a landscape architecture ~~curriculum program~~ accredited by the Landscape Architectural Accreditation Board (LAAB) shall have:

- ~~1. a.~~ Obtained a minimum of 36 months of experience as follows:
 - ~~a. (1)~~ A minimum of 12 months of experience under the direct control and personal supervision of a licensed or certified landscape architect; ~~and~~
 - ~~b. (2)~~ The remaining 24 months of experience under the direct control and personal supervision of a licensed or certified landscape architect or a licensed architect, professional engineer, or land surveyor, in accordance with the Landscape Architects Experience Credit Table; ~~and or~~

~~(3)~~ In lieu of the provision in subdivisions 1 a (1) and 1 a (2) of this section, a minimum of 48 months of experience under the direct control and personal supervision of a licensed architect, professional engineer, or land surveyor; and

~~2. b.~~ Passed all sections of the Council of Landscape Architectural Registration Board (CLARB)-prepared exam.

~~C. 2.~~ Applicants who have not graduated from a LAAB-accredited landscape architecture ~~curriculum program~~ shall have obtained a minimum of eight years of combined education and work experience in accordance with this subsection.

~~1. a.~~ Only semester and quarter hours with passing ~~grades scores~~ shall be accepted. Credit shall be calculated as follows:

~~a. (1)~~ 32 semester credit hours or 48 quarter credit hours shall be worth one year.

~~b. (2)~~ Fractions greater than or equal to one half-year, but less than one year, will be counted as one-half year.

~~e. (3)~~ Fractions smaller than one half-year will not be counted.

~~2. b.~~ The maximum years indicated in subdivisions a through d of the ~~LANDSCAPE ARCHITECTS EDUCATION CREDIT TABLE~~ Landscape Architects Education Credit Table shall apply regardless of the length of the degree program.

~~3. c.~~ All applicants shall have a minimum of two years of experience under the direct control and personal supervision of a licensed or certified landscape architect.

~~4. d.~~ Education and experience shall be evaluated against the ~~LANDSCAPE ARCHITECTS EDUCATION CREDIT TABLE~~ Landscape Architects Education Credit Table and the ~~LANDSCAPE ARCHITECTS EXPERIENCE CREDIT TABLE~~ Landscape Architects Experience Credit Table to determine if an applicant has met the minimum eight years required in this subsection.

LANDSCAPE ARCHITECTS EDUCATION CREDIT TABLE Landscape Architects Education Credit Table		
Categories	Values	Examples
a. (1) Credits completed applicable toward a LAAB-accredited degree.	Credit shall be given at the rate of 100% with a maximum of four years allowable.	An applicant has 86 semester hours of credit. Calculation: ♦ 86/32 = 2.6875 years ♦ 100% credit for a maximum of four years (2.6875 x
b. (2) A degree in landscape architecture, or credits completed applicable toward a degree in landscape		

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architecture, from a non-LAAB-accredited curriculum program.		<p>100% = 2.6875 years).</p> <p>◆ 0.6875 is \geq 0.5 years, which is worth 0.5 years.</p> <p>Final result: 86 semester hours equals 2.5 years.</p>
<p>€ (3) A degree, or credits completed applicable toward a degree, in an allied professional discipline approved by the board (i.e., architecture, civil engineering, environmental science).</p>	<p>Credit shall be given at the rate of 75% for the first two years and 100% for succeeding years with a maximum of three years allowable.</p>	<p>An applicant has 101 semester hours of credit.</p> <p>Calculation:</p> <p>◆ 101/32 = 3.15625 years</p> <p>◆ 75% credit for the first two years (2 x 75% = 1.5 years).</p> <p>◆ 100% credit for succeeding years (1.15625 x 100% = 1.15625 years).</p> <p>◆ 1.5 + 1.15625 = 2.65625 years.</p> <p>◆ 0.65625 is \geq 0.5 years, which is worth 0.5 years.</p> <p>Final result: 101 semester hours equals 2.5 years.</p>
<p>£ (4) Any other undergraduate degree or credits completed applicable toward that degree.</p>	<p>Credit shall be given at the rate of 50% for the first two years and 75% for succeeding years with a maximum of two years allowable.</p>	<p>An applicant has 95 semester hours of credit.</p> <p>Calculation:</p> <p>◆ 95/32 = 2.96875 years</p> <p>◆ 50% credit for the first two years (2 x 50% = 1 year).</p> <p>◆ 75% credit for succeeding years (.96875 x 75% = .72656 years).</p> <p>◆ 1 + .72656 = 1.72656 years.</p> <p>◆ 0.72656 is \geq 0.5 years, which is worth 0.5 years.</p> <p>Final result: 95 semester hours equals 1.5 years.</p>

LANDSCAPE ARCHITECTS EXPERIENCE CREDIT TABLE Landscape Architects Experience Credit Table		
Categories	Values	Examples
<p>€ (5) Experience gained under the direct control and personal supervision of a licensed or certified landscape architect.</p>	<p>Credit shall be given at the rate of 100% of work experience gained with no maximum.</p>	<p>An applicant worked under a landscape architect for 3.7 years.</p> <p>Calculation: 3.7 years x 100% = 3.7 years (no maximum).</p> <p>Final result: An applicant with 3.7 years of work experience will be credited for the entire 3.7 years.</p>
<p>£ (6) Experience gained under the direct control and personal supervision of a licensed architect, professional engineer, or land surveyor.</p>	<p>Credit shall be given at the rate of 50% of work experience gained with a maximum of four years allowable.</p>	<p>An applicant has worked under a land surveyor for eight years or more.</p> <p>Calculation: 8 years x 50% = 4 years.</p> <p>Final result: eight years or more of experience is worth only four years based on the maximum allowable.</p>

18VAC10-20-425. References.

In addition to the requirements found in 18VAC10-20-25, applicants shall submit three references with the application, ~~each from a currently licensed~~ one of which shall be from a currently licensed, certified, or registered landscape architect in another a state or other jurisdiction of the United States. An applicant shall only submit references from landscape architects who have a licensed professional engineer, architect, land surveyor, or a landscape architect who has personal knowledge of ~~his~~ the applicant's competence and integrity relative to his landscape architectural experience.

18VAC10-20-430. Experience standard.

Qualifying landscape architectural training and experience shall be progressive in complexity and based on knowledge of natural, physical and mathematical sciences, and the principles and methodology of landscape architecture.

The experience must be obtained in an organization with a landscape architecture practice and must be verified on the

board experience verification form by a licensed landscape architect, professional engineer, architect, or land surveyor in the organization's practice.

18VAC10-20-440. Examination.

A. Applicants with a LAAB-accredited degree may be approved to sit for the exam prior to completing the 36-month experience requirement contained in subdivision 1 a of 18VAC10-20-420 B-1.

B. The Virginia board is a member of the Council of Landscape Architectural Registration Boards (CLARB) and is authorized to ~~administer the CLARB~~ make available the CLARB prepared exams. All applicants for original licensure in Virginia are required to pass the CLARB-prepared exam.

C. Applicants approved to sit for the exam shall register and submit the required exam fee to be received in the board office, or by the board's designee. Applicants not properly registered will not be allowed to sit for the exam.

D. Grading of the exam shall be in accordance with the national grading procedures ~~established~~ administered by CLARB. The board shall ~~adopt~~ utilize the scoring procedures recommended by CLARB.

E. Applicants shall be advised only of their passing or failing score and the CLARB minimum passing score.

F. ~~Upon written request to the board within 30 days of receiving exam results, applicants will be permitted to view the performance problems contained within the section that they failed. Exam appeals are permitted in accordance with the CLARB score verification process. The board may approve transfer credits for parts of the exam taken and passed in accordance with national standards.~~

G. Applicants approved to sit for the exam shall be eligible for a period of three years from the date of their initial approval. Applicants who do not pass all sections of the exam during their eligibility period are no longer eligible to sit for the exam. To become exam-eligible again, applicants shall reapply to the board as follows:

1. Applicants who have taken at least one section of the exam and who reapply to the board no later than six months after the end of their eligibility may be approved to sit for the exam for an additional three years. The original application requirements shall apply.
2. Applicants who do not meet the criteria of subdivision 1 of this subsection shall reapply to the board and meet all entry requirements current at the time of reapplication.

18VAC10-20-450. Licensure by comity.

A. Applicants with a valid license in good standing to practice landscape architecture issued by another state or other jurisdiction of the United States may be licensed by the board without further examination provided they:

1. Were issued the original license based on requirements that do not conflict with and that are substantially equivalent to the board's regulations that were in effect at the time of original licensure; ~~and~~

2. Passed an exam in another jurisdiction that was substantially equivalent to that approved by the board at that time; ~~or~~ met the regulations in effect at that time; and

3. Possess a CLARB certificate.

B. Applicants who do not qualify under subsection A of this section shall be required to meet current entry requirements at the time the application for comity is received in the board's office.

18VAC10-20-460. Definitions.

The following words, terms, and phrases when used in this part shall have the meanings ascribed to them except where the context clearly indicates or requires different meanings.

"CIDA" means the Council for Interior Design Accreditation (~~CIDA~~), formerly known as the Foundation of Interior Design Education Research (FIDER).

"Diversified experience" includes the identification, research, and creative solution of problems pertaining to the function and quality of the interior environment including, ~~but not limited to,~~ code analysis, fire safety consideration, and barrier free evaluations that relate to the health, safety, and welfare of the public.

"Monitored experience" means diversified experience in interior design under the direct control and personal supervision of a certified or licensed interior designer, ~~an~~ architect, or a professional engineer.

"Professional program approved by the board" means an evaluated degree or combination of evaluated degrees as follows:

1. A minimum of an undergraduate degree in an interior design program that is deemed by the board to be substantially equivalent to an undergraduate degree in interior design from a CIDA-accredited ~~institution at the time of the applicant's graduation~~ program; ~~or~~
2. A graduate degree from a CIDA-accredited program; or
3. A graduate degree in interior design plus an undergraduate degree that is a in combination are deemed by the board to be substantially equivalent to an undergraduate degree program from a CIDA-accredited ~~institution~~ program at the time of the applicant's graduation.

For the purposes of this definition, a degree program that met CIDA accreditation requirements not later than two years after the date of the applicant's graduation shall be determined to be CIDA accredited.

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18VAC10-20-490. Requirements for certification.

A. Applicants shall meet one of the following education requirements: A degree from a professional program approved by the board.

1. ~~Have graduated from a program accredited by CIDA;~~
2. ~~Have graduated from a program accredited by an organization equivalent to CIDA; or~~
3. ~~Have graduated from a professional degree program approved by the board.~~

B. The board reserves the right to reject any evaluation submitted. Any costs attributable to evaluation shall be borne by the applicant.

C. Applicants shall possess a minimum of two years of monitored experience. Any monitored experience gained under the direct control and personal supervision of a professional engineer shall be reduced by 50% and shall not account for more than six months of the two years required by this subsection.

~~C. D.~~ Applicants shall have passed the board-approved exam and provide documentation acceptable to the board verifying that the exam has been passed.

~~D. Any cost of evaluation of degrees shall be borne by the applicant. The board reserves the right to reject, for good cause, any evaluation submitted.~~

18VAC10-20-495. Examination.

A. The National Council of Interior Design Qualification (NCIDQ) exam is approved by the board.

B. Applicants shall apply directly to NCIDQ the Council for Interior Design Qualifications for the exam.

18VAC10-20-505. Certification by comity.

~~An applicant with a valid license or certificate in another state or country or the District of Columbia may be issued a certificate if he provides satisfactory evidence to the board that:~~
~~1. The Applicants who hold a license or certificate in good standing in another jurisdiction of the United States or province of Canada may be issued a certificate if the board is provided with satisfactory evidence that the license or certificate was issued based on qualifications equal to those required by this chapter as of the date the application is received by the board; and~~
~~2. The license or certificate is in good standing.~~

Part VIII

Qualifications for Registration as a Professional Corporation

18VAC10-20-510. Definitions. (Repealed.)

~~Section 13.1-543 of the Code of Virginia provides the definition of the following term:~~

~~Professional Corporation ("P.C.")~~

The following words, terms, and phrases when used in this part shall have the meanings ascribed to them except where the context clearly indicates or requires different meanings:

~~"Employee" of a corporation, for purposes of stock ownership, is a person regularly employed by the corporation who devotes 60% or more of his gainfully employed time to that of the corporation.~~

~~"Registration" means a certificate of authority issued by the board to transact business in Virginia pursuant to § 13.1-549 of the Code of Virginia.~~

[18VAC10-20-515. Registration required. (Repealed.)

~~Any professional corporation offering or rendering professional services in the Commonwealth of Virginia shall register with the board. Professional services shall include architecture, engineering, land surveying, landscape architecture, or interior design.]~~

18VAC10-20-520. Fee schedule. (Repealed.)

~~All fees are nonrefundable and shall not be prorated.~~

Application for professional corporation registration	\$30
Application for professional corporation branch office registration	\$30
Renewal of professional corporation registration	\$25
Renewal of professional corporation branch office registration	\$25

18VAC10-20-530. Application requirements. (Repealed.)

~~A. All applicants shall be incorporated in the Commonwealth of Virginia or, if a foreign professional corporation, shall have a certificate of authority to conduct business in Virginia from the State Corporation Commission in accordance with § 13.1-544.2 of the Code of Virginia. The corporation shall be in good standing with the State Corporation Commission at the time of application to the board office and at all times when the board registration is in effect.~~

~~B. Each application shall include:~~

~~1. For applicants incorporated in Virginia, the applicant shall provide a copy of its articles of incorporation, bylaws, or charter, and the certificate of incorporation issued by the Virginia State Corporation Commission.~~

~~2. For applicants incorporated in a state other than Virginia, the applicant shall provide a copy of its articles of incorporation, bylaws, or charter, the certificate of incorporation issued by the foreign state of incorporation, and the certificate of authority issued by the Virginia State Corporation Commission.~~

C. Articles of incorporation or bylaws.

1. The articles of incorporation or bylaws shall specifically state that cumulative voting is prohibited.
2. The bylaws shall affirmatively state that the professional corporation meets the requirements of § 13.1-549 of the Code of Virginia.
3. The bylaws shall state that nonlicensed or noncertified individuals will not have a voice or standing in any matter affecting the practice of the corporation requiring professional expertise, in any matter constituting professional practice, or both.

D. The board of directors shall meet the following requirements:

1. A corporation may not elect to its board of directors more than one third of its members who are employees of the corporation and are not authorized to render professional services;
2. At least two thirds of the board of directors shall be licensed to render the services of an architect, professional engineer, land surveyor, or landscape architect or be duly certified to use the title of certified interior designer, or any combination thereof; and
3. At least one director, currently licensed or certified in each profession offered or practiced, shall be resident at the business to provide effective supervision and control of the final professional product.

E. Joint ownership of stock. Any type of joint ownership of the stock of the corporation is prohibited. Ownership of stock by nonlicensed or noncertified employees shall not entitle those employees to vote in any matter affecting the practice of the professions herein regulated.

F. The name of the business and any assumed, fictitious, trading as, or doing business as names of the firm shall be disclosed on the application.

G. Any branch office offering or rendering professional services shall complete a branch office registration application from the board. Each branch office shall have a responsible person resident at the branch office for each profession offered or rendered.

18VAC10-20-550. Foreign corporations. (Repealed.)

A. The bylaws shall state that the foreign corporation's activities in Virginia shall be limited to rendering the services of architects, professional engineers, land surveyors, landscape architects, certified interior designers, or any combination thereof.

B. Foreign corporations shall not be required to have two thirds of its stockholders be licensed or certified to perform professional services in Virginia but must meet all other requirements of this chapter.

C. Foreign corporations shall provide the name, address, and Virginia license or certificate number of each stockholder or employee of the corporation who will be offering or providing the professional services in Virginia.

18VAC10-20-560. Amendments and changes. (Repealed.)

A. Amendments to charter, articles of incorporation or bylaws. A corporation holding a registration to practice in one or in any combination of the professions covered in these regulations shall file with the board, within 30 days of its adoption, a copy of any amendment to the articles of incorporation, bylaws or charter.

B. Change in directors or shareholders. The following shall apply to the board issued registration upon the event of any change in directors or shareholders whether the change is temporary or permanent, caused by death, resignation, or otherwise:

1. The professional corporation shall notify the board within 30 days of any change in its directors or shareholders;
2. In the event of a change in the corporate directors or shareholders, the board issued registration shall be limited to the professional practices permitted by those pertinent licenses or certificates held by the remaining directors and shareholders of the corporation unless an employee of the firm holds the appropriate license or certificate and is competent to render such professional services; and
3. In the event that a change results in the professional corporation's noncompliance with the requirements of this chapter and applicable statutes relating to ownership of capital stock or composition of the board of directors, the board issued registration shall be automatically suspended until such time as the corporation comes into compliance with this chapter.

C. Change of name, address and place of business. The professional corporation shall notify the board, in writing, within 30 days of any of the following changes at each place of business:

1. Any change of name (including assumed names), address, place of business in Virginia, or responsible person of the profession offered or practiced; and
2. Any change in the employment status of a licensed or certified employee responsible for professional practice.

Part IX

Qualifications for Registration as a Professional Limited Liability Company

18VAC10-20-570. Definitions. (Repealed.)

A. Section 13.1-1102 of the Code of Virginia provides the definition of the following term:

Professional Limited Liability Company ("P.L.C.," "PLC," "P.L.L.C.," or "PLLC")

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~~B. The following words, terms, and phrases when used in this part shall have the meanings ascribed to them except where the context clearly indicates or requires different meanings:~~

~~"Manager" is a person or persons designated by the members of a limited liability company to manage the professional limited liability company as provided in the articles of organization or an operating agreement, and who is duly licensed or otherwise legally authorized to render one or more of the professional services of architects, professional engineers, land surveyors, landscape architects, or certified interior designers in the Commonwealth of Virginia.~~

~~"Member" means an individual or professional business entity that owns an interest in a professional limited liability company.~~

~~"Registration" means a certificate of authority issued by the board to transact business in Virginia pursuant to § 13.1-1111 of the Code of Virginia.~~

18VAC10-20-575. Registration required. (Repealed.)

~~Any professional limited liability company offering or rendering professional services in the Commonwealth of Virginia shall register with the board. Professional services shall include architecture, engineering, land surveying, landscape architecture, and interior design.~~

18VAC10-20-580. Fee schedule. (Repealed.)

~~All fees are nonrefundable and shall not be prorated.~~

Application for professional limited liability company registration	\$100
Application for professional limited liability company branch office registration	\$50
Renewal of professional limited liability company registration	\$50
Renewal of professional limited liability company branch office registration	\$50

18VAC10-20-590. Application requirements. (Repealed.)

~~A. All applicants shall have a certificate of organization in the Commonwealth of Virginia or, if a foreign professional limited liability company, shall have a certificate of authority to conduct business in Virginia from the State Corporation Commission, in accordance with § 13.1-1105 of the Code of Virginia. The company shall be in good standing with the State Corporation Commission at the time of application to the board and at all times when the board registration is in effect.~~

~~B. Each application shall include a copy of the articles of organization or operating agreement. Applications shall also include additional information as follows:~~

~~1. Applicants organized as a professional limited liability company in Virginia shall provide a copy of the certificate of organization.~~

~~2. Applicants organized as a professional limited liability company in a state other than Virginia shall provide a copy of the certificate of authority issued by the Virginia State Corporation Commission.~~

~~C. Articles of organization or operating agreement.~~

~~1. The articles of organization or operating agreement shall state the specific purpose of the professional limited liability company.~~

~~2. The articles of organization or operating agreement shall affirmatively state that the professional limited liability company meets the requirements of § 13.1-1111 of the Code of Virginia.~~

~~3. The articles of organization or operating agreement shall attest that all members, managers, employees and agents who render professional services of architects, professional engineers, land surveyors, or landscape architects, or use the title of certified interior designers, are duly licensed or certified to provide those services.~~

~~4. The person executing the affidavit shall sign it and state beneath his signature his name and the capacity in which he signs. If the person signing the affidavit is not a manager of the PLLC, the affidavit shall also state that the individual has been authorized by the members of the PLLC to execute the affidavit for the benefit of the company.~~

~~D. Management of the PLLC.~~

~~1. Pursuant to § 13.1-1118 of the Code of Virginia, unless the articles of organization or operating agreement provides for management of the PLLC by a manager or managers, management shall be vested in its members.~~

~~2. Any manager or member must be licensed to render the same professional services within the Commonwealth for which the company was formed. These members or managers shall be the only members or managers authorized to supervise and direct the provision of professional services within the Commonwealth.~~

~~3. At least one member or manager currently licensed or certified in each profession offered or practiced shall be resident at the business to provide effective supervision and control of the final professional product.~~

~~E. The name of the business and any assumed, fictitious, trading as, or doing business as names of the firm shall be disclosed on the application.~~

~~F. Any branch office offering or rendering professional services shall complete a branch office registration application from the board. Each branch office shall have a resident responsible person at the branch office for each profession offered or rendered.~~

18VAC10-20-610. Foreign professional limited liability companies. (Repealed.)

A. The articles of organization or operating agreement shall state that the PLLC's activities in Virginia shall be limited to rendering the professional services of architects, professional engineers, land surveyors, landscape architects, certified interior designers, or any combination thereof.

B. The foreign PLLC shall meet every requirement of § 13.1-1111 of the Code of Virginia except for the requirement that two thirds of its members and managers be licensed or certified to perform the professional service in this Commonwealth.

C. The PLLC shall provide the name, address, and Virginia license or certificate number of each manager or member who will be providing the professional service(s) in Virginia.

18VAC10-20-620. Amendments and changes. (Repealed.)

A. A PLLC holding a registration to practice in any combination of the professions covered in these regulations shall file with the board a copy of any amendment to the articles of organization, operating agreement, or certificate of organization within 30 days of its adoption.

B. Change of managers or members of the PLLC. The following shall apply to the board issued registration upon the event of any change in members or managers whether the change is temporary or permanent, caused by death, resignation, or otherwise:

1. The PLLC shall notify the board within 30 days of any change in its members or managers;
2. In the event of a change in the members or managers, the board issued registration shall be limited to the professional practices consistent with the licenses or certificates held by the remaining members or managers of the PLLC unless an employee of the firm holds the appropriate license or certificate and is competent to render such professional services; and
3. In the event that a change results in the PLLC's noncompliance with the requirements of this chapter and applicable statutes relating to ownership of the membership interests, the board issued registration shall be automatically suspended until such time as the PLLC comes into compliance with this chapter.

C. Change of name, address, or place of business. The PLLC shall notify the board, in writing, within 30 days of any of the following changes at each place of business:

1. Any change of name (including assumed names), address, place of business in Virginia, or responsible person of the profession offered or practiced; and
2. Any change in the employment status of a licensed or certified employee responsible for professional practice.

Part X Part VIII

Qualifications for Registration as a Business Entity-Other Than a Professional Corporation and Professional Limited Liability Company

18VAC10-20-627. Registration required.

Any business entity, which is not a professional corporation or professional limited liability company but is offering or practicing architectural, engineering, surveying, landscape architectural, or interior design offering or rendering professional services in the Commonwealth of Virginia, shall register with the board. Professional services shall include architecture, engineering, land surveying, landscape architecture, or interior design.

18VAC10-20-630. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application for business entity registration	\$100 \$90
Application for business entity branch office registration	\$50 \$45
Renewal of business entity registration	\$50 \$45
Renewal of business entity branch office registration	\$50 \$35

18VAC10-20-640. Application requirements.

A. In accordance with § 54.1-411 of the Code of Virginia, any entity that is not a PC, PLLC, or sole proprietorship that does not employ other individuals for which licensing is required shall register with the board. This includes, but is not limited to, any corporation, partnership, limited liability company, joint ventures, or nonprofit.

B. Partnerships. Applications for registration as a partnership shall include a copy of the partnership agreement, which shall state that all professional services of the partnership shall be under the direct control and personal supervision of a licensed or certified professional.

C. Limited partnerships. Applications for registration as a limited partnership shall include:

1. A copy of the partnership agreement that shall state that all professional services of the limited partnership shall be under the direct control and personal supervision of duly licensed or certified professionals; and
2. A copy of the certificate of limited partnership issued by the Virginia State Corporation Commission for applicants organized in Virginia or, if organized as a foreign limited partnership, a certification of registration issued by the Virginia State Corporation Commission.

D. Corporations. Applications for registration as a corporation shall include:

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~~1. A copy of the articles of incorporation, bylaws, or charter, and~~

~~2. A copy of the certificate of incorporation issued by the Virginia State Corporation Commission if organized in Virginia or, if organized as a foreign corporation, a copy of the certificate of authority issued by the Virginia State Corporation Commission.~~

~~E. Limited liability companies. Applications for registration as a limited liability company shall include a copy of the certificate of organization issued by the State Corporation Commission if organized in Virginia or, if organized as a foreign limited liability company, a copy of the certificate of authority issued by the Virginia State Corporation Commission.~~

~~F. If architectural, engineering, surveying, landscape architectural, or interior design services are offered or rendered in a branch office, a separate branch office designation form shall be completed for each branch office. Resident responsible persons shall be designated for each branch office in accordance with this chapter.~~

~~G. The name of the business and any assumed, fictitious, trading as, or doing business as names of the firm shall be disclosed on the application.~~

A. All applicants shall be appropriately credentialed to do business in the Commonwealth of Virginia by the State Corporation Commission in accordance with the Code of Virginia. The business entity shall be in good standing with the State Corporation Commission at the time of application to the board office, at the time of board approval, and at all times when the board registration is in effect.

B. The name of the business and any assumed, fictitious, trading as, or doing business as names of the firm shall be disclosed on the application.

C. Any branch office offering or rendering professional services shall complete a branch office registration application from the board. Each branch office shall have a responsible person resident at the branch office for each professional offered or rendered.

18VAC10-20-650. Registration certification.

The application shall contain an affidavit by an authorized official in the ~~corporation, partnership, sole proprietorship, limited liability company, or other~~ business entity unit that the practice of architecture, engineering, land surveying, landscape architecture, or certified interior design to be done by that entity shall be under the direct control and personal supervision of the licensed or certified full-time employees or licensed or certified resident principals identified in the application as responsible persons for the practice. In addition, the licensed or certified employees or principals responsible for the practice shall sign their names indicating that they are

responsible persons who are resident, and that they understand and shall comply with all statutes and regulations of the board.

~~Part XI~~ Part IX Renewal and Reinstatement

18VAC10-20-670. Renewal.

A. ~~Individuals and organizations~~ Regulants shall not practice with an expired license, certificate, or registration. The following timeframes shall determine the required fees for renewal based on the date the fee is received in the board's office:

1. If the renewal fee is received by the board by the expiration date of the license, certificate, or registration, no additional fee shall be required to renew.

2. If the renewal fee is not received by the board within 30 days following the expiration date of the branch office registration, the registration shall be subject to the requirements of 18VAC10-20-680.

3. If the renewal fee is not received by the board within 30 days following the expiration date of the license, certificate, or nonbranch office registration, a \$25 late fee shall be required in addition to the renewal fee.

4. If the renewal fee and applicable late fee are not received by the board within six months following the expiration date of the license, certificate, or nonbranch office registration, the reinstatement fee shall be required pursuant to 18VAC10-20-680.

B. Upon receipt of the required fee, licenses, certificates, and registrations not currently sanctioned by the board shall be renewed for a two-year period from their previous expiration date.

C. Branch offices shall not renew or reinstate until the main office registration is properly renewed or reinstated.

D. The board may deny renewal of a license, certificate, or registration for the same reasons as it may refuse initial licensure, certification, or registration or for the same reasons that it may discipline a regulant for noncompliance with the standards of practice and conduct as well as the continuing education requirements contained in this chapter. The regulant has the right to request further review of any such action by the board under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

E. By submitting the renewal fee, the regulant is certifying continued compliance with the standards of practice and conduct as established by the board. In addition, by submitting the renewal fee, licensees are certifying their compliance with the continuing education requirements as contained in this chapter.

F. Failure to receive a renewal notice shall not relieve the regulant of the responsibility to renew. In the absence of a

renewal notice, the regulant may submit a copy of the license, certificate, or registration with the required fee for renewal.

G. A license, certificate, or registration that is renewed shall be regarded as having been current without interruption and under the authority of the board.

H. Failure to pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in a delay or withholding of services provided by the department such as, but not limited to, renewal, reinstatement, processing a new application, or exam administration.

18VAC10-20-680. Reinstatement.

A. Applicants whose license, certificate, or ~~nonbranch main~~ office registration has expired for more than six months, and applicants whose branch office registration has expired for more than 30 days, shall be required to submit a reinstatement application, which shall be evaluated by the board to determine if the applicant remains qualified to be a regulant of the board.

B. Applicants whose license or certificate has expired for more than five years shall be required to reapply for licensure or certification on the initial application and document experience from the date of expiration of the license or certificate to the present.

C. The board may require an exam, additional continuing education, or experience for architects, professional engineers, land surveyors, landscape architects, and interior designers whose license or certificate has expired for more than five years.

D. The board may deny reinstatement of a license, certificate, or registration for the same reasons as it may refuse initial licensure, certification, or registration or for the same reasons that it may discipline a regulant for noncompliance with the standards of practice and conduct, as well as the continuing education requirements, contained in this chapter. The applicant has the right to request further review of any such action by the board under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

~~C. E.~~ E. The date the reinstatement fee is received in the board's office shall determine the amount to be paid pursuant to the following requirements:

1. Branch office registrations that have expired for more than 30 days shall require a reinstatement fee that shall equal the renewal fee plus \$30.
2. Licenses, certificates, and ~~nonbranch main~~ office registrations that have expired for more than six months, but less than five years, shall require a reinstatement fee that shall equal the renewal fee plus \$100.
3. Licenses, certificates, and ~~nonbranch main~~ office registrations that have expired for more than five years shall require a reinstatement fee that shall equal the renewal fee plus \$250.

~~D. Architects, professional engineers, land surveyors, surveyor photogrammetrists, and landscape architects applying for reinstatement shall provide evidence of compliance with the continuing education requirements of this chapter.~~

~~E. The board may require an exam for architects, professional engineers, land surveyors, surveyor photogrammetrists, landscape architects, and interior designers whose license or certificate has expired for more than five years.~~

F. Licensees shall remain under the disciplinary authority of the board at all times, regardless of whether the license is reinstated, pursuant to § 54.1-405 of the Code of Virginia.

G. A certificate or registration holder who reinstates shall be regarded as having been current and without interruption and under the authority of the board.

H. Failure to pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in a delay or withholding of services provided by the department such as, but not limited to, renewal, reinstatement, processing a new application, or exam administration.

18VAC10-20-683. Continuing education requirements for renewal or reinstatement.

A. Licensees are required to complete ~~46 hours of~~ continuing education (CE) pursuant to the provisions of ~~this section~~ § 54.1-404.2 of the Code of Virginia for any renewal or reinstatement.

B. CE for renewal shall be completed during the two-year license period immediately prior to the expiration date of the license and shall be valid for that renewal only; additional hours ~~over 16 hours~~ shall not be valid for subsequent renewal.

C. CE for reinstatement shall be completed during the two years immediately prior to the date of the board's receipt of a reinstatement application and shall be valid for that reinstatement only; additional hours ~~over 16 hours~~ shall not be valid for subsequent ~~reinstatement~~ renewal.

D. Licensees shall maintain records of completion of CE used to renew a license for three years from the date of expiration of the license. Licensees shall provide those records to the board or its authorized agents upon request.

E. CE activities completed by licensees may be accepted by the board provided the activity:

1. Consists of content and subject matter related to the practice of the profession;
2. Has a clear purpose and objective that will maintain, improve, or expand the skills and knowledge relevant to the licensee's area of practice and may be in areas related to business practices, including project management, risk management, ~~and~~ ethics, and public health, safety, and welfare that have demonstrated relevance to the licensee's

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area of practice as defined in § 54.1-400 of the Code of Virginia;

3. Is taught by instructors who are competent in the subject matter, either by education or experience, for those activities involving an interaction with an instructor;

4. If self-directed, contains an assessment by the sponsor at the conclusion of the activity that verifies that the licensee has successfully achieved the purpose and objective of the activity; and

5. Results in documentation that verifies the licensee's successful completion of the activity.

F. Computation of credit.

1. Fifty contact minutes shall equal one hour of CE. For activities that consist of segments that are less than 50 minutes, those segments shall be totaled for computation of CE for that activity.

2. One semester hour of college credit shall equal 15 hours of CE and one-quarter hour of college credit shall equal 10 hours of CE.

3. The number of hours required to successfully complete any CE activity must have been ~~predetermined~~ determined by the sponsor. A licensee shall not claim more credit for any CE activity than the number of hours that was predetermined by the sponsor at the time the activity was completed.

4. CE may be granted for the initial development, substantial updating, or the initial teaching of a CE activity that meets the requirements of this chapter at twice the amount of credit that participants receive. CE claimed pursuant to this subdivision shall not be claimed for subsequent offerings of the same activity.

5. A licensee applying for renewal shall not receive credit for completing a CE activity with the same content more than once during the two years prior to license expiration.

6. A licensee applying for reinstatement shall not receive credit more than once for completing a CE activity with the same content during the two years immediately prior to the date of the board's receipt of his reinstatement application.

G. The board may periodically conduct a random audit of its licensees who have applied for renewal to determine compliance. Licensees who are selected for audit shall provide all documentation of all CE activities utilized to renew their license within 21 calendar days of the date of the board's notification of audit.

H. If the board determines that CE was not obtained properly to renew or reinstate a license, the licensee shall be required to make up the deficiency to satisfy the ~~16-hour~~ CE requirement for that license renewal or reinstatement. Any CE activity used to satisfy the deficiency shall not be applied to his current

license CE requirement or any subsequent renewal or reinstatement.

~~Part XII~~ Part X

Standards of Practice and Conduct

18VAC10-20-740. Professional responsibility.

A. Unless exempt by statute, all architectural, engineering, land surveying, landscape architectural, and interior design work must be completed by a professional or a person performing the work who is under the direct control and personal supervision of a professional.

B. A professional shall be able to clearly define his scope and degree of direct control and personal supervision, clearly define how it was exercised, and demonstrate that he was responsible within that capacity for the work that he has sealed, signed, and dated. For the work prepared under his supervision, a professional shall:

1. Have detailed professional knowledge of the work;

2. Exercise the degree of direct control over work that includes:

a. Having control over decisions on technical matters of policy and design;

b. Personally making professional decisions or the review and approval of proposed decisions prior to implementation, including the consideration of alternatives to be investigated and compared for designed work, whenever professional decisions are made that could affect the health, safety, and welfare of the public involving permanent or temporary work;

c. The selection or development of design standards and materials to be used; and

d. Determining the validity and applicability of recommendations prior to incorporation into the work, including the qualifications of those making the recommendations;

3. Have exercised his professional judgment in ~~all~~ professional matters that are embodied in the work and the drawings, specifications, or other documents involved in the work; and

4. Have exercised critical examination and evaluation of an employee's, consultant's, subcontractor's, or project team member's work product, during and after preparation, for purposes of compliance with applicable laws, codes, ordinances, regulations, and usual and customary standards of care pertaining to professional practice.

C. The regulant shall not knowingly associate in a business venture with, or permit the use of his name, by any person or firm when there is reason to believe that person or firm is engaging in activity of a fraudulent or dishonest nature or is violating statutes or any of these regulations.

D. A regulant who has ~~direct knowledge or reason to believe~~ that any ~~individual or firm~~ person may have violated or may currently be violating any of these provisions, or the provisions of Chapters 7 (§ 13.1-542.1 et seq.) and 13 (§ 13.1-1100 et seq.) of Title 13.1 or Chapters 1 (§ 54.1-100 et seq.) through 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia, shall ~~immediately~~ inform the board in writing and shall cooperate in furnishing any further information or assistance that may be required by the board or any of its agents.

E. Upon request by the board or any of its agents, the regulant shall produce any plan, plat, document, sketch, book, record, or copy thereof concerning a transaction covered by this chapter and shall cooperate in the investigation of a complaint filed with the board against a regulant.

F. Except as authorized by 18VAC10-20-760 A 2, a regulant shall not utilize the design, drawings, specifications, or work of another regulant to complete or to replicate any work without the written consent of the person or organization that owns the design, drawings, specifications, or work.

G. Utilization and modification of work.

1. A regulant who utilizes the designs, drawings, specifications, or work of another regulant pursuant to subsection F of this section or 18VAC10-20-760 A 2, or who modifies any plats or surveys, shall conduct a thorough review of the work to verify that it has been accomplished to the same extent that would have been done under the direct control and personal supervision of the regulant affixing the professional seal, signature, and date. The regulant shall assume full responsibility for the utilization of any unsealed work or any changes or modifications to previously sealed work.

2. ~~The information contained in recorded plats or surveys may be utilized by another regulant without permission.~~ Information from recorded plats or surveys may be utilized without permission. However, the modification of the actual recorded plat or survey is prohibited without written permission of the regulant.

18VAC10-20-750. Good standing. (Repealed.)

A. ~~A regulant licensed, certified, or registered to practice architecture, engineering, land surveying, landscape architecture, or interior design in any jurisdiction shall be in good standing in every jurisdiction where licensed, certified, or registered.~~

B. ~~A regulant who has received a reprimand, civil penalty, or monetary penalty, or whose license, certificate or registration is revoked, suspended, denied, or surrendered as a result of a disciplinary action by any jurisdiction, shall notify the board of such action within 30 days.~~

18VAC10-20-760. Use of seal.

A. Affixing of a professional seal, signature, and date shall indicate that the professional has exercised direct control and personal supervision over the work to which it is affixed. Affixing of the seal, signature, and date also indicates the professional's acceptance of responsibility for the work shown thereon.

1. No professional shall affix a seal, signature, and date or certification to ~~a plan, plat, document, sketch, or other work~~ plans, plats, documents, drawings, or other works constituting the practice of the professions regulated that has been prepared by an unlicensed or uncertified person unless such ~~work was~~ works were performed under the direct control and personal supervision of the professional while the unlicensed or uncertified person was an employee of the same firm as the professional or was under written contract to the same firm that employs the professional.

2. If the original professional of record is no longer able to seal, sign, and date completed professional work, such work may be sealed, signed, and dated by another qualified professional pursuant to the standards established in 18VAC10-20-740 G 1.

B. Documents to be sealed.

1. All final documents, including ~~original cover sheet of plans, plats, documents, sketches, technical reports, and specifications, and each original sheet of plans, cover sheet of plans, plats, documents, drawings, technical reports, and specifications, and each sheet of plans or plats, or drawings~~ prepared by the professional, or someone under his direct control and personal supervision, shall be sealed, signed, and dated by the professional. All final documents shall also bear the professional's name or firm name, address, and project name. ~~Final documents are completed documents or copies submitted on a client's behalf for approval by authorities, for construction, or for recordation.~~

2. For projects involving multiple ~~sets of plans from multiple professionals~~ professional services involved in the same project, each professional shall seal, sign, and date the final documents for the work component that he completed or that was completed under his direct control and personal supervision. The professional responsible for the compilation of the project shall seal, sign, and date the cover sheet of the aggregate collection of final documents for the project.

C. An electronic seal, signature, and date are permitted to be used in lieu of an original seal, signature, and date when the following criteria, and all other requirements of this section, are met:

1. It is a unique identification of the professional;
2. It is verifiable; and

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3. It is under the professional's direct control.

D. Incomplete plans, plats, documents, and ~~sketches drawings~~, whether advance or preliminary copies, shall be so identified on the ~~plan, plat, document, or sketch~~ plans, plats, documents, or drawings and need not be sealed, signed, or dated. Advance or preliminary copies of incomplete plans, plats, documents, and ~~sketches drawings~~, must be clearly identified as not complete but need not be sealed, signed, or dated.

E. All work performed by a professional who is licensed or certified by this board, including work that is exempt from licensure pursuant to § 54.1-402 of the Code of Virginia, shall be sealed, signed, and dated pursuant to subsection B of this section.

F. The original seal shall conform in detail and size to the design illustrated ~~below in this subsection~~ and shall be two inches in diameter. The designs ~~below~~ illustrated may not be shown to scale:



*The number referred to is the last six-digit number as shown on the license or certificate. The number is permanent. Leading zeros contained in the six-digit number may be omitted from the seal.

18VAC10-20-790. Sanctions.

A license, certificate, or registration shall not be sanctioned unless a majority of the eligible voting members of the entire board vote for the action. The board may discipline or sanction any regulant if the board finds that:

1. The regulant failed to maintain good moral character pursuant to the definition in 18VAC10-20-10;

2. The license, certification, or registration was obtained or renewed through fraud or misrepresentation;

3. The regulant has been found guilty ~~by the board, or~~ by a court of competent jurisdiction, of any material misrepresentation in the course of professional practice, or has been convicted, pleaded guilty, or has been found guilty, regardless of adjudication or deferred adjudication, of any felony or misdemeanor that, in the judgment of the board, adversely affects the regulant's ability to perform satisfactorily within the regulated discipline. ~~Any plea of nolo contendere shall be considered a conviction for the purposes of this chapter.~~ The board shall review the conviction pursuant to the provisions of § 54.1-204 of the Code of Virginia;

4. The regulant ~~is guilty of~~ has committed acts constituting professional incompetence, negligence, or gross negligence;

5. The regulant has abused drugs or alcohol to the extent that professional competence is adversely affected;

6. The regulant fails to comply, or misrepresents any information pertaining to their compliance, with any of the continuing education requirements as contained in this chapter;

7. The regulant violates any standard of practice and conduct as defined in this chapter; ~~or~~

8. The regulant violates or induces others to violate any provision of Chapters 7 (§ 13.1-542.1 et seq.) and 13 (§ 13.1-1100 et seq.) of Title 13.1 or Chapters 1 (§ 54.1-100 et seq.) through 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia, or any other statute applicable to the practice of the professions regulated by this chapter;

9. The regulant has been disciplined by any county, city, town, state, or federal governing body. For purposes of this section "discipline" means reprimand; civil or monetary penalty; probation, suspension, or revocation of a license; or cease and desist order. The board will review such discipline before taking any disciplinary action of its own; or

10. The regulant fails to notify the board within 30 days of having been disciplined by any county, city, town, state, or federal governing body as stipulated in subdivision 9 of this section.

18VAC10-20-795. Change of address.

All regulants shall notify the board ~~in writing of any change of address~~ of a change of mailing address on the designated address change form within 30 days of making the change. When submitting a change of address, regulants holding more than one license, certificate, or registration shall inform the board of each affected by the change. A post office box will not be accepted in lieu of a physical address.

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

[License/Certificate Renewal Form \(Architect, Professional Engineer, Land Surveyor, Surveyor Photogrammetrist, Landscape Architect, Interior Designer\), A415-04REN-v1 \(eff. 10/2011\)](#)

~~Architect License Application (Architect Information Sheet), 0401LIC (rev. 4/2012)~~

[Architect License Application, 0401LIC 2018, \(rev. 7/2018\)](#)

[Verification of Architect Examination & Licensure Form, 0401ELV \(rev. 4/2012\)](#)

~~Architect Experience Verification Form, 0401EXP (rev. 4/2012)~~

[Architect Experience Verification Form, 0401LIC 2018, \(rev. 7/2018\)](#)

[Architect Client Experience Verification Form, 0401CEXP \(rev. 4/2012\)](#)

[Architect Degree Verification Form, 0401DEG \(rev. 4/2012\)](#)

~~Architect Reference Form, A416 0401REF v1 (eff. 1/2016)~~

~~Architect License Reinstatement Application, 0401REI (rev. 4/2012)~~

~~Professional Engineer License Application (Professional Engineer Information Sheet), 0402LIC (rev. 4/2012)~~

~~Professional Engineer Reference Form, A416 0402REF v1 (eff. 1/2016)~~

~~Professional Engineer License Reinstatement Application, 0402REI (rev. 4/2012)~~

[Architect Reference Form, 0401REF 2018, \(rev. 7/2018\)](#)

[Architect License Reinstatement Application, 0401REI 2018, \(rev. 7/2018\)](#)

[Professional Engineer License Application, 0402LIC 2018, \(rev. 7/2018\)](#)

[Professional Engineer Reference Form, 0402REF 2018, \(rev. 7/2018\)](#)

[Professional Engineer License Reinstatement Application, 0402REI 2018, \(rev. 7/2018\)](#)

[Professional Engineer & Engineer-in-Training Degree Verification Form, 0402_20DEG \(rev. 4/2012\)](#)

~~Professional Engineer & Engineer-in-Training Experience Verification Form, A416 0402_20EXP v1 (eff. 11/2013)~~

[Professional Engineer & Engineer-in-Training Experience Verification Form, 0402 20EXP 2018, \(rev. 7/2018\)](#)

[Engineer Verification of Examination and Licensure Form, 0402_20ELV \(rev. 4/2012\)](#)

~~Engineer in Training Designation Application, (Engineer in Training Information Sheet) A416 0420DES v2 (rev. 12/2013)~~

~~Engineer In Training Reference Form, A416 0420REF v1 (eff. 1/2016)~~

[Engineer-in-Training Designation Application, 0420DES 2018, \(rev. 7/2018\)](#)

[Engineer-in-Training Reference Form, 0420REF 2018, \(rev. 7/2018\)](#)

[Course Requirements for Engineering Technology Program, 0402CREQ \(rev. 4/2012\)](#)

~~Land Surveyor License Application (Land Surveyor Information Sheet), 0403LIC (rev. 4/2012)~~

~~Land Surveyor License Reinstatement Application, 0403REI (rev. 4/2012)~~

~~Land Surveyor B License Reinstatement Application, 0404REI (rev. 4/2012)~~

~~Land Surveyor B License Application (Land Surveyor B Information Sheet), 0404LIC (rev. 4/2012)~~

[Land Surveyor License Application, 0403LIC 2018, \(rev. 7/2018\)](#)

[Land Surveyor License Reinstatement Application, 0403REI 2018, \(rev. 7/2018\)](#)

[Land Surveyor B License Application, 0404LIC 2018, \(rev. 7/2018\)](#)

[Land Surveyor B License Reinstatement Application, 0404REI 2018, \(rev. 7/2018\)](#)

[Land Surveyor & Surveyor-in-Training Degree Verification Form, 0403_30DEG \(rev. 4/2012\)](#)

[Land Surveyor Verification of Examination and Licensure Form, 0403_30ELV \(rev. 4/2012\)](#)

~~Land Surveyor & Surveyor-in-Training Experience Verification Form, 0403_30EXP (rev. 4/2012)~~

~~Surveyor Photogrammetrist License Application (Surveyor Photogrammetrist Information Sheet), 0408LIC (rev. 4/2012)~~

~~Surveyor Photogrammetrist Reference Form, 0408REF (rev. 9/2014)~~

~~Surveyor Photogrammetrist Experience Verification Form, 0408EXP (rev. 4/2012)~~

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~~Surveyor Photogrammetrist License Reinstatement Application, 0408REI (rev. 4/2012)~~

[Land Surveyor & Surveyor-in-Training Experience Verification Form, 0403 30EXP 2018, \(rev. 7/2018\)](#)

[Surveyor Photogrammetrist License Application, 0408LIC 2018, \(rev. 7/2018\)](#)

[Surveyor Photogrammetrist Reference Form, 0408REF 2018, \(rev. 7/2018\)](#)

[Surveyor Photogrammetrist Experience Verification Form, 0408EXP 2018, \(rev. 7/2018\)](#)

[Surveyor Photogrammetrist License Reinstatement Application, 0408REI 2018, \(rev. 7/2018\)](#)

[Surveyor Photogrammetrist Degree Verification Form, 0408DEG \(rev. 4/2012\)](#)

[Surveyor Photogrammetrist Verification of Examination and Licensure Form, 0408elvf \(eff. 4/2012\)](#)

~~Surveyor In-Training Designation Application (Surveyor in-Training Information Sheet), A416 0430DES v3 (rev. 12/2013)~~

~~Landscape Architect License Application (Landscape Architect Information Sheet), 0406LIC (rev. 9/2014)~~

~~Landscape Architect Reference Form, A416 0406REF v1 (eff. 1/2016)~~

[Surveyor-in-Training Designation Application, 0430DES 2018, \(rev. 7/2018\)](#)

[Landscape Architect License Application, 0406LIC 2018, \(rev. 7/2018\)](#)

[Landscape Architects Reference Form, 0406REF 2018, \(rev. 7/2018\)](#)

[Verification of Landscape Architect Examination and Licensure Form, 0406ELV \(rev. 4/2012\)](#)

[Landscape Architect Experience Verification Form for Examination and Comity Applicants, 0406EXP \(rev. 4/2012\)](#)

[Landscape Architect Degree Verification Form, 0406DEG \(rev. 4/2012\)](#)

~~Landscape Architect License Reinstatement Application, 0406REI (rev. 4/2012)~~

~~Interior Designer Certificate Application, (Interior Designer Information Sheet) 0412CERT (rev. 4/2012)~~

[Landscape Architect License Reinstatement Application, 0406REI 2018, \(rev. 7/2018\)](#)

[Interior Designer Certificate Application, 0412CERT 2018, \(rev. 7/2018\)](#)

[Verification of Interior Designer Examination and Certification Form, 0412ELV \(rev. 4/2012\)](#)

[Interior Designer Degree Verification Form, 0412DEG \(rev. 4/2012\)](#)

~~Interior Designer Experience Verification Form, 0412EXP (rev. 4/2012)~~

~~Interior Designer Certificate Reinstatement Application, 0412REI (rev. 4/2012)~~

[Interior Designer Experience Verification Form, 0412EXP 2018, \(rev. 7/2018\)](#)

[Interior Designer Certificate Reinstatement Application, 0412REI 2018, \(rev. 7/2018\)](#)

[Professional Corporation Registration Application \(Professional Corporation Information Sheet\), 04PCREG \(rev. 4/2012\)](#)

[Professional Corporation Branch Office Registration Application, 04BRPCREG \(rev. 4/2012\)](#)

~~Business Entity Registration Application (Business Entity Information Sheet) 04BUSREG, (rev. 4/2012)~~

~~Business Entity Branch Office Registration Application, 04BRBUSREG (rev. 4/2012)~~

[Business Entity Registration Application \(Business Entity Information Sheet\) 04BUSREG 2018, \(rev. 7/2018\)](#)

[Business Entity Branch Office Registration Application, 04BRBUSREG 2018, \(rev. 7/2018\)](#)

[Professional Limited Liability Company Registration Application \(Professional Limited Liability Company Information Sheet\) 04PLCREG \(rev. 4/2012\)](#)

[Professional Limited Liability Company Branch Office Registration Application, 04BRPLCREG \(rev. 4/2012\)](#)

[Criminal Conviction Reporting Form, A406-01CCR-v1 \(eff. 5/2015\)](#)

[Disciplinary Action Reporting Form, A406-01DAR-v1 \(eff. 5/2015\)](#)

[Criminal Conviction - Supplemental Form, Requesting an Informal Fact Finding \(IFF\) Conference, A713-01IFF-v1 \(eff. 1/2016\)](#)

VA.R. Doc. No. R17-5025; Filed June 22, 2021, 5:50 p.m.

COMMON INTEREST COMMUNITY BOARD

Final Regulation

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

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

Effective Date: September 1, 2021.

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

Summary:

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

Chapter 60

Common Interest Community ~~Board Management~~
Information Fund Association Registration Regulations

18VAC48-60-13. Definitions.

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

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

"Association" means the same as the term is defined in § 54.1-2345 of the Code of Virginia.

"Board" [~~shall have the meaning~~ means the same as the term is] defined in § 54.1-2345 of the Code of Virginia.

"Common interest community" [shall have the meaning means the same as the term is] defined in § 54.1-2345 of the Code of Virginia.

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

"Governing board" means the same as the term is defined in § 54.1-2345 of the Code of Virginia.

"Property owners' association" [shall have the meaning means the same as the term is] defined in § 55.1-1800 of the Code of Virginia.

["Proprietary lessees' association" means the same as the term is defined in § 55.1-2100 of the Code of Virginia.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Change of address;
2. Change of members of the governing board; and
3. Any other changes in information that was reported on the association's previous annual report filing.

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

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

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

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

18VAC48-60-25. Maintenance of registration.

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

1. Change of address of contact person;
2. Change of members of the governing board; and
3. Any other changes in information reported on the association's annual report.

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

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

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

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

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

Within the meaning and intent of § 55.1-1835 of the Code of Virginia, within 30 days of the creation of the association, and every year thereafter, the association shall file an annual report with the board.

18VAC48-60-55. Fees, generally.

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

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

[A.] The following fee schedule is based upon the size of number of lots or units subject to the declaration for each residential common interest community association. The application fee is different than the annual renewal fee. All fees are nonrefundable. [Each association filing its first annual report shall also pay the assessment required by § 54.1-2354.5 B of the Code of Virginia.]

<u>Number of Lots/Units</u>	<u>Application Registration Fee</u>	<u>Renewal Fee</u>
1 - 50	\$45	\$30
51 - 100	\$65	\$50
101 - 200	\$100	\$80
201 - 500	\$135	\$115
501 - 1000	\$145	\$130
1001 - 5000	\$165	\$150
5001%2B	\$180	\$170

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

VA.R. Doc. No. R19-5532; Filed June 23, 2021, 4:55 p.m.

BOARD FOR CONTRACTORS

Proposed Regulation

Title of Regulation: 18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-30 through 18VAC50-22-60).

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

Public Hearing Information:

July 28, 2021 - noon - Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 200, Board Room 3, Richmond, Virginia 23233

Public Comment Deadline: September 17, 2021.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractors@dpor.virginia.gov.

Basis: Section 54.1-1102 A of the Code of Virginia provides the Board for Contractors with the authority to promulgate regulations not inconsistent with the statute necessary for the licensure of contractors.

Purpose: The Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals (WWWOSSP) currently issues journeyman and master level licenses to individuals that install conventional and alternative onsite sewage systems, which are defined in the regulations. The two types of systems are inherently different and require a different skill level to install. The Board for Contractors currently issues licenses to contractor businesses that includes the sewage disposal system contracting specialty (SDS). This specialty does not identify whether the contractor is licensed to install conventional or alternative systems, which can be confusing to consumers. Additionally, in order to obtain the SDS specialty on its license a contractor business must have a qualified individual who holds either a conventional or alternative installer license from WWWOSSP with both being acceptable. Since the Board for Contractors does not differentiate between the two types of systems with the current licensing scheme, a contractor that is not properly licensed with WWWOSSP to install an alternative system would not be in violation of this regulation for working outside the scope of that contractor's license. This is not only confusing to consumers but could lead to harm from both a health standpoint and an economic standpoint. The proposed amendments to this regulation would split the current specialty into two categories that match the current licensing requirements of WWWOSSP. This would eliminate confusion regarding the type of system installation the license allowed and could eliminate harm done by improperly licensed contractors.

Substance: The amendments eliminate the definition of "sewage disposal system contracting" and create two new specialties: Alternative Sewage Disposal System Contracting

and Conventional Sewage Disposal System Contracting. The requirements sections for the license classes are also amended to further clarify the requirements for the qualified individual.

Issues: The primary advantage for the public is that contractors who are not properly licensed with WWWOSSP would not hold a specialty they are not licensed to perform. Individuals and companies that do not meet the qualifications would be required to obtain the appropriate license from WWWOSSP, master conventional or alternative installer license, and then add the corresponding specialty to the contractor license. The only disadvantage to the public, private citizens, or businesses is the fact that individuals or businesses may be required to meet additional eligibility criteria with WWWOSSP if both specialties are required.

Department of Planning and Budget's Economic Impact Analysis:

The Board for Contractors proposes to replace the existing Sewage Disposal Systems Contracting specialty in the 18VAC50-22, Board for Contractors Regulations, with two new specialties: Alternative Sewage Disposal System Contracting and Conventional Sewage Disposal System Contracting.

Background:

Current: The Department of Professional and Occupational Regulation (DPOR) notes that conventional and alternative onsite sewage systems are inherently different and require a different skill level to install.¹ Simply put, a conventional system uses one or more septic tanks and results in a point source discharge via a drainfield.² An alternative system uses a different approach and does not result in a point source discharge.

The current 18VAC50-22, Board for Contractors Regulations, do not distinguish between conventional and alternative sewage disposal systems. This regulation currently defines "Sewage disposal systems contracting" (SDS) as "the service that provides for the installation, repair, improvement, or removal of septic tanks, septic systems, and other onsite sewage disposal systems annexed to real property." The qualified individual of a licensed contractor holding the SDS specialty must hold a master onsite sewage system installer license, issued by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals (WWWOSSP), in order for the company to qualify for the specialty on its license, and to legally perform SDS contracting work.

In contrast, WWWOSSP does distinguish between conventional and alternative sewage disposal systems. The 18VAC160-40, Onsite Sewage System Professionals Licensing Regulations, have separate journeyman and master licenses for both conventional and alternative sewage disposal systems. However, since the Board for Contractors current licensing approach does not differentiate between the two types of systems, a contractor whose qualified individual only had a master conventional onsite sewage system installer

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license but performed alternative sewage disposal system work would not violate the Board for Contractors Regulations.

Proposed: The Board for Contractors proposes to align the Board for Contractors Regulations with the Onsite Sewage System Professionals Licensing Regulations by replacing the existing SDS contracting specialty with separate conventional and alternative specialties. Accordingly, the Board for Contractors proposes to eliminate SDS from 18VAC50-22-30, Definitions of specialty services, and add definitions for "Conventional sewage disposal system contracting" (CDS) and "Alternative sewage disposal system contracting" (ADS). CDS would be defined as: "The service that provides for the installation, repair, improvement, or removal of a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield. The ADS specialty may also perform this work."

ADS would be defined as: "The service that provides for the installation, repair, improvement, or removal of a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge. No other classification or specialty service provides this function."

Also, in 18VAC50-22-40, Requirements for a Class C license; 18VAC50-22-50, Requirements for a Class B license; and 18VAC50-22-60 Requirements for a Class A license, the Board for Contractors proposes to specify that the firm's qualified individual: "Has obtained, pursuant to the Onsite Sewage System Professionals Licensing Regulations, a master conventional onsite sewage system installer license for Conventional Sewage Disposal System Contracting and a master alternative onsite sewage system installer license for Alternative Sewage Disposal System Contracting."

Thus, under the proposed Board for Contractors Regulations, the qualified individual must have a master alternative onsite sewage system installer license in order for a contractor to perform alternative sewage disposal system work.

Estimated Benefits and Costs. An improperly installed or maintained sewage disposal system can potentially harm public health and the environment. The most serious documented problems involve contamination of surface waters and ground water with disease-causing pathogens and nitrates. Other problems include excessive nitrogen discharges to sensitive coastal waters and phosphorus pollution of inland surface waters, which increases algal growth and lowers dissolved oxygen levels. Contamination of important shellfish beds and swimming beaches by pathogens is a concern in some coastal regions.³

According to DPOR, the examination required for the master conventional onsite sewage system installer license does not cover the more complex attributes of alternative onsite sewage systems. As indicated, under the current regulation a contractor whose qualified individual only has a master conventional onsite sewage system installer license would not violate the

Board for Contractors Regulations for performing alternative sewage disposal system work.

The proposal to only permit contractors with a qualified individual who has obtained a master alternative onsite sewage system installer license to conduct alternative sewage disposal system contracting would likely reduce the frequency that alternative sewage disposal systems are improperly installed or serviced. In order to obtain a master alternative onsite sewage system installer license, the applicant must demonstrate extensive subject-specific knowledge of alternative systems through passing the master alternative onsite sewage system installer examination. Thus, by limiting alternative onsite sewage system work to those firms with a qualified individual who has demonstrated sufficient knowledge through exam, the proposal would likely be beneficial for public health and the environment.

Contractors that already have a qualified individual with a master alternative onsite sewage system installer license would, initially at least, benefit through reduced competition for alternative sewage disposal system work from firms whose qualified individual only has a master conventional onsite sewage system installer license. The latter firms would be worse off in that they would no longer be permitted to offer alternative sewage disposal system services, at least until their qualified individual has earned the master alternative onsite sewage system installer license or they hire someone who already possesses the license.

In order to obtain the master alternative onsite sewage system installer license, the applicant must: pay the exam fee (currently \$80), pass the examination, have sufficient experience,⁴ potentially receive 20 hours of training,⁵ and fill out the application and pay the \$100 application fee. Under the proposed Board for Contractors Regulations, the contractor would pay a \$110 application fee for ADS specialty designation.

Businesses and Other Entities Affected. The proposed amendments affect the 494 licensed contractors with the SDS specialty, people who hire sewage disposal systems contractors, and the general public in that public health and the environment may be affected. It is not known how many of the 494 licensed contractors with the SDS specialty do not have a qualified individual with a master alternative onsite sewage system installer license, but since there are only 279 master alternative installers licensed by WWOOSSP, at least 215 of these firms would no longer be able to do alternative sewage disposal system work without violating the Board for Contractors Regulations; that is until their qualified individual has earned the master alternative onsite sewage system installer license or they hire someone who already possesses the license.⁶

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

likely be, initially at least, net reduced revenue for some contractors, an adverse impact is indicated.

Small Businesses⁷ Affected: Types and Estimated Number of Small Businesses Affected

The proposed amendments potentially affect the 494 licensed contractors with the SDS specialty. DPOR believes most of the 494 licensed contractors with the SDS specialty would qualify as small businesses.

Costs and Other Effects. As described, the proposal would likely result in increased business for small contractors whose qualified individual has a master alternative onsite sewage system installer license, and reduced business for small contractors whose qualified individual does not.

Alternative Method that Minimizes Adverse Impact. There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities⁸ Affected.⁹ The proposed amendments apply statewide. No localities are known to be disproportionately affected. The proposal does not substantively introduce costs for local governments.

Projected Impact on Employment. The proposed amendment is unlikely to substantively affect total employment.

Effects on the Use and Value of Private Property. As a consequence of the proposal, the value of contractors whose qualified individual has a master alternative onsite sewage system installer license may increase due to likely increased demand for their services; and the value of contractors whose qualified individual does not have a master alternative onsite sewage system installer license may decrease due to likely decreased demand for their services. The proposal would not likely substantively affect real estate development costs.

¹See https://townhall.virginia.gov/GetFile.cfm?File=10\5550\9204\AgencyStatement_DPOR_9204_v1.pdf, page 2

²See <https://www.epa.gov/septic/types-septic-systems>

³Source: United States Environmental Protection Agency: <https://www.epa.gov/septic/septic-systems-overview>

⁴The amount of required experience depends on the individual's circumstance. See <https://law.lis.virginia.gov/admincode/title18/agency160/chapter40/section220/>

⁵Whether or not the 20 hours of training is required, depends on the individual's circumstance. See <https://law.lis.virginia.gov/admincode/title18/agency160/chapter40/section220/>. Free training is available through a joint Virginia Tech-Virginia Department of Health program. See <https://www.cpe.vt.edu/waww/>

⁶Data source: DPOR

⁷Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

⁸"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁹§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

The proposed amendments divide the existing sewage disposal system contracting specialty into two new specialties - alternative sewage disposal system contracting and conventional sewage disposal system contracting - to align the licensing of the contractor licenses for these specialties issued by the Board for Contractors with the individual licenses of the specialties issued by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals.

18VAC50-22-30. Definitions of specialty services.

The following words and terms when used in this chapter unless a different meaning is provided or is plainly required by the context shall have the following meanings:

"Accessibility services contracting" (Abbr: ASC) means the service that provides for all work in connection with the constructing, installing, altering, servicing, repairing, testing, or maintenance of wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, and private residence elevators in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63). The EEC specialty may also perform this work. This specialty does not include work on limited use-limited application (LULA) elevators.

"Accessibility services contracting - LULA" (Abbr: ASL) means the service that provides for all work in connection with the constructing, installing, altering, servicing, repairing, testing, or maintenance of wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, private residence elevators, and limited use-limited application (LULA) elevators in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63). The EEC specialty may also perform this work.

"Alternative energy system contracting" (Abbr: AES) means the service that provides for the installation, repair or improvement, from the customer's meter, of alternative energy generation systems, supplemental energy systems and associated equipment annexed to real property. This service does not include the installation of emergency generators powered by fossil fuels. No other classification or specialty service provides this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Alternative sewage disposal system contracting" (Abbr: ADS) means the service that provides for the installation, repair, improvement, or removal of a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge. No other classification or specialty service provides this function.

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"Asbestos contracting" (Abbr: ASB) means the service that provides for the installation, removal, or encapsulation of asbestos containing materials annexed to real property. No other classification or specialty service provides for this function.

"Asphalt paving and sealcoating contracting" (Abbr: PAV) means the service that provides for the installation of asphalt paving or sealcoating, or both, on subdivision streets and adjacent intersections, driveways, parking lots, tennis courts, running tracks, and play areas, using materials and accessories common to the industry. This includes height adjustment of existing sewer manholes, storm drains, water valves, sewer cleanouts and drain grates, and all necessary excavation and grading. The H/H classification also provides for this function.

"Billboard/sign contracting" (Abbr: BSC) means the service that provides for the installation, repair, improvement, or dismantling of any billboard or structural sign permanently annexed to real property. H/H and CBC are the classifications that can perform this work except that a contractor in this specialty may connect or disconnect signs to existing electrical circuits. No trade related plumbing, electrical, or HVAC work is included in this function.

"Blast/explosive contracting" (Abbr: BEC) means the service that provides for the use of explosive charges for the repair, improvement, alteration, or demolition of any real property or any structure annexed to real property.

"Commercial improvement contracting" (Abbr: CIC) means the service that provides for repair or improvement to structures not defined as dwellings and townhouses in the USBC. The CBC classification also provides for this function. The CIC specialty does not provide for the construction of new buildings, accessory buildings, electrical, plumbing, HVAC, or gas work.

"Concrete contracting" (Abbr: CEM) means the service that provides for all work in connection with the processing, proportioning, batching, mixing, conveying, and placing of concrete composed of materials common to the concrete industry. This includes finishing, coloring, curing, repairing, testing, sawing, grinding, grouting, placing of film barriers, sealing, and waterproofing. Construction and assembling of forms, molds, slipforms, and pans, centering, and the use of rebar are also included. The CBC, RBC, and H/H classifications also provide for this function.

"Conventional sewage disposal system contracting" (Abbr: CDS) means the service that provides for the installation, repair, improvement, or removal of a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield. The ADS specialty may also perform this work.

"Drug lab remediation contracting" (Abbr: DLR) means the service that provides for the cleanup, treatment, containment, or removal of hazardous substances at or in a property formerly

used to manufacture methamphetamine or other drugs and may include demolition or disposal of structures or other property. No other classification or specialty provides for this function.

"Drywall contracting" (Abbr: DRY) means the service that provides for the installation, taping, and finishing of drywall, panels and assemblies of gypsum wallboard, sheathing, and cementitious board, and the installation of studs made of sheet metal for the framing of ceilings and nonstructural partitioning. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Electronic/communication service contracting" (Abbr: ESC) means the service that provides for the installation, repair, improvement, or removal of electronic or communications systems annexed to real property including telephone wiring, computer cabling, sound systems, data links, data and network installation, television and cable TV wiring, antenna wiring, and fiber optics installation, all of which operate at 50 volts or less. A firm holding an ESC license is responsible for meeting all applicable tradesman licensure standards. The ELE classification also provides for this function.

"Elevator/escalator contracting" (Abbr: EEC) means the service that provides for the installation, repair, improvement, or removal of elevators or escalators permanently annexed to real property. A firm holding an EEC license is responsible for meeting all applicable individual license and certification regulations. No other classification or specialty service provides for this function.

"Environmental monitoring well contracting" (Abbr: EMW) means the service that provides for the construction of a well to monitor hazardous substances in the ground.

"Environmental specialties contracting" (Abbr: ENV) means the service that provides for installation, repair, removal, or improvement of pollution control and remediation devices. No other specialty provides for this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Equipment/machinery contracting" (Abbr: EMC) means the service that provides for the installation or removal of equipment or machinery including conveyors or heavy machinery. Boilers exempted by the Virginia Uniform Statewide Building Code (13VAC5-63) but regulated by the Department of Labor and Industry are also included in this specialty. This specialty does not provide for any electrical, plumbing, process piping, or HVAC functions.

"Farm improvement contracting" (Abbr: FIC) means the service that provides for the installation, repair, or improvement of a nonresidential farm building or structure, or nonresidential farm accessory-use structure, or additions thereto. The CBC classification also provides for this function. The FIC specialty does not provide for any electrical, plumbing, HVAC, or gas fitting functions.

"Finish carpentry contracting" (Abbr: FIN) means the service that provides for the installation, repair, and finishing of cabinets, sash casing, door casing, wooden flooring, baseboards, countertops, and other millwork. Finish carpentry does not include the installation of ceramic tile, marble, and artificial or cultured stone. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Fire alarm systems contracting" (Abbr: FAS) means the service that provides for the installation, repair, or improvement of fire alarm systems that operate at 50 volts or less. The ELE classification also provides for this function. A firm with an FAS license is responsible for meeting all applicable tradesman licensure standards.

"Fire sprinkler contracting" (Abbr: SPR) means the service that provides for the installation, repair, alteration, addition, testing, maintenance, inspection, improvement, or removal of sprinkler systems using water as a means of fire suppression when annexed to real property. This specialty does not provide for the installation, repair, or maintenance of other types of fire suppression systems. The PLB classification allows for the installation of systems permitted to be designed in accordance with the plumbing provisions of the USBC. This specialty may engage in the installation of backflow prevention devices in the fire sprinkler supply main and incidental to the sprinkler system installation when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Fire suppression contracting" (Abbr: FSP) means the service that provides for the installation, repair, improvement, or removal of fire suppression systems including halon and other gas systems, dry chemical systems, and carbon dioxide systems annexed to real property. No other classification provides for this function. The FSP specialty does not provide for the installation, repair, or maintenance of water sprinkler systems.

"Flooring and floor covering contracting" (Abbr: FLR) means the service that provides for the installation, repair, improvement, or removal of materials that are common in the flooring industry. This includes wood and wood composite flooring, tack strips or other products used to secure carpet, vinyl and linoleum, ceramic, marble, stone, and all other types of tile, and includes the installation or replacement of subflooring, leveling products, or other materials necessary to facilitate the installation of the flooring or floor covering. This does not include the installation, repair, or removal of floor joists or other structural components of the flooring system. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Framing subcontractor" (Abbr: FRM) means the service which, while serving in the role of a subcontractor to a licensed prime contractor, provides for the construction, removal, repair, or improvement to any framing or rough carpentry necessary for the construction of framed structures, including

the installation and repair of individual components of framing systems. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Gas fitting contracting" (Abbr: GFC) means the service that provides for the installation, repair, improvement, or removal of gas piping and appliances annexed to real property. A firm holding a GFC license is responsible for meeting all applicable individual (tradesman) licensure regulations.

"Glass and glazing contracting" (Abbr: GLZ) means the service that provides for the installation, assembly, repair, improvement, or removal of all makes and kinds of glass, glass work, mirrored glass, and glass substitute for glazing; executes the fabrication and glazing of frames, panels, sashes and doors; or installs these items in any structure. This specialty includes the installation of standard methods of weatherproofing, caulking, glazing, sealants, and adhesives. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Home improvement contracting" (Abbr: HIC) means the service that provides for repairs or improvements to dwellings and townhouses as defined in the USBC or structures annexed to those dwellings or townhouses as defined in the USBC. The RBC classification also provides for this function. The HIC specialty does not provide for electrical, plumbing, HVAC, or gas fitting functions. It does not include new construction functions beyond the existing building structure other than decks, patios, driveways, and utility out buildings that do not require a permit per the USBC.

"Industrialized building contracting" (Abbr: IBC) means the service that provides for the installation or removal of an industrialized building as defined in the Virginia Industrialized Building Safety Regulations (13VAC5-91). This classification covers foundation work in accordance with the provisions of the Virginia Uniform Statewide Building Code (13VAC5-63) and allows the licensee to complete internal tie-ins of plumbing, gas, electrical, and HVAC systems. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter, or installing the outside compressor for the HVAC system. The CBC and RBC classifications also provide for this function.

"Insulation and weather stripping contracting" (Abbr: INS) means the service that provides for the installation, repair, improvement, or removal of materials classified as insulating media used for the sole purpose of temperature control or sound control of residential and commercial buildings. It does not include the insulation of mechanical equipment and ancillary lines and piping. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Landscape irrigation contracting" (Abbr: ISC) means the service that provides for the installation, repair, improvement, or removal of irrigation sprinkler systems or outdoor sprinkler systems. The PLB and H/H classifications also provide for this

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function. This specialty may install backflow prevention devices incidental to work in this specialty when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Landscape service contracting" (Abbr: LSC) means the service that provides for the alteration or improvement of a land area not related to any other classification or service activity by means of excavation, clearing, grading, construction of retaining walls for landscaping purposes, or placement of landscaping timbers. This specialty may remove stumps and roots below grade. The CBC, RBC, and H/H classifications also provide for this function.

"Lead abatement contracting" (Abbr: LAC) means the service that provides for the removal or encapsulation of lead-containing materials annexed to real property. No other classification or specialty service provides for this function, except that the PLB and HVA classifications may provide this service incidental to work in those classifications.

"Liquefied petroleum gas contracting" (Abbr: LPG) means the service that includes the installation, maintenance, extension, alteration, or removal of all piping, fixtures, appliances, and appurtenances used in transporting, storing, or utilizing liquefied petroleum gas. This excludes hot water heaters, boilers, and central heating systems that require an HVA or PLB license. The GFC specialty also provides for this function. A firm holding an LPG license is responsible for meeting all applicable individual license and certification regulations.

"Manufactured home contracting" (Abbr: MHC) means the service that provides for the installation or removal of a manufactured home as defined in the Virginia Manufactured Home Safety Regulations (13VAC5-95). This classification does not cover foundation work; however, it does allow installation of piers covered under HUD regulations. It does allow a licensee to do internal tie-ins of plumbing, gas, electrical, or HVAC equipment. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter or installing the outside compressor for the HVAC system. No other specialty provides for this function.

"Marine facility contracting" (Abbr: MCC) means the service that provides for the construction, repair, improvement, or removal of any structure the purpose of which is to provide access to, impede, or alter a body of surface water. The CBC and H/H classifications also provide for this function. The MCC specialty does not provide for the construction of accessory structures or electrical, HVAC, or plumbing functions.

"Masonry contracting" (Abbr: BRK) means the service that includes the installation of brick, concrete block, stone, marble, slate, or other units and products common to the masonry

industry, including mortarless type masonry products. This includes installation of grout, caulking, tuck pointing, sand blasting, mortar washing, parging, and cleaning and welding of reinforcement steel related to masonry construction. The CBC and RBC classifications and the HIC and CIC specialties also provide for this function.

"Miscellaneous contracting" (Abbr: MSC) means the service that may fall under another classification or specialty service but is more limited than the functions provided by the other classification or specialty. This specialty is limited to a single activity and will be restricted to that specialty only. This specialty may not be used for work that would fall under the ELE, HVA, PLB, GFC, LPG, NGF, EEC, WWP, ASC, LAC, or ASB classification or specialty. Contractors applying for the MSC specialty will have their applications reviewed by the Board for Contractors.

"Natural gas fitting provider contracting" (Abbr: NGF) means the service that provides for the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property. This does not include new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment that requires an HVA or PLB license. The GFC specialty also provides for this function. A firm holding an NGF license is responsible for meeting all applicable individual license and certification regulations.

"Painting and wallcovering contracting" (Abbr: PTC) means the service that provides for the application of materials common to the painting and decorating industry for protective or decorative purposes, the installation of surface coverings such as vinyls, wall papers, and cloth fabrics. This includes surface preparation, caulking, sanding, and cleaning preparatory to painting or coverings and includes both interior and exterior surfaces. The CBC and RBC classifications and the HIC and CIC specialties also provide for this function.

"Radon mitigation contracting" (Abbr: RMC) means the service that provides for additions, repairs, or improvements to buildings or structures, for the purpose of mitigating or preventing the effects of radon gas. No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty.

"Recreational facility contracting" (Abbr: RFC) means the service that provides for the construction, repair, or improvement of any recreational facility, excluding paving and the construction of buildings, plumbing, electrical, and HVAC functions. The CBC classification also provides for this function.

"Refrigeration contracting" (Abbr: REF) means the service that provides for installation, repair, or removal of any refrigeration equipment (excluding HVAC equipment). No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty. This specialty is intended for those contractors who repair or install coolers, refrigerated casework, ice-making machines, drinking fountains, cold room

equipment, and similar hermetic refrigeration equipment. The HVA classification also provides for this function.

"Roofing contracting" (Abbr: ROC) means the service that provides for the installation, repair, removal, or improvement of materials common to the industry that form a watertight, weather resistant surface for roofs and decks. This includes roofing system components when installed in conjunction with a roofing project, application of dampproofing or waterproofing, and installation of roof insulation panels and other roof insulation systems above roof deck. The CBC and RBC classifications and the HIC and CIC specialties also provide for this function.

~~"Sewage disposal systems contracting" (Abbr: SDS) means the service that provides for the installation, repair, improvement, or removal of septic tanks, septic systems, and other onsite sewage disposal systems annexed to real property.~~

"Steel erection contracting" (Abbr: STL) means the service that provides for the fabrication and erection of structural steel shapes and plates, regardless of shape or size, to be used as structural members, or tanks, including any related riveting, welding, and rigging. This specialty includes the fabrication, placement and tying of steel reinforcing bars (rods), and post-tensioning to reinforce concrete buildings and structures. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Swimming pool construction contracting" (Abbr: POL) means the service that provides for the construction, repair, improvement, or removal of in-ground swimming pools. The CBC and RBC classifications and the RFC specialty also provide for this function. No trade related plumbing, electrical, backflow, or HVAC work is included in this specialty.

"Tile, marble, ceramic, and terrazzo contracting" (Abbr: TMC) means the service that provides for the preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, terrazzo, encaustic, faience, quarry, semi-vitreous, cementitious board, and other tile, excluding hollow or structural partition tile. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Underground utility and excavating contracting" (Abbr: UUC) means the service that provides for the construction, repair, improvement, or removal of main sanitary sewer collection systems, main water distribution systems, storm sewer collection systems, and the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer collection systems at property line, or residential or single-occupancy commercial properties, or on multi-occupancy properties at manhole or wye lateral extend to an invert elevation as engineered to accommodate future building sewers, water distribution systems, or storm sewer collection systems at storm sewer structures. This specialty may install

empty underground conduits in rights-of way, easements, platted rights-of-way in new site development, and sleeves for parking lot crossings if each conduit system does not include installation of any conductor wiring or connection to an energized electrical system. The H/H classification also provides for this function.

"Vessel construction contracting" (Abbr: VCC) means the service that provides for the construction, repair, improvement, or removal of nonresidential vessels, tanks, or piping that hold or convey fluids other than sanitary, storm, waste, or potable water supplies. The H/H classification also provides for this function.

"Water well/pump contracting" (Abbr: WWP) means the service that provides for the installation of a water well system, including geothermal wells, which includes construction of a water well to reach groundwater, as defined in § 62.1-255 of the Code of Virginia, and the installation of the well pump and tank, including pipe and wire, up to and including the point of connection to the plumbing and electrical systems. No other classification or specialty service provides for construction of water wells. This regulation shall not exclude the PLB, ELE, or HVA classification from installation of pumps and tanks.

Note: Specialty contractors engaging in construction that involves the following activities or items or similar activities or items may fall under the CIC, HIC, and FIC specialty services, or they may fall under the CBC or RBC classification.

Appliances	Fences	Railings
Awnings	Fiberglass	Rigging
Blinds	Fireplaces	Rubber linings
Bulkheads	Fireproofing	Sandblasting
Carpeting	Fixtures	Scaffolding
Ceilings	Grouting	Screens
Chimneys	Guttering	Shutters
Chutes	Interior decorating	Siding
Curtains	Lubrication	Skylights
Curtain walls	Metal work	Storage bins and lockers
Decks	Millwrighting	Stucco
Doors	Mirrors	Vaults
Drapes	Miscellaneous iron	Wall panels
Epoxy	Ornamental iron	Waterproofing
Exterior decoration	Partitions	Windows
Facings	Protective coatings	

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18VAC50-22-40. Requirements for a Class C license.

A. A firm applying for a Class C license must meet the requirements of this section.

B. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;
2. Has a minimum of two years of experience in the classification or specialty for which he is the qualifier;
3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm; and
4. a. Has obtained the appropriate certification for the following specialties:
 - (1) Blast/explosive contracting (Department of Fire Programs explosive use certification);
 - (2) Fire sprinkler (NICET Sprinkler III certification); and
 - (3) Radon mitigation (EPA or DEQ accepted radon certification).b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.
- c. Has completed, for the drug lab remediation specialty, a remediation course approved by the board and a board-approved examination.
- d. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.
- e. Has obtained, pursuant to the Onsite Sewage System Professionals Licensing Regulations (18VAC160-40), a master conventional onsite sewage system installer license for Conventional Sewage Disposal System Contracting and a master alternative onsite sewage system installer license for Alternative Sewage Disposal System Contracting.
- f. Has been approved by the Board for Contractors for the miscellaneous specialty (MSC).
- f. g. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

C. The firm shall provide information for the past five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in

Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

D. The firm and all members of the responsible management of the firm shall disclose at the time of application any current or previous contractor licenses held in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes any monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license in Virginia or in any other jurisdiction.

E. In accordance with § 54.1-204 of the Code of Virginia, all applicants shall disclose the following information about the firm, all members of the responsible management, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and
2. All felony convictions during their lifetimes.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

F. A member of responsible management shall have successfully completed a board-approved basic business course.

18VAC50-22-50. Requirements for a Class B license.

A. A firm applying for a Class B license must meet the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;
2. Is a full-time employee of the firm as defined in this chapter, or is a member of responsible management as defined in this chapter;
3. Has passed a board-approved examination as required by § 54.1-1108 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and
4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the date of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;
2. Has a minimum of three years of experience in the classification or specialty for which he is the qualifier;
3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm;
4. a. Has obtained the appropriate certification for the following specialties:

- (1) Blast/explosive contracting (Department of Fire Programs explosive use certification);
- (2) Fire sprinkler (NICET Sprinkler III certification); and
- (3) Radon mitigation (EPA or DEQ accepted radon certification).

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has completed, for the drug lab remediation specialty, a remediation course approved by the board and a board-approved examination.

d. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

e. Has obtained, pursuant to the Onsite Sewage System Professionals Licensing Regulations (18VAC160-40), a master conventional onsite sewage system installer license for Conventional Sewage Disposal System Contracting and a master alternative onsite sewage system installer license for Alternative Sewage Disposal System Contracting.

f. Has been approved by the Board for Contractors for the miscellaneous specialty (MSC).

g. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of \$15,000 or more.

E. Each firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes any monetary penalties, fines, suspension, revocation, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed in this subsection have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated or surrendered in connection with a disciplinary action in Virginia or any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, all applicants shall disclose the following information about the firm, designated employee, all members of the responsible management, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and
2. All felony convictions during their lifetimes.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

18VAC50-22-60. Requirements for a Class A license.

A. A firm applying for a Class A license shall meet all of the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;
2. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm as defined in this chapter;
3. Has passed a board-approved examination as required by § 54.1-1106 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and
4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination

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date and any oral or written instructions given at the site on the day of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;
2. Has a minimum of five years of experience in the classification or specialty for which he is the qualifier;
3. Is a full-time employee of the firm as defined in this chapter or is a member of the firm as defined in this chapter or is a member of the responsible management of the firm;
4. a. Has obtained the appropriate certification for the following specialties:
 - (1) Blast/explosive contracting (DHCD explosive use certification);
 - (2) Fire sprinkler (NICET Sprinkler III certification); and
 - (3) Radon mitigation (EPA or DEQ accepted radon certification).
- b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.
- c. Has completed, for the drug lab remediation specialty, a remediation course approved by the board and a board-approved examination.
- d. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.
- e. Has obtained, pursuant to the Onsite Sewage System Professionals Licensing Regulations (18VAC160-40), a master conventional onsite sewage system installer license for Conventional Sewage Disposal System Contracting and a master alternative onsite sewage system installer license for Alternative Sewage Disposal System Contracting.
- f. Has been approved by the Board for Contractors for the miscellaneous specialty (MSC).
- f. g. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of \$45,000.

E. The firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, and all members of the responsible management of

the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes any monetary penalties, fines, suspensions, revocations, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed in this subsection have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated, or surrendered in connection with a disciplinary action in Virginia or in any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, all applicants shall disclose the following information about the firm, all members of the responsible management, the designated employee, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and
2. All felony convictions during their lifetimes.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

VA.R. Doc. No. R21-6438; Filed June 24, 2021, 10:57 a.m.

Proposed Regulation

Title of Regulation: 18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-40).

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

Public Hearing Information:

July 28, 2021 - noon - Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 200, Board Room 3, Richmond, Virginia 23233

Public Comment Deadline: September 17, 2021.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA

23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractors@dpor.virginia.gov.

Basis: Section 54.1-1102 A of the Code of Virginia provides the Board for Contractors with the authority to promulgate regulations not inconsistent with the statute necessary for the certification of backflow prevention device workers.

Purpose: The Board for Contractors is responsible for regulating businesses and individuals engaging in work within the construction and trade industry. Part of that responsibility is to develop entry level eligibility criteria that afford protection to the public that, at the same time, are not overly burdensome to those seeking licenses or certifications. Since 1999, the board has certified individuals as backflow prevention device workers and set entry standards that were, at the time, reasonable and not overly burdensome. When developing these initial entry criteria, the board reviewed the requirements of those other states that regulated the backflow industry. Additionally, the board reviewed the certifying criteria set forth by national certifying agencies active in the industry. Since that time several states and organizations have changed their initial entry criteria, reducing the number of vocational training hours. In response, several of the approved vocational training providers, who are generally approved in other states as well as Virginia, have stopped offering some of the longer certification courses. This has directly resulted in applicants for a backflow certification in Virginia experiencing difficulty in finding vocational training courses that meet the requirements set forth by the Board for Contractors.

In response to comments that have been received over the past several months, the board researched the vocational training criteria in several states and found that four of six neighboring states that regulate backflow testers have vocational training requirements that are less than those of Virginia. Additionally, while there is no training requirement that is prevalent throughout the United States, of the dozen programs reviewed only three required the same amount of vocational training as Virginia; the others were lower. The Board for Contractors determined that an amendment to the current requirements was appropriate.

Substance: The proposed amendments lower the formal vocational training requirement of individuals with a minimum of four years but less than seven years of experience from 40 hours to 32 hours.

Issues: The primary advantage for individual private citizens is the fact that applicants for the backflow certification will no longer experience difficulty in finding vocational training courses, potentially allowing for more businesses to employ certified individuals. There are no disadvantages to the public, private citizens, businesses, or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board for Contractors proposes to lower the vocational training requirement for certification as a backflow prevention device

worker from 40 hours to 32 hours; this would apply to those who have less than seven years of experience in water distribution systems. A backflow prevention device is used to protect potable water supplies from contamination or pollution due to backflow of water from a non-potable system into a potable system.

Background. Under the current Individual License and Certification Regulations, applicants for examination to be certified as a backflow prevention device worker must furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in water distribution systems and 40 hours of formal vocational training in a school approved by the board; or
2. Applicants with seven or more years of experience may qualify with 16 hours of formal vocational training in a school approved by the board.

The Board proposes to reduce the required number of hours of formal vocational training in the first option from 40 to a minimum of 32.

According to the Department of Professional and Occupational Regulation (DPOR), the Board has been contacted by individuals interested in becoming certified in Virginia, but who have experienced difficulty finding a 40-hour vocational training class on backflow prevention devices. While a few providers still offer 40-hour classes, most have apparently shifted to 32-hour classes. DPOR has indicated that this has occurred in large part because many regulatory agencies and national certifying organizations have changed their education requirements from 40 hours to 32 hours.

Estimated Benefits and Costs. The proposed amendment would benefit individuals seeking backflow prevention device worker certification in Virginia by both making it easier to find available vocational training needed for the certification, and reducing the amount of time spent in training. The Board believes that 32 hours of vocational training is sufficient for public safety.¹

The proposed amendment would likely increase demand for 32-hour backflow prevention training classes and reduce demand for 40-hour classes. The few vocational training schools that still offer 40-hour classes could adapt and switch to 32-hour classes. Depending on the extent of potential changes in demand, and how the charges for classes are structured, these schools that would likely need to adapt might not be able to charge as much for the classes compared to the current situation. Conversely, these schools may experience a reduction in non-fixed costs.

Businesses and Other Entities Affected. The proposed amendment potentially affects the 34 vocational training schools that provide backflow prevention training and are currently approved by the Board. Eight of the providers are at public schools or community colleges. The other 26 are private entities.

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The proposal also potentially affects individuals interested in obtaining certification as a backflow prevention device worker. As of January 1, 2021, there were 1,477 certified backflow prevention device workers in the Commonwealth. During Fiscal Year 2020,² there were approximately 160 new applicants for certification.³

According to DPOR, a substantial number of applicants are plumbers who want to be able to expand their business to include the testing of backflow prevention devices. Additionally, backflow prevention device workers are employed by public utilities and private providers of drinking water.

The proposed amendment may reduce net revenue for vocational training schools that currently offer 40-hour classes. Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. Thus, the proposal may produce an adverse impact.

Small Businesses⁴Affected. Types and Estimated Number of Small Businesses Affected: The proposed amendment potentially affects the 26 small private vocational training schools⁵ that provide backflow prevention training, as well as small plumbing firms that want to expand their business to include the testing of backflow prevention devices.

Costs and Other Effects. As described, the proposal might result in reduced net revenue for some of the small private vocational training schools.

Alternative Method that Minimizes Adverse Impact. There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities⁶ Affected.⁷ The proposed amendment applies statewide. No locality is expected to be disproportionately affected. The proposed amendment does not introduce costs for local governments.

Projected Impact on Employment. The proposed amendment is unlikely to substantively affect total employment.

Effects on the Use and Value of Private Property. The proposed amendment would likely increase demand for 32-hour backflow prevention training classes and reduce demand for 40-hour classes. This may moderately increase the value of the private vocational training schools that offer 32-hour classes, and moderately reduce the value of private vocational training schools that offer 40-hour classes. Consequently, the private vocational training schools that offer 40-hour classes may adapt, and switch to offering 32-hour classes. The proposed amendment does not affect real estate development costs.

⁵DPOR believes that all 26 private vocational training schools that provide backflow prevention training would qualify as small businesses.

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

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

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

Summary:

The proposed amendments lower the current vocational training requirement for certified backflow prevention device workers who have fewer than seven years of experience in water distribution systems from 40 hours to 32 hours.

18VAC50-30-40. Evidence of ability and proficiency.

A. Applicants for examination to be licensed as a journeyman shall furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in the trade and 240 hours of formal vocational training in the trade. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 80 hours of formal training, but not to exceed 200 hours;
2. Four years of practical experience and 80 hours of vocational training for liquefied petroleum gas fitters and natural gas fitter providers except that no substitute experience will be allowed for liquefied petroleum gas and natural gas workers;
3. An associate degree or a certificate of completion from at least a two-year program in a tradesman-related field from an accredited community college or technical school as evidenced by a transcript from the educational institution and two years of practical experience in the trade for which licensure is desired;
4. A bachelor's degree received from an accredited college or university in an engineering curriculum related to the trade and one year of practical experience in the trade for which licensure is desired; or
5. An applicant with 10 years of practical experience in the trade as verified by reference letters of experience from any of the following: building officials, building inspectors, current or former employers, contractors, engineers, architects, or current or past clients attesting to the applicant's work in the trade, may be granted permission to sit for the journeyman's level examination without having to meet the educational requirements.

B. Applicants for examination to be licensed as a master shall furnish evidence that one of the following experience standards has been attained:

¹Source: DPOR

²Fiscal Year 2020 was July 1, 2019, through June 30, 2020.

³Data sources: DPOR

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

1. Evidence that they have one year of experience as a licensed journeyman; or

2. An applicant with 10 years of practical experience in the trade, as verified by reference letters of experience from any of the following: building officials, building inspectors, current or former employers, contractors, engineers, architects, or current or past clients, attesting to the applicant's work in the trade, may be granted permission to sit for the master's level examination without having to meet the educational requirements.

C. Individuals who have successfully passed the Class A contractors trade examination prior to January 1, 1991, administered by the Virginia Board for Contractors in a certified trade shall be deemed qualified as a master in that trade in accordance with this chapter.

D. Applicants for examination to be certified as a backflow prevention device worker shall furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in water distribution systems and ~~40~~ a minimum of 32 hours of formal vocational training in a school approved by the board; or

2. Applicants with seven or more years of experience may qualify with 16 hours of formal vocational training in a school approved by the board.

The board accepts the American Society of Sanitary Engineers' (ASSE) standards for testing procedures. Other programs could be approved after board review. The board requires all backflow training to include instruction in a wet lab.

E. An applicant for certification as an elevator mechanic shall:

1. Have three years of practical experience in the construction, maintenance, and service/repair of elevators, escalators, or related conveyances; 144 hours of formal vocational training; and satisfactorily complete a written examination administered by the board. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 40 hours of formal training, but not to exceed 120 hours;

2. Have three years of practical experience in the construction, maintenance, and service/repair of elevators, escalators, or related conveyances and a certificate of completion of the elevator mechanic examination of a training program determined to be equivalent to the requirements established by the board; or

3. Successfully complete an elevator mechanic apprenticeship program that is approved by the Virginia Apprenticeship Council or registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor, as

evidenced by providing a certificate of completion or other official document, and satisfactorily complete a written examination administered by the board.

F. Pursuant to § 54.1-1129.1 A of the Code of Virginia, an applicant for examination as a certified water well systems provider shall provide satisfactory proof to the board of at least:

1. One year of full-time practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board to qualify for examination as a trainee water well systems provider;

2. Three years of practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board and 24 hours of formal vocational training in the trade to qualify for examination as a journeyman water well systems provider; or

3. Six years of practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board and 48 hours of formal vocational training in the trade to qualify for examination as a master water well systems provider.

G. An applicant for certification as an accessibility mechanic shall:

1. Have three years of practical experience in the construction, installation, maintenance, service, repair, and testing of wheelchair lifts, incline chairlifts, dumbwaiters, residential elevators, or related conveyances; 80 hours of formal vocational training; and satisfactorily complete a written examination administered by the board. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 20 hours of formal training, but not to exceed 60 hours;

2. Have three years of practical experience in the construction, installation, maintenance, service, repair, and testing of wheelchair lifts, incline chairlifts, dumbwaiters, residential elevators, or related conveyances and a certificate of completion of an accessibility mechanic examination of a training program determined to be equivalent to the requirements established by the board; or

3. Successfully complete an accessibility mechanic apprenticeship program that is approved by the Virginia Apprenticeship Council or registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor, as evidenced by providing a certificate of completion or other

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official document, and satisfactorily complete a written examination administered by the board.

H. An applicant for a limited use/limited application (LULA) endorsement shall:

1. Hold a current certification as an accessibility mechanic issued by the board.
2. Have one year of practical experience in the construction, installation, maintenance, service, repair, and testing of limited use/limited application elevators and complete a vocational education program approved by the board; and satisfactorily complete a written examination administered by the board; or complete a limited use/limited application elevator training program determined to be equivalent to the requirements established by the board.

I. Pursuant to § 54.1-1145 B of the Code of Virginia, an applicant for licensure as a residential building energy analyst shall provide satisfactory proof to the board of:

1. The completion of a residential building energy analyst training program approved by the board;
2. The completion of a minimum of five residential building energy analyses under the supervision of a licensed residential building energy analyst;
3. Current membership in good standing with a certifying organization approved by the board; and
4. Maintaining a minimum of \$100,000 of general liability insurance from a company authorized to provide such insurance in the Commonwealth of Virginia unless the individual is employed by a company that holds a valid residential building energy analyst firm license issued by the board.

The applicant shall provide information for the past five years prior to application on any outstanding past-due debts, outstanding judgments, outstanding tax obligations, defaults on bonds, or pending or past bankruptcies.

J. Individuals applying for initial licensure as residential building energy analysts who meet the criteria of § 54.1-1145 C of the Code of Virginia are not required to meet the eligibility standards for licensure found in subsection I of this section.

VA.R. Doc. No. R21-6447; Filed June 24, 2021, 10:57 a.m.

BOARD OF PHARMACY

Forms

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

Titles of Regulations: 18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians.

18VAC110-30. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances.

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Henrico, VA 23230, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC110-21)

~~Application for a Pharmacist license by endorsement or examination, online form available at https://www.dhp.virginia.gov/Pharmacy/pharmacy_forms~~

~~Instructions for Reinstating or Reactivating a Pharmacist License (rev. 10/2020)~~

~~Application for registration as a Pharmacy Technician, online form available at https://www.dhp.virginia.gov/Pharmacy/pharmacy_forms~~

~~Instructions for Reinstating a Pharmacy Technician Registration (rev. 10/2020)~~

~~Application for Registration as a Limited use Pharmacy Technician (rev. 7/2020)~~

[Application for Licensure as a Pharmacist by Examination \(rev. 6/2021\)](#)

[Application for Licensure as a Pharmacist by Endorsement \(rev. 6/2021\)](#)

[Instructions for Reinstating or Reactivating a Pharmacist License \(rev. 6/2021\)](#)

[Instructions for Reinstating a Pharmacy Technician Registration \(rev. 6/2021\)](#)

[Application for Registration as a Pharmacy Technician \(eff. 6/2021\)](#)

[Application for Registration as a Limited-Use Pharmacy Technician \(for use exclusively in a free clinic\) \(rev. 6/2021\)](#)

[Affidavit for Limited-use Pharmacy Technician \(rev. 5/2018\)](#)

[Application for Approval of Pharmacy Technician Training Program \(rev. 10/2020\)](#)

~~Application for registration as a Pharmacy Intern, online form available at https://www.dhp.virginia.gov/Pharmacy/pharmacy_forms~~

[Application for Registration as a Pharmacy Intern \(eff. 6/2021\)](#)

[Application for Registration as a Pharmacy Intern for Graduates of a Foreign College of Pharmacy \(rev. 6/2021\)](#)

[Affidavit of Practical Experience as a Pharmacy Intern \(rev. 3/2019\)](#)

- [Name Change Form for Individuals \(rev. 3/2018\)](#)
 - [Application for Approval of a Continuing Education Program \(rev. 5/2018\)](#)
 - [Application for Approval of an Innovative \(PILOT\) Program \(rev. 10/2020\)](#)
 - [Application for Approval of a Repackaging Training Program \(rev. 10/2020\)](#)
 - [Continuing Education \(CE\) Credit Form for Preceptors \(rev. 7/2020\)](#)
 - [Application for Approval of ACPE Accredited Pharmacy School Course\(s\) for Continuing Education Credit \(rev. 6/2020\)](#)
 - [Sponsor Certification for Volunteer Registration \(rev. 4/2018\)](#)
 - [Application for Volunteer Practice By a Pharmacist \(rev. 4/2018\)](#)
 - [Continuing Education \(CE\) Credit Form for Volunteer Practice \(rev. 4/2018\)](#)
- FORMS (18VAC110-30)
- [Application for a Controlled Substances Registration Certificate \(rev. 10/2020\)](#)
 - [Controlled Substances Registration Inspection Report \(rev. 1/2020\)](#)
 - [Application for a License to Sell Controlled Substances by a Practitioner of the Healing Arts \(eff. 6/2021\)](#)

VA.R. Doc. No. R21-6848; Filed June 25, 2021, 11:37 a.m.

BOARD OF COUNSELING

Final Regulation

Titles of Regulations: **18VAC115-20. Regulations Governing the Practice of Professional Counseling (amending 18VAC115-20-10, 18VAC115-20-130).**

18VAC115-30. Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling Assistants (amending 18VAC115-30-10, 18VAC115-30-140).

18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18VAC115-50-10, 18VAC115-50-110).

18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18VAC115-60-10, 18VAC115-60-130).

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

Effective Date: August 18, 2021.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA

23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Summary:

The amendments define conversion therapy and establish that the standard of practice for persons licensed, certified, or registered by the board preclude the provision of conversion therapy to persons younger than 18 years of age. Changes to the proposed regulation adjust the definition of "conversion therapy" to reference the definition of that term in § 54.1-2409.5 of the Code of Virginia.

18VAC115-20-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia:

- "Board"
- "Counseling"
- "Professional counselor"

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

"Ancillary counseling services" means activities such as case management, recordkeeping, referral, and coordination of services.

"Applicant" means any individual who has submitted an official application and paid the application fee for licensure as a professional counselor.

"CACREP" means the Council for Accreditation of Counseling and Related Educational Programs.

"Candidate for licensure" means a person who has satisfactorily completed all educational and experience requirements for licensure and has been deemed eligible by the board to sit for its examinations.

"Clinical counseling services" means activities such as assessment, diagnosis, treatment planning, and treatment implementation.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

"Conversion therapy" means any practice or treatment [~~that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. Conversion therapy does not include: 1. Counseling that provides assistance to a person undergoing gender transition; or 2. Counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development.~~

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~~including sexual orientation neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity in any direction as defined in § 54.1-2409.5 A of the Code of Virginia]~~.

"CORE" means Council on Rehabilitation Education.

"Exempt setting" means an agency or institution in which licensure is not required to engage in the practice of counseling according to the conditions set forth in § 54.1-3501 of the Code of Virginia.

"Face-to-face" means the in-person delivery of clinical counseling services for a client.

"Group supervision" means the process of clinical supervision of no more than six persons in a group setting provided by a qualified supervisor.

"Internship" means a formal academic course from a regionally accredited college or university in which supervised, practical experience is obtained in a clinical setting in the application of counseling principles, methods, and techniques.

"Jurisdiction" means a state, territory, district, province, or country that has granted a professional certificate or license to practice a profession, use a professional title, or hold oneself out as a practitioner of that profession.

"Nonexempt setting" means a setting that does not meet the conditions of exemption from the requirements of licensure to engage in the practice of counseling as set forth in § 54.1-3501 of the Code of Virginia.

"Regional accrediting agency" means one of the regional accreditation agencies recognized by the U.S. Secretary of Education responsible for accrediting senior postsecondary institutions.

"Residency" means a postgraduate, supervised, clinical experience.

"Resident" means an individual who has a supervisory contract and has been issued a temporary license by the board to provide clinical services in professional counseling under supervision.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented individual or group consultation, guidance, and instruction that is specific to the clinical counseling services being performed with respect to the clinical skills and competencies of the person supervised.

"Supervisory contract" means an agreement that outlines the expectations and responsibilities of the supervisor and resident in accordance with regulations of the board.

18VAC115-20-130. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by phone, or electronically, these standards shall apply to the practice of counseling.

B. Persons licensed or registered by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare;
2. Practice only within the boundaries of their competence, based on their education, training, supervised experience, and appropriate professional experience and represent their education, training, and experience accurately to clients;
3. Stay abreast of new counseling information, concepts, applications, and practices that are necessary to providing appropriate, effective professional services;
4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes;
5. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a counseling relationship;
6. Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;
7. Disclose to clients all experimental methods of treatment and inform clients of the risks and benefits of any such treatment. Ensure that the welfare of the clients is in no way compromised in any experimentation or research involving those clients;
8. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services;
9. Inform clients of the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed; the limitations of confidentiality; and other pertinent information when counseling is initiated and throughout the counseling process as necessary. Provide clients with accurate information regarding the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;
10. Select tests for use with clients that are valid, reliable, and appropriate and carefully interpret the performance of individuals not represented in standardized norms;

11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been granted communication privileges with the other professional;

12. Use only in connection with one's practice as a mental health professional those educational and professional degrees or titles that have been earned at a college or university accredited by an accrediting agency recognized by the U.S. Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature; ~~and~~

13. Advertise professional services fairly and accurately in a manner that is not false, misleading, or deceptive; and

14. Not engage in conversion therapy with any person younger than 18 years of age.

C. In regard to patient records, persons licensed by the board shall:

1. Maintain written or electronic clinical records for each client to include treatment dates and identifying information to substantiate diagnosis and treatment plan, client progress, and termination;

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

3. Disclose or release records to others only with the client's expressed written consent or that of the client's legally authorized representative in accordance with § 32.1-127.1:03 of the Code of Virginia;

4. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from the client or the client's legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using identifiable client records and clinical materials in teaching, writing, or public presentations; and

5. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the counseling relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18 years) or 10 years following termination, whichever comes later;

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have been transferred to another mental health service provider or given to the client or his legally authorized representative.

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

1. Avoid dual relationships with clients that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include, ~~but are not limited to,~~ familial, social, financial, business, bartering, or close personal relationships with clients. Counselors shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;

2. Not engage in any type of romantic relationships or sexual intimacies with clients or those included in a collateral relationship with the client and not counsel persons with whom they have had a romantic relationship or sexual intimacy. Counselors shall not engage in romantic relationships or sexual intimacies with former clients within a minimum of five years after terminating the counseling relationship. Counselors who engage in such relationship or intimacy after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitive nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of, or participation in sexual behavior or involvement with a counselor does not change the nature of the conduct nor lift the regulatory prohibition;

3. Not engage in any romantic relationship or sexual intimacy or establish a counseling or psychotherapeutic relationship with a supervisee or student. Counselors shall avoid any nonsexual dual relationship with a supervisee or student in which there is a risk of exploitation or potential harm to the supervisee or student or the potential for interference with the supervisor's professional judgment; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

E. Persons licensed by this board shall report to the board known or suspected violations of the laws and regulations governing the practice of professional counseling.

F. Persons licensed by the board shall advise their clients of their right to report to the Department of Health Professions any information of which the licensee may become aware in his professional capacity indicating that there is a reasonable probability that a person licensed or certified as a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, may have engaged in unethical, fraudulent, or

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unprofessional conduct as defined by the pertinent licensing statutes and regulations.

18VAC115-30-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia:

"Board"

"Certified substance abuse counselor"

"Certified substance abuse counseling assistant"

"Licensed substance abuse treatment practitioner"

"Practice of substance abuse treatment"

"Substance abuse" and "substance dependence"

"Substance abuse treatment"

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

"Applicant" means an individual who has submitted a completed application with documentation and the appropriate fees to be examined for certification as a substance abuse counselor or substance abuse counseling assistant.

"Candidate" means a person who has been approved to take the examinations for certification as a substance abuse counselor or substance abuse counseling assistant.

"Clinical supervision" means the ongoing process performed by a clinical supervisor who monitors the performance of the person supervised and provides regular, documented face-to-face consultation, guidance and education with respect to the clinical skills and competencies of the person supervised.

"Clinical supervisor" means one who provides case-related supervision, consultation, education and guidance for the applicant. The supervisor must be credentialed as defined in 18VAC115-30-60 C.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

"Contact hour" means the amount of credit awarded for 60 minutes of participation in and successful completion of a continuing education program.

~~"Conversion therapy" means any practice or treatment [that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. Conversion therapy does not include: 1. Counseling that provides assistance to a person undergoing gender transition; or 2. Counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping,~~

~~social support, and identity exploration and development, including sexual orientation neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity in any direction as defined in § 54.1-2409.5 A of the Code of Virginia].~~

"Didactic" means teaching-learning methods that impart facts and information, usually in the form of one-way communication (includes directed readings and lectures).

"Group supervision" means the process of clinical supervision of no less than two nor more than six persons in a group setting provided by a clinical supervisor.

"NAADAC" means the Association of Addiction Professionals.

"NCC AP" means the National Certification Commission for Addiction Professionals, an affiliate of NAADAC.

"Regionally accredited" means accredited by one of the regional accreditation agencies recognized by the U.S. Department of Education as responsible for accrediting senior postsecondary institutions.

"Substance abuse counseling" means applying a counseling process, treatment strategies and rehabilitative services to help an individual to:

1. Understand his substance use, abuse, or dependency; and
2. Change his drug-taking behavior so that it does not interfere with effective physical, psychological, social, or vocational functioning.

18VAC115-30-140. Standards of practice.

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

B. Persons certified by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare.
2. Be able to justify all services rendered to clients as necessary for diagnostic or therapeutic purposes.
3. Practice only within the competency area for which they are qualified by training or experience.
4. Report to the board known or suspected violations of the laws and regulations governing the practice of certified substance abuse counselors or certified substance abuse counseling assistants.
5. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services. Make appropriate consultations and referrals based on the best interest of clients.

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

7. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making arrangements for the continuation of treatment for clients when necessary, following termination of a counseling relationship.

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

9. Not engage in conversion therapy with any person younger than 18 years of age.

C. In regard to client records, persons certified by the board shall:

1. Disclose counseling records to others only in accordance with applicable law.

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

3. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from the client or the client's legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third-party observation, or (iv) using identifiable client records and clinical materials in teaching, writing, or public presentations.

4. Maintain timely, accurate, legible, and complete written or electronic records for each client, to include counseling dates and identifying information to substantiate the substance abuse counseling plan, client progress, and termination.

5. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the counseling relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18 years);

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have been transferred to another mental health service provider or given to the client or the client's legally authorized representative.

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

1. Not engage in dual relationships with clients, former clients, supervisees, and supervisors that are harmful to the client's or supervisee's well-being or that would impair the substance abuse counselor's, substance abuse counseling assistant's, or supervisor's objectivity and professional judgment or increase the risk of client or supervisee exploitation. This prohibition includes such activities as counseling close friends, former sexual partners, employees, or relatives or engaging in business relationships with clients.

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

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

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

18VAC115-50-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia: (i) "board," (ii) "marriage and family therapy," (iii) "marriage and family therapist," and (iv) "practice of marriage and family therapy."

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

"Ancillary counseling services" means activities such as case management, recordkeeping, referral, and coordination of services.

"CACREP" means the Council for Accreditation of Counseling and Related Educational Programs.

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"COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education.

"Clinical marriage and family services" means activities such as assessment, diagnosis, and treatment planning and treatment implementation for couples and families.

"Conversion therapy" means any practice or treatment [that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. Conversion therapy does not include: 1. Counseling that provides assistance to a person undergoing gender transition; or 2. Counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual orientation neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity in any direction as defined in § 54.1-2409.5 A of the Code of Virginia].

"Face-to-face" means the in-person delivery of clinical marriage and family services for a client.

"Internship" means a formal academic course from a regionally accredited university in which supervised practical experience is obtained in a clinical setting in the application of counseling principles, methods, and techniques.

"Regional accrediting agency" means one of the regional accreditation agencies recognized by the U.S. Secretary of Education as responsible for accrediting senior post-secondary institutions and training programs.

"Residency" means a postgraduate, supervised clinical experience.

"Resident" means an individual who has a supervisory contract and has been issued a temporary license by the board approval to provide clinical services in marriage and family therapy under supervision.

"Supervision" means an ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented, individual or group consultation, guidance, and instruction with respect to the clinical skills and competencies of the person or persons being supervised.

"Supervisory contract" means an agreement that outlines the expectations and responsibilities of the supervisor and resident in accordance with regulations of the board.

18VAC115-50-110. Standards of practice.

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

delivery method, whether in person, by phone or electronically, these standards shall apply to the practice of marriage and family therapy.

B. Persons licensed or registered by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare;
2. Practice only within the boundaries of their competence, based on their education, training, supervised experience, and appropriate professional experience and represent their education, training, and experience accurately to clients;
3. Stay abreast of new marriage and family therapy information, concepts, applications, and practices that are necessary to providing appropriate, effective professional services;
4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes;
5. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a counseling relationship;
6. Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;
7. Disclose to clients all experimental methods of treatment and inform client of the risks and benefits of any such treatment. Ensure that the welfare of the client is not compromised in any experimentation or research involving those clients;
8. Neither accept nor give commissions, rebates or other forms of remuneration for referral of clients for professional services;
9. Inform clients of the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed; the limitations of confidentiality; and other pertinent information when counseling is initiated and throughout the counseling process as necessary. Provide clients with accurate information regarding the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;
10. Select tests for use with clients that are valid, reliable, and appropriate and carefully interpret the performance of individuals not represented in standardized norms;
11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been

granted communication privileges with the other professional;

12. Use only in connection with one's practice as a mental health professional those educational and professional degrees or titles that have been earned at a college or university accredited by an accrediting agency recognized by the U.S. Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature; ~~and~~

13. Advertise professional services fairly and accurately in a manner that is not false, misleading or deceptive; and

14. Not engage in conversion therapy with any person younger than 18 years of age.

C. In regard to patient records, persons licensed by the board shall:

1. Maintain written or electronic clinical records for each client to include treatment dates and identifying information to substantiate diagnosis and treatment plan, client progress, and termination;

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

3. Disclose or release client records to others only with clients' expressed written consent or that of their legally authorized representative in accordance with § 32.1-127.1:03 of the Code of Virginia;

4. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from clients or their legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using identifiable client records and clinical materials in teaching, writing, or public presentations; and

5. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the counseling relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18 years) or 10 years following termination, whichever comes later;

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have transferred to another mental health service provider or given to the client or his legally authorized representative.

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

1. Avoid dual relationships with clients that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include, ~~but are not limited to~~, familial, social, financial, business, bartering, or close personal relationships with clients. Marriage and family therapists shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;

2. Not engage in any type of romantic relationships or sexual intimacies with clients or those included in a collateral relationship with the client and also not counsel persons with whom they have had a sexual intimacy or romantic relationship. Marriage and family therapists shall not engage in romantic relationships or sexual intimacies with former clients within a minimum of five years after terminating the counseling relationship. Marriage and family therapists who engage in such relationship or intimacy after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitive nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of or participation in sexual behavior or involvement with a marriage and family therapist does not change the nature of the conduct nor lift the regulatory prohibition;

3. Not engage in any romantic relationships or sexual relationship or establish a counseling or psychotherapeutic relationship with a supervisee or student. Marriage and family therapists shall avoid any nonsexual dual relationship with a supervisee or student in which there is a risk of exploitation or potential harm to the supervisee or student or the potential for interference with the supervisor's professional judgment; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

E. Persons licensed by this board shall report to the board known or suspected violations of the laws and regulations governing the practice of marriage and family therapy.

F. Persons licensed by the board shall advise their clients of their right to report to the Department of Health Professions any information of which the licensee may become aware in his professional capacity indicating that there is a reasonable probability that a person licensed or certified as a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, may have engaged in unethical, fraudulent or

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unprofessional conduct as defined by the pertinent licensing statutes and regulations.

18VAC115-60-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia:

"Board"

"Licensed substance abuse treatment practitioner"

"Substance abuse"

"Substance abuse treatment"

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

"Ancillary services" means activities such as case management, recordkeeping, referral, and coordination of services.

"Applicant" means any individual who has submitted an official application and paid the application fee for licensure as a substance abuse treatment practitioner.

"CACREP" means the Council for Accreditation of Counseling and Related Educational Programs.

"Candidate for licensure" means a person who has satisfactorily completed all educational and experience requirements for licensure and has been deemed eligible by the board to sit for its examinations.

"Clinical substance abuse treatment services" means activities such as assessment, diagnosis, treatment planning, and treatment implementation.

"COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

"Conversion therapy" means any practice or treatment [~~that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. Conversion therapy does not include: 1. Counseling that provides assistance to a person undergoing gender transition; or 2. Counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual orientation neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity in any direction as defined in § 54.1-2409.5 A of the Code of Virginia~~].

"Exempt setting" means an agency or institution in which licensure is not required to engage in the practice of substance abuse treatment according to the conditions set forth in § 54.1-3501 of the Code of Virginia.

"Face-to-face" means the in-person delivery of clinical substance abuse treatment services for a client.

"Group supervision" means the process of clinical supervision of no more than six persons in a group setting provided by a qualified supervisor.

"Internship" means a formal academic course from a regionally accredited university in which supervised, practical experience is obtained in a clinical setting in the application of counseling principles, methods and techniques.

"Jurisdiction" means a state, territory, district, province, or country ~~which~~ that has granted a professional certificate or license to practice a profession, use a professional title, or hold oneself out as a practitioner of that profession.

"Nonexempt setting" means a setting ~~which~~ that does not meet the conditions of exemption from the requirements of licensure to engage in the practice of substance abuse treatment as set forth in § 54.1-3501 of the Code of Virginia.

"Regional accrediting agency" means one of the regional accreditation agencies recognized by the U.S. Secretary of Education responsible for accrediting senior postsecondary institutions.

"Residency" means a postgraduate, supervised, clinical experience.

"Resident" means an individual who has a supervisory contract and has been issued a temporary license by the board to provide clinical services in substance abuse treatment under supervision.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented individual or group consultation, guidance, and instruction with respect to the clinical skills and competencies of the person supervised.

"Supervisory contract" means an agreement that outlines the expectations and responsibilities of the supervisor and resident in accordance with regulations of the board.

18VAC115-60-130. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by phone or electronically, these standards shall apply to the practice of substance abuse treatment.

B. Persons licensed or registered by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare;
2. Practice only within the boundaries of their competence, based on their education, training, supervised experience and appropriate professional experience and represent their education, training and experience accurately to clients;
3. Stay abreast of new substance abuse treatment information, concepts, application, and practices that are necessary to providing appropriate, effective professional services;
4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes;
5. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a counseling relationship;
6. Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;
7. Disclose to clients all experimental methods of treatment and inform clients of the risks and benefits of any such treatment. Ensure that the welfare of the clients is in no way compromised in any experimentation or research involving those clients;
8. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services;
9. Inform clients of the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed; the limitations of confidentiality; and other pertinent information when counseling is initiated and throughout the counseling process as necessary. Provide clients with accurate information regarding the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;
10. Select tests for use with clients that are valid, reliable, and appropriate and carefully interpret the performance of individuals not represented in standardized norms;
11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been granted communication privileges with the other professional;

12. Use only in connection with one's practice as a mental health professional those educational and professional degrees or titles that have been earned at a college or university accredited by an accrediting agency recognized by the U.S. Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature; ~~and~~

13. Advertise professional services fairly and accurately in a manner that is not false, misleading or deceptive; and

14. Not engage in conversion therapy with any person younger than 18 years of age.

C. In regard to patient records, persons licensed by the board shall:

1. Maintain written or electronic clinical records for each client to include treatment dates and identifying information to substantiate diagnosis and treatment plan, client progress, and termination;
2. Maintain client records securely, inform all employees of the requirements of confidentiality and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality;
3. Disclose or release records to others only with clients' expressed written consent or that of their legally authorized representative in accordance with § 32.1-127.1:03 of the Code of Virginia;
4. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the substance abuse treatment relationship with the following exceptions:
 - a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18 years) or 10 years following termination, whichever comes later;
 - b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or
 - c. Records that have been transferred to another mental health service provider or given to the client; and
5. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from clients or their legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using identifiable client records and clinical materials in teaching, writing or public presentations.

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

1. Avoid dual relationships with clients that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include, ~~but are not limited~~

to, familial, social, financial, business, bartering, or close personal relationships with clients. Counselors shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;

2. Not engage in any type of romantic relationships or sexual intimacies with clients or those included in a collateral relationship with the client and not counsel persons with whom they have had a romantic relationship or sexual intimacy. Licensed substance abuse treatment practitioners shall not engage in romantic relationships or sexual intimacies with former clients within a minimum of five years after terminating the counseling relationship. Licensed substance abuse treatment practitioners who engage in such relationship or intimacy after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitive nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of or participation in sexual behavior or involvement with a licensed substance abuse treatment practitioner does not change the nature of the conduct nor lift the regulatory prohibition;

3. Not engage in any sexual intimacy or romantic relationship or establish a counseling or psychotherapeutic relationship with a supervisee or student. Licensed substance abuse treatment practitioners shall avoid any nonsexual dual relationship with a supervisee or student in which there is a risk of exploitation or potential harm to the supervisee or the potential for interference with the supervisor's professional judgment; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

E. Persons licensed by this board shall report to the board known or suspected violations of the laws and regulations governing the practice of substance abuse treatment.

F. Persons licensed by the board shall advise their clients of their right to report to the Department of Health Professions any information of which the licensee may become aware in his professional capacity indicating that there is a reasonable probability that a person licensed or certified as a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

VA.R. Doc. No. R19-5842; Filed June 22, 2021, 2:45 p.m.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Proposed Regulation

Title of Regulation: 18VAC120-30. Regulations Governing Polygraph Examiners (amending 18VAC120-30-100, 18VAC120-30-120, 18VAC120-30-130, 18VAC120-30-160, 18VAC120-30-170, 18VAC120-30-180, 18VAC120-30-190; repealing 18VAC120-30-140, 18VAC120-30-150).

Statutory Authority: §§ 54.1-113 and 54.1-1802.1 of the Code of Virginia.

Public Hearing Information:

July 28, 2021 - noon - Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 200, Board Room 3, Richmond, Virginia 23233

Public Comment Deadline: September 17, 2021.

Agency Contact: Eric L. Olson, Board Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-7226, FAX (866) 430-1033, or email polygraph@dpor.virginia.gov.

Basis: Section 54.1-1802.1 of the Code of Virginia grants the Director of the Department of Professional and Occupational Regulation (DPOR) the powers and duties of a regulatory board and directs the director to promulgate regulations necessary for the reasonable administration of Chapter 18 (§ 54.1-1800 et seq.) of Title 54.1 of the Code of Virginia in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

Purpose: A two-year license term is aligned with the Commonwealth's biennial budget cycle for purposes of fee-setting; it provides a reasonable, less restrictive timeframe for an individual to be licensed to work without requalifying with the credentialing source, and it brings renewal requirements in line with other regulatory programs in Virginia. Currently, the majority of regulatory boards at DPOR and its companion agency, the Department of Health Professions, issue licenses on a two-year cycle. Polygraph examiner licenses are one of the few exceptions that must renew on an annual basis, which can prove burdensome to some licensees.

The public's health, safety, and welfare remains protected with this proposed regulatory change to the reinstatement regulations. In reviewing the instances where an individual lost a license simply for being late with a payment, staff conducted a review of other regulatory board reinstatement regulations. This review found that most regulatory boards have a minimum of a one-year reinstatement period, double that currently in place for polygraph examiners.

Substance: DPOR will review current renewal and reinstatement fees to ensure compliance with § 54.1-113 of the Code of Virginia and adjust as necessary. 18VAC120-30-120 is amended to increase the license period to two years from the

last day of the month in which the license was issued. DPOR is repealing 18VAC120-30-140 and 18VAC120-30-150. Qualifications for renewal is amended to incorporate provisions of 18VAC120-30-150. DPOR will amend reinstatement requirements to increase the reinstatement period to 24 calendar months. 18VAC120-30-180 is amended to clarify language to include the same provisions as those in 18VAC120-30-160. 18VAC120-30-190 is amended to increase the reinstatement period to two years.

Issues: The primary advantage to the public is increased clarity and ability to comply with regulatory requirements by implementing the proposed changes, which are the direct result of feedback received from licensees. Polygraph examiners will benefit from a less burdensome path to reinstate an expired license without needing to meet a reexamination requirement. There are no identified disadvantages to the public. The primary advantage to the agency and the Commonwealth is increased understanding and compliance by licensees with regulatory requirements, since the proposed changes resulted directly from input from the licensing staff because of interaction with licensees. There are no identified disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Professional and Occupational Regulation (DPOR) proposes to: 1) change the length of polygraph examiner licensure from 12 months to 24 months, 2) change the license renewal fee from \$55 for 12 months to \$110 for 24 months, 3) change the Application for Examiner's License by Reciprocity fee from \$95 (covers the first year of licensure) to \$190 (covers the first two years of licensure), 4) change the Application for Examiner's License fee from \$45 (covers the first year of licensure) to \$90 (covers the first two years of licensure), 5) increase the period of time after license expiration that the license can be reinstated from six months to 24 months, and 6) eliminate the one month grace period to pay the renewal fee.

Background. The regulation lists three license application fees: Application for Examiner's License by Reciprocity fee, Application for Examiner's License fee, and Application for Examiner's License by Examination fee.

License by Reciprocity is for polygraph examiners who are licensed in states with whom Virginia has reciprocal agreements (Alabama, Kentucky, Mississippi, North Carolina, South Carolina, Texas, Vermont and West Virginia). These applicants for Virginia licensure would not have to take the Virginia examination and would instead pay the Application for Examiner's License by Reciprocity fee.

An Application for Examiner's License is used when an individual is licensed in a state without a reciprocity agreement, and who requests to have DPOR review their application to determine if the examination completed in that state is equivalent; if DPOR determines that it is equivalent, that applicant is not required to

complete the examination. These applicants would pay the Application for Examiner's License fee.

All other applicants must pass Virginia's exam and pay the Application for Examiner's License by Examination fee.

Estimated Benefits and Costs.

Changes in License Length and Fees

The table below shows how application fees would change for the types of licensure application. Under the current regulation, where the license lasts for one year, a renewal fee must be paid for the second year. The renewal fee in the current regulation is \$55. Under the proposed regulation, where the license lasts for two years, no renewal fee is required for the second year.

Application Fees

Application Type	Current One-Year License	Proposed Two-Year License
Examiner's License by Reciprocity	\$95	\$190
Examiner's License	\$45	\$90
Examiner's License by Examination	\$200	\$200

Taking this information into account, the tables below demonstrate that under the proposed regulation total fees for the first two years would increase by \$40 for License by Reciprocity. In addition, total fees would decrease for the other two types of application: by \$10 for an Examiner's License, and \$55 for License by Examination.

Cost for First Two Years: License by Reciprocity

	First Year	Second Year	Total First Two Years
Current Regulation	\$95	\$55	\$150
Proposed Regulation	\$190	\$0	\$190

Cost for First Two Years: Examiner's License

	First Year	Second Year	Total First Two Years
Current Regulation	\$45	\$55	\$100
Proposed Regulation	\$90	\$0	\$90

Cost for First Two Years: License by Examination

	First Year	Second Year	Total First Two Years
Current Regulation	\$200	\$55	\$255
Proposed Regulation	\$200	\$0	\$200

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After the first two years, the cost per year would be \$55 regardless of the path to licensure as the renewal fee would be \$110 every other year under the proposed regulation. This is the same per year cost as under the current regulation where the renewal fee is \$55 every year. By switching from one-year licenses to two-year licenses, polygraph examiners would have to pay more upfront, but would save the small amount of time involved in sending payment in the second year of each license term.

Late Payments. The current regulation allows what is essentially a one-month grace period in paying for license renewal. If the payment is paid up until one month after the expiration date of the license, reinstatement is not required and there is no late fee. DPOR proposes to eliminate the one-month grace period. Under the proposed regulation, the licensee would have to pay the reinstatement fee instead of the renewal fee. Practically speaking, this would essentially work out to be a \$40 late fee, since the reinstatement fee is \$150 compared to the \$110 renewal fee. This change may encourage some licensees to be more diligent about sending their renewal payment in on time.

As shown in the table below, an individual who is more than one month, but less than six months late in re-applying for licensure must pay a \$75 reinstatement fee under the current regulation. However, if the individual is more than six months late they must apply as a new applicant for licensure. According to DPOR, since 2014 there have been multiple instances in which a licensed polygraph examiner has had their license expire past the current six-month reinstatement period, which requires that they apply as a new examiner and complete all entry criteria again (including the examination) in order to become relicensed. In one instance, the individual had been licensed for nearly 20 years without incident. In many of the examples there were mitigating circumstances, outside the control of the individual that resulted in the license not being reinstated during the six-month window.

Current Regulation: Missing Payment Due Date for License Renewal

Lateness	Requirement to Retain or Regain Licensure
Zero Days <= One Month	\$55 renewal fee
One Month < Six Months	\$75 reinstatement fee
<= Six Months	Must apply as a new applicant, meeting all then current entry requirements, including retaking an examination

DPOR proposes to allow licensees to reinstate their license up until 24 months after the expiration of their license versus the current limit of six months. This would substantially benefit

licensees who are six months to 24 months late in paying for license renewal and wish to continue practicing as a polygraph examiner. These licensees would not have to apply as a new examiner and complete all entry criteria again (including the examination) in order to regain licensure. DPOR believes these licensees would not be a risk to the public's health, safety, and welfare.

Proposed Regulation: Missing Payment Due Date for License Renewal

Lateness	Requirement to Retain or Regain Licensure
Zero Days < 24 Months	\$150 reinstatement fee instead of \$110 renewal fee if earlier payment
<= 24 Months	Must apply as a new applicant, meeting all then current entry requirements, including retaking an examination

Businesses and Other Entities Affected. DPOR directly regulates polygraph examiners, but not the businesses or other entities where they work. The proposed amendments affect the 296 licensed polygraph examiners in the Commonwealth, as well as future applicants.

Small Businesses¹ Affected: As stated above, DPOR directly regulates polygraph examiners, but not the businesses or other entities where they work. According to DPOR, some examiners operate privately, and may perform polygraphs for other individuals to comply with parole or probation. They are often contracted with government entities to perform pre-employment screenings. It is not known how many work for small businesses.

Localities² Affected.³ Some localities may employ polygraph examiners. The proposal to allow reinstatement up until 24 months past the license expiration date may reduce the likelihood that their employed polygraph examiners who are late in paying for renewal have a time gap where they cannot legally work as they reapply for licensure. It is not known how many localities employ polygraph examiners.

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

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

¹Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

²"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

³§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

The proposed amendments extend the license term and reinstatement periods currently in place for polygraph examiners, eliminating the requirement that licenses be renewed annually and extending the reinstatement period to provide a longer amount of time a licensee may be late with a renewal payment and not have the license terminated.

18VAC120-30-100. Fees.

A. All application fees for licenses and registrations are nonrefundable and shall not be prorated. The date of receipt by the department is the date that will be used to determine whether or not the fee is on time.

B. Application and examination fees must be submitted with the application for licensure. All other fees are discussed in greater detail in later sections of this chapter.

C. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department.

D. 1. The following fees listed in the table apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Application for Examiner's License	\$45 \$90	With application
Application for Examiner's License by Reciprocity	\$95 \$190	With application
Application for Intern Registration	\$75	With application
Application for Examiner's License by Examination	\$200	With application
Reexamination	\$200	With approval letter
Renewal	\$55 \$110	Up to one calendar month after the expiration date on the license
Reinstatement	\$75 \$150	One to six From the expiration date to 24 calendar months after the expiration date on license

2. For renewal fees received on or before June 30, 2020, the fee shall be ~~\$20~~ \$40.

18VAC120-30-120. Renewal required.

Licenses issued under this chapter shall expire ~~12 months~~ 24 months from the last day of the month in which the license was issued, as indicated on the license.

18VAC120-30-130. Procedures for renewal.

The department will mail a renewal application form to the licensee at the last known address of department record. Failure to receive this notice shall not relieve the licensee of the obligation to renew. Prior to the expiration date shown on the license, each licensee desiring to renew his license must return to the department all required forms and the appropriate fee as referenced in 18VAC120-30-100. Any licensee who fails to submit the renewal payment on or prior to the expiration date shall be required to apply for reinstatement.

18VAC120-30-140. Fees for renewal. (Repealed.)

~~Licenses shall be required to renew their license by submitting the proper fee made payable to the Treasurer of Virginia. Any licensee who fails to renew within one calendar month after the license expires, shall be required to apply for reinstatement.~~

18VAC120-30-150. Department discretion to deny renewal. (Repealed.)

~~The department may deny renewal of a license for the same reasons as it may refuse initial licensure or discipline a licensee. The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).~~

~~Failure to timely pay a monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or examination administration.~~

18VAC120-30-160. Qualifications for renewal.

A. Applicants for renewal of a license shall continue to meet the standards for entry as set forth in subdivisions A 2 through A 5 of 18VAC120-30-40. ~~The board may deny renewal of a license for the same reasons as it may refuse initial issuance or discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).~~

B. The department may deny renewal of a license for the same reasons as it may refuse initial licensure or discipline a licensee. The licensee has a right to appeal any such action by the department under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

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C. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as, ~~but not limited to,~~ renewal, reinstatement, or processing of a new application; or exam administration.

18VAC120-30-170. Reinstatement required.

A. Any licensee who fails to renew his license ~~within one calendar month after~~ on or prior to the expiration date on the license shall be required to apply for reinstatement and submit the proper fee referenced in 18VAC120-30-100.

B. ~~Six~~ Twenty-four calendar months after the expiration date on the license, reinstatement is no longer possible. To resume practice as a polygraph examiner, the former licensee must apply as a new applicant for licensure, meeting all then current entry requirements at the time of reapplication, including retaking an examination.

C. Any examiner activity conducted subsequent to the expiration of the license may constitute unlicensed activity and may be subject to prosecution under § 54.1-111 of the Code of Virginia.

18VAC120-30-180. ~~Department discretion to deny~~ Qualifications for reinstatement.

~~The department may deny reinstatement of a license for the same reasons as it may refuse initial licensure or discipline a licensee.~~

A. Applicants for reinstatement of a license shall continue to meet the standards for entry as set forth in subdivisions A 2 through A 5 of 18VAC120-30-40.

B. The department may deny reinstatement of a license for the same reasons as it may refuse initial licensure or discipline a licensee. The licensee has a right to appeal any such action by the department under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

C. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding the services provided by the department, such as, ~~but not limited to,~~ renewal, reinstatement, processing of a new application, or examination administration. ~~The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).~~

18VAC120-30-190. Status of a license during the period before reinstatement.

A. When a license is reinstated, the licensee shall continue to have the same license number and shall be assigned an expiration date ~~one year~~ two years from the previous expiration date of the license.

B. A licensee who reinstates his license shall be regarded as having been continually licensed without interruption. Therefore, the licensee shall remain under the disciplinary authority of the department during this entire period. Nothing in this chapter shall divest the department of its authority to discipline a licensee for a violation of the law or regulations during the period of licensure.

VA.R. Doc. No. R19-5965; Filed June 24, 2021, 10:55 a.m.

BOARD OF PSYCHOLOGY

Final Regulation

Title of Regulation: **18VAC125-20. Regulations Governing the Practice of Psychology (amending 18VAC125-20-10, 18VAC125-20-150).**

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

Effective Date: August 18, 2021.

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

Summary:

The amendments define conversion therapy and establish that the standard of practice for persons licensed or registered by the board preclude the provision of conversion therapy to persons younger than 18 years of age. Changes to the proposed regulation adjust the definition of "conversion therapy" to reference the definition of that term in § 54.1-2409.5 of the Code of Virginia.

18VAC125-20-10. Definitions.

The following words and terms, in addition to the words and terms defined in § 54.1-3600 of the Code of Virginia, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"APA" means the American Psychological Association.

"APPIC" means the Association of Psychology Postdoctoral and Internship Centers.

"Board" means the Virginia Board of Psychology.

"CAEP" means Council for the Accreditation of Educator Preparation.

"Conversion therapy" means any practice or treatment [that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of any gender. Conversion therapy does not include: 1. Psychological services that provide assistance to a person undergoing gender transition; or 2. Psychological services that provide acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity

~~exploration and development, including sexual orientation neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such services do not seek to change an individual's sexual orientation or gender identity in any direction~~ as defined in § 54.1-2409.5 A of the Code of Virginia].

"CPA" means Canadian Psychological Association.

"Demonstrable areas of competence" means those therapeutic and assessment methods and techniques for the populations served and for which one can document adequate graduate training, workshops, or appropriate supervised experience.

"Face-to-face" means in person.

"Intern" means an individual who is enrolled in a professional psychology program internship.

"Internship" means an ongoing, supervised, and organized practical experience obtained in an integrated training program identified as a psychology internship. Other supervised experience or on-the-job training does not constitute an internship.

"NASP" means the National Association of School Psychologists.

"Practicum" means the pre-internship clinical experience that is part of a graduate educational program.

"Practicum student" means an individual who is enrolled in a professional psychology program and is receiving pre-internship training and seeing clients.

"Professional psychology program" means an integrated program of doctoral study in clinical or counseling psychology or a master's degree or higher program in school psychology designed to train professional psychologists to deliver services in psychology.

"Regional accrediting agency" means one of the six regional accrediting agencies recognized by the U.S. Secretary of Education established to accredit senior institutions of higher education.

"Residency" means a post-internship, post-terminal degree, supervised experience approved by the board.

"Resident" means an individual who has received a doctoral degree in a clinical or counseling psychology program or a master's degree or higher in school psychology and is completing a board-approved residency.

"School psychologist-limited" means a person licensed pursuant to § 54.1-3606 of the Code of Virginia to provide school psychology services solely in public school divisions.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented individual

consultation, guidance, and instruction with respect to the skills and competencies of the person supervised.

"Supervisor" means an individual who assumes responsibility for the education and training activities of a person under supervision and for the care of such person's clients and who provides supervision consistent with the training and experience of both the supervisor and the person under supervision and with the type of services being provided.

18VAC125-20-150. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Psychologists respect the rights, dignity, and worth of all people and are mindful of individual differences. Regardless of the delivery method, whether face-to-face or by use of technology, these standards shall apply to the practice of psychology.

B. Persons regulated by the board shall:

1. Provide and supervise only those services and use only those techniques for which they are qualified by education, training, and appropriate experience;
2. Delegate to persons under their supervision only those responsibilities such persons can be expected to perform competently by education, training, and experience;
3. Maintain current competency in the areas of practices through continuing education, consultation, or other procedures consistent with current standards of scientific and professional knowledge;
4. Accurately represent their areas of competence, education, training, experience, professional affiliations, credentials, and published findings to ensure that such statements are neither fraudulent nor misleading;
5. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services. Make appropriate consultations and referrals consistent with the law and based on the interest of patients or clients;
6. Refrain from undertaking any activity in which their personal problems are likely to lead to inadequate or harmful services;
7. Avoid harming, exploiting, misusing influence, or misleading patients or clients, research participants, students, and others for whom they provide professional services and minimize harm when it is foreseeable and unavoidable;
8. Not engage in, direct, or facilitate torture, which is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, or

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in any other cruel, inhuman, or degrading behavior that causes harm;

9. Withdraw from, avoid, adjust, or clarify conflicting roles with due regard for the best interest of the affected party and maximal compliance with these standards;

10. Make arrangements for another professional to deal with emergency needs of clients during periods of foreseeable absences from professional availability and provide for continuity of care when services must be terminated;

11. Conduct financial responsibilities to clients in an ethical and honest manner by:

- a. Informing clients of fees for professional services and billing arrangements as soon as is feasible;
- b. Informing clients prior to the use of collection agencies or legal measures to collect fees and provide opportunity for prompt payment;
- c. Obtaining written consent for fees that deviate from the practitioner's usual and customary fees for services;
- d. Participating in bartering only if it is not clinically contraindicated and is not exploitative; and
- e. Not obtaining, attempting to obtain, or cooperating with others in obtaining payment for services by misrepresenting services provided, dates of service, or status of treatment.

12. Be able to justify all services rendered to clients as necessary for diagnostic or therapeutic purposes;

13. Construct, maintain, administer, interpret, and report testing and diagnostic services in a manner and for purposes that are current and appropriate;

14. Design, conduct, and report research in accordance with recognized standards of scientific competence and research ethics. Practitioners shall adhere to requirements of § 32.1-162.18 of the Code of Virginia for obtaining informed consent from patients prior to involving them as participants in human research, with the exception of retrospective chart reviews;

15. Report to the board known or suspected violations of the laws and regulations governing the practice of psychology;

16. Accurately inform a client or a client's legally authorized representative of the client's diagnoses, prognosis, and intended treatment or plan of care. A psychologist shall present information about the risks and benefits of the recommended treatments in understandable terms and encourage participation in the decisions regarding the patient's care. When obtaining informed consent treatment for which generally recognized techniques and procedures have not been established, a psychologist shall inform clients of the developing nature of the treatment, the potential risks involved, alternative treatments that may be available, and the voluntary nature of their participation;

17. Clearly document at the outset of service delivery what party the psychologist considers to be the client and what, if any, responsibilities the psychologist has to all related parties;

18. Determine whether a client is receiving services from another mental health service provider, and if so, document efforts to coordinate care; ~~and~~

19. Document the reasons for and steps taken if it becomes necessary to terminate a therapeutic relationship (e.g., when it becomes clear that the client is not benefiting from the relationship or when the psychologist feels endangered). Document assistance provided in making arrangements for the continuation of treatment for clients, if necessary, following termination of a therapeutic relationship; and

20. Not engage in conversion therapy with any person younger than 18 years of age.

C. In regard to confidentiality, persons regulated by the board shall:

1. Keep confidential their professional relationships with patients or clients and disclose client information to others only with written consent except as required or permitted by law. Psychologists shall inform clients of legal limits to confidentiality;
2. Protect the confidentiality in the usage of client information and clinical materials by obtaining informed consent from the client or the client's legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using clinical information in teaching, writing, or public presentations; and
3. Not willfully or negligently breach the confidentiality between a practitioner and a client. A disclosure that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

D. In regard to client records, persons regulated by the board shall:

1. Maintain timely, accurate, legible, and complete written or electronic records for each client. For a psychologist practicing in an institutional setting, the recordkeeping shall follow the policies of the institution or public facility. For a psychologist practicing in a noninstitutional setting, the record shall include:
 - a. The name of the client and other identifying information;
 - b. The presenting problem, purpose, or diagnosis;
 - c. Documentation of the fee arrangement;
 - d. The date and clinical summary of each service provided;
 - e. Any test results, including raw data, or other evaluative results obtained;

- f. Notation and results of formal consults with other providers; and
- g. Any releases by the client;

2. Maintain client records securely, inform all employees of the requirements of confidentiality and dispose of written, electronic, and other records in such a manner as to ensure their confidentiality; and

3. Maintain client records for a minimum of five years or as otherwise required by law from the last date of service, with the following exceptions:

- a. At minimum, records of a minor child shall be maintained for five years after attaining 18 years of age;
- b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or
- c. Records that have been transferred pursuant to § 54.1-2405 of the Code of Virginia pertaining to closure, sale, or change of location of one's practice.

E. In regard to dual relationships, persons regulated by the board shall:

1. Not engage in a dual relationship with a person under supervision that could impair professional judgment or increase the risk of exploitation or harm. Psychologists shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;

2. Not engage in sexual intimacies or a romantic relationship with a student, supervisee, resident, intern, therapy patient, client, or those included in collateral therapeutic services (such as a parent, spouse, or significant other of the client) while providing professional services. For at least five years after cessation or termination of professional services, not engage in sexual intimacies or a romantic relationship with a therapy patient, client, or those included in collateral therapeutic services. Consent to, initiation of, or participation in sexual behavior or romantic involvement with a psychologist does not change the exploitative nature of the conduct nor lift the prohibition. Because sexual or romantic relationships are potentially exploitative, psychologists shall bear the burden of demonstrating that there has been no exploitation, based on factors such as duration of therapy, amount of time since therapy, termination circumstances, client's personal history and mental status, and adverse impact on the client;

3. Not engage in a personal relationship with a former client in which there is a risk of exploitation or potential harm or if the former client continues to relate to the psychologist in his professional capacity; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

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

VA.R. Doc. No. R19-5824; Filed June 22, 2021, 2:45 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: 20VAC5-360. Licensed Professional Engineer to Exercise Responsible Charge over Certain Natural Gas Engineering Projects (adding 20VAC5-360-10 through 20VAC5-360-50).

Statutory Authority: §§ 12.1-13 and 56-257.2:1 of the Code of Virginia.

Effective Date: January 1, 2022.

Agency Contact: Lauren Govoni, Director, Utility and Railroad Safety Division, 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:

The regulatory action establishes a new chapter, 20VAC5-360, Licensed Professional Engineer to Exercise Responsible Charge over Certain Natural Gas Engineering Projects. The new regulation requires that licensed professional engineers exercise responsible charge over certain pipeline projects undertaken by natural gas companies jurisdictional to the State Corporation Commission where such projects, among other things, present a material risk to public safety and includes a mechanism by which operators may request a temporary waiver of such regulations. Changes to the proposed regulation specify gas engineering projects and activities

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over which professional engineers are required to exercise responsible charge.

AT RICHMOND, MAY 13, 2021

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. URS-2020-00052

Ex Parte: In the matter of adopting new rules of the State Corporation Commission requiring licensed professional engineers to exercise responsible charge over certain pipeline projects under § 56-257.2:1 of the Code of Virginia

ORDER ADOPTING REGULATIONS

During its 2020 Session, the Virginia General Assembly enacted Chapter 822 (SB 385) of the 2020 Virginia Acts of Assembly ("Act"), which became effective on July 1, 2020. The Act, inter alia, amended the Code of Virginia ("Va. Code") by adding a section, § 56-257.2:1, to require the State Corporation Commission ("Commission") to promulgate regulations requiring that a licensed professional engineer exercise responsible charge over engineering projects that (i) involve gas pipeline facilities, as defined in the federal regulations promulgated under 49 U.S.C. § 60101 et seq., as amended and adopted by the Commission, and the federal pipeline safety laws, and (ii) may present a material risk to public safety. These regulations are in furtherance of the Act's related amendment to a provision of the Va. Code that, inter alia, had generally exempted employees of Commission-regulated public service corporations from professional engineer licensing, when those employees provided engineering services in connection with public service corporations' facilities regulated by the Commission. The Act further required the Commission to convene a stakeholder group ("Stakeholder Group"), including representatives of natural gas utilities in the Commonwealth, and to direct such stakeholder group to develop and propose to the Commission recommendations concerning such regulations no later than December 1, 2020. Pursuant to the Commission's May 29, 2020, Order in Case No. URS-2020-00052, the Staff of the Commission ("Staff") filed the Staff Report which included recommendations and proposed regulations compiled as a result of the greater Stakeholder Group.

On December 9, 2020, the Commission entered an Order for Notice and Comment in this proceeding which, among other things, permitted the filing of comments on the proposed regulations ("Proposed Rules") by interested persons and the Staff. The Proposed Rules were attached to the Commission's Order for Notice and Comment. Rebecca Golden, representing the Virginia Society of Professional Engineers, Joseph Hines, and the American Gas Association filed separate comments on January 26, 2021, February 2, 2021, and February 3, 2021,

respectively. Washington Gas Light Company, Appalachian Natural Gas Distribution Company, Atmos Energy Corporation, Columbia Gas of Virginia, Inc., Roanoke Gas Company, Southwestern Virginia Gas Company, and Virginia Natural Gas (collectively the "LDCs" or "Joint Commenters"), filed joint comments on the Proposed Rules on February 2, 2021.

On February 25, 2021, Staff filed its comments, ("Staff Comments") including certain revisions to the Proposed Rules, offered by Staff in response to the comments provided by interested persons and the LDCs.

On April 6, 2021, the Joint Commenters filed their Motion for Leave to File Supplemental Comments and Withdraw the Request for a Hearing ("Motion for Leave and to Withdraw Request for Hearing").¹

NOW THE COMMISSION, upon consideration of the foregoing, finds that we should adopt the Proposed Rules appended hereto as Attachment A effective July 1, 2021 ("Rules") and also grant the Motion for Leave and to Withdraw Request for Hearing. As an initial matter, the Commission expresses appreciation to the Stakeholder Group and to those who have submitted written comments for our consideration. We have carefully reviewed and considered all comments filed in this matter. The Rules adopted today are intended to enhance pipeline safety in the Commonwealth. As experience is gained and lessons are learned in the regulation of pipeline safety, the Commission may update and revise these Rules as needed. In this regard, we further note that the Rules permit requests for waiver.²

The Rules we adopt herein contain modifications to the regulations that were first proposed by Staff and published in the Virginia Register of Regulations on January 4, 2021. Consideration of all comments filed in this proceeding informed our modification of those regulations as emphasized below. Although we will not comment on each Rule in detail, there are several provisions that we will address further herein.

20 VAC 5-360-30 C 2

As proposed by the Joint Commenters, we find that exempting from professional engineer review certain routine operating adjustments and like-kind component replacements, performed at district regulator stations, compressor stations, or gate stations that alter or modify the configuration or overpressure of equipment is reasonable where the operator specifies in detail the meaning of "like-kind" components within their respective Operations and Maintenance manuals required by the Commission's Pipeline Safety Standards.

20 VAC 5-360-30 C 5

We accept as reasonable the alternative language as proposed by the Joint Commenters, and the LCDs commitment to define in detail "minor adjustments" and "routine maintenance"

within their respective Operations and Maintenance manuals required by the Commission's Pipeline Safety Standards.

20 VAC 5-360-30 C 7

We support the amended definition of "Public Right-of-Way", finding reasonable the amended language proposed by the Staff and endorsed subsequently by Joint Commenters.

20 VAC 5-360-30 C 8

We agree with the Staffs clarification to Rule C8 which is also supported by the Joint Commenters. We therefore endorse the following language:

Installation or abandonment of service lines connecting to transmission lines or installation or abandonment of service lines connecting to high-pressure distribution mains with a MAOP that exceeds 100 p.s.i.g.

20 VAC 5-360-30 C 10

We reject amendments to this section as proposed by Joint Commenters, finding persuasive and reasonable Staffs Comments relative to existing standards in the Code of Federal Regulations.

Accordingly, IT IS ORDERED THAT:

(1) The Rules requiring that a licensed professional engineer exercise responsible charge over certain pipeline projects under Va. Code § 56-257.2:1, 20 VAC 5-360-10 et seq., as shown in Attachment A to this Order Adopting Regulations ("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) The Joint Commenters' Motion for Leave to File Supplemental Comments and Withdraw the Request for a Hearing is granted.

(4) 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

(5) 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.

¹The Joint Commenters attached their supplemental comments to the Motion for Leave and to Withdraw Request for Hearing.

²20 VAC 5-360-50.

AT RICHMOND, JUNE 24, 2021

COMMONWEALTH OF VIRGINIA, ex rel.

CASE NO. URS-2020-00052

Ex Parte: In the matter concerning regulations required by Chapter 822 of the 2020 Acts of Assembly

ORDER ON RECONSIDERATION

On May 13, 2021, the State Corporation Commission ("Commission") issued an Order Adopting Regulations in this docket, promulgating new regulations requiring that licensed professional engineers exercise responsible charge over certain engineering projects involving gas pipeline facilities in Virginia ("Rules").

On June 1, 2021, Virginia Natural Gas, Inc., Washington Gas Light Company, Appalachian Natural Gas Distribution Company, Atmos Energy Corporation, Columbia Gas of Virginia, Inc., Roanoke Gas Company, and Southwestern Virginia Gas Company (collectively, the "Joint Commenters") filed a Limited Petition for Reconsideration ("Petition"). Specifically, the Joint Commenters sought to continue the effective date of the Rules from July 1, 2021, to January 1, 2022.

On June 3, 2021, the Commission issued an Order Granting Reconsideration for purposes of continuing Commission jurisdiction over the matter while considering the Petition, and on June 10, 2021, issued an Order scheduling additional pleadings attendant to the Petition.¹

On June 14, 2021, Commission Staff filed a letter in response to the Petition stating that Staff did not object to the request for relief in the Petition.

On June 17, 2021, the Joint Commenters filed a reply to Staff letter, noting Staff's lack of objection.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that the Limited Petition for Reconsideration should be granted.

Accordingly, IT IS ORDERED THAT:

(1) The Limited Petition for Reconsideration is granted.

(2) Ordering Paragraph (1) of the Order Adopting Regulations is amended to reflect the implementation date of the Rules as January 1, 2022. The remainder of the May 13, 2021 Order Adopting Regulations remains in full force and effect.

(3) The Order Adopting Regulations is no longer suspended.

(4) This case is dismissed.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in

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this matter. The Service List is available from the Clerk of the Commission.

¹On June 16, 2021, the American Gas Association filed comments supporting the request for relief in the Petition.

Chapter 360

Licensed Professional Engineer to Exercise Responsible Charge over Certain Natural Gas Engineering Projects

20VAC5-360-10. Purpose and scope.

This chapter delineates standards used by the commission to enforce the provisions of § 56-257.2:1 of the Code of Virginia. This chapter further details certain standards and requirements for professional engineering oversight of projects that (i) involve gas pipeline facilities, as defined in the federal regulations promulgated under 49 USC § 60101 et seq., as amended and adopted by the commission pursuant to § 56-257.2 of the Code of Virginia, and the federal pipeline safety laws and (ii) may present a material risk to public safety.

20VAC5-360-20. Definitions.

Terms used in this chapter shall have the same meaning and effect as in the federal pipeline safety laws under 49 USC § 60101 et seq. and 49 CFR Parts 191, 192, 193, 195, and 199. In addition, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Act" means Chapter 822 of the 2020 Acts of Assembly.

"Bypass" means a pipeline connection or control mechanism installed in order to allow construction, maintenance, or repair work, thus altering the flow of gas or hazardous liquid to different facilities other than those transporting the gas prior to installation of the pipeline connection or control mechanism.

"Commission" means the Virginia State Corporation Commission.

"Commission's pipeline safety standards" means standards for gas and hazardous liquid pipeline facilities adopted, prescribed, or enforced by the commission pursuant to §§ 56-257.2 and 56-555 of the Code of Virginia; 49 USC § 60101 et seq.; and 20VAC5-300-70, 20VAC5-307-10, and 20VAC5-308-10.

"Compressor stations" means pipeline facilities that compress natural gas, increasing the pressure and providing the energy needed to move the gas through the pipeline.

"District regulator stations" means a pressure regulating station that controls pressure to a high-pressure or low-pressure distribution main.

"Emergency work" means nonroutine maintenance or repair work, such as repairs to hazardous leaks, that should be performed immediately. Examples include third party damages, repairs, work to maintain priority service, reduce

customer outages as a matter of safety, and compromises to system integrity as a cause of overpressurization.

"Engineered structures" means distribution mains vertically attached to buildings, overpasses, or water crossings.

"Gate station" means pressure regulating stations where custody of natural gas or hazardous liquid is transferred from an interstate supplier to a Virginia public service company.

"Maintenance" means any repair or rehabilitation activity performed on a pipeline facility or prescribed by 49 CFR 192, Subpart M.

"MAOP" means maximum allowable operating pressure.

"O&M Procedures" means any operations or maintenance procedures or processes prepared by the operator for conducting operations and maintenance activities or emergency response, as prescribed by 49 CFR 192, Subpart L.

"Peak shaving facilities" means pipeline storage facilities designed to house natural gas or propane gas for reintroduction into an operator's system at times of peak demand. These facilities may store liquefied natural gas or liquefied petroleum gas.

"P.E. stamp" means a professional seal as prescribed by 18VAC10-20-760, pertaining to use of seal.

"Public right-of-way" means any portion of a designated interstate, [freeway highway], or [limited access] expressway [as well as any other principal arterial roadway with four or more lanes, or freeway] as defined in the Federal Highway Administration's Highway Functional Classification Concepts, Criteria and Procedures. Section 3.1 (see: https://www.fhwa.dot.gov/planning/processes/statewide/related/highway_functional_classifications/fcauab.pdf).

"Professional engineer" or "P.E." means a person who is qualified to practice engineering by reason of special knowledge and use of mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as a professional engineer.

"PSIG" means pounds per square inch, gauge.

"Repair" means any activity on a distribution main or transmission line that calls for removing the leak by cutting out and replacing a cylindrical piece of pipe, installing a pressure-carrying full encirclement welded split sleeve of appropriate design, or any other permanent repair that is consistent with 49 CFR § 192.717.

"Tie-in" means any process of connecting a newly installed pipeline to either an existing pipeline or another newly installed pipeline by means of joining.

"Uprating" means the act of increasing maximum allowable operating pressures for pipelines.

20VAC5-360-30. Use of professional engineers.

A. Any gas pipeline engineering plans or specifications for engineering work or services that (i) involve gas pipeline facilities, as defined in the federal regulations promulgated under 49 USC § 60101 et seq., as amended and adopted by the commission in the commission's pipeline safety standards pursuant to § 56-257.2 of the Code of Virginia, and the federal pipeline safety laws and (ii) may present a material risk to public safety must be produced by or under the direct charge and supervision of a professional engineer with sufficient knowledge of a gas company's natural gas distribution system, and such plans or specifications must bear the professional engineer's stamp, in accordance with § 54.1-406 of the Code of Virginia.

B. A professional engineer must ensure that the plan or specification conforms to the applicable pipeline safety laws, regulations, and standards, and the review and use of a professional engineer's stamp must comply with the professional and ethical obligations set forth in Virginia.

C. Engineering services involving gas pipeline facilities and that present a material risk to public safety shall include:

1. New installation of district pressure regulator stations, compressor stations, or gate stations.
2. Reconfiguration or physical facility changes, [other than routine operating adjustments and like-kind replacements,] performed at district pressure regulator stations, compressor stations, or gate stations that alter or modify the configuration or overpressure protection of equipment.
3. Installation, uprating, repair, or abandonment of intrastate transmission pipelines.
4. Any distribution main piping modifications or replacement work falling within established district regulator awareness zones as established by each operator.
5. [~~Any construction~~ Construction] or maintenance work on distribution mains [, other than routine maintenance, inspections, and minor adjustments,] that changes the system operating pressure and requires a bypass or a change in the system operating pressure that involves more than two tie-ins.
6. Installation of distribution mains where such mains attach to bridges or other engineered structures.
7. Installation of distribution mains, including replacements and extension projects, that are within or cross any public right-of-way.
8. Installation or abandonment of service lines connecting to transmission lines or [a installation or abandonment of service lines connecting to] high-pressure distribution

[~~main mains~~] with a MAOP that exceeds [~~90-PSIG~~ 100 psig].

9. Installation of peak shaving facilities, to include any modifications or reconfigurations that would alter such a facility's pressure delivery characteristics.

10. Any other project in the judgment of the operator that poses a material risk to public safety.

D. A professional engineer's stamp is not required for emergency work, but a professional engineer's stamp is required after the emergency has been resolved if the remaining work or services are on a project that presents a material risk to public safety.

E. Incorporation of Guidelines into Operations and Maintenance Procedures: Each public service company shall incorporate the provisions of this chapter into its written procedures as required under 49 CFR Part 192 and the commission's pipeline safety standards.

20VAC5-360-40. Documentation.

Each public service company subject to this chapter shall maintain the plans and specifications that must bear a professional engineer's stamp pursuant to this chapter at its office. These plans and specifications shall be readily accessible upon request of the commission, and they shall be maintained in accordance with the document retention timelines set forth in 49 CFR Part 192 and the commission's pipeline safety standards.

20VAC5-360-50. Commission authority.

A request for a 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 such terms and conditions as the State Corporation Commission may impose.

VA.R. Doc. No. R21-6603; Filed May 24, 2021, 12:34 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: [Public Pay Assisted Living Facility Assessment Manual.](#)

Public Comment Deadline: August 18, 2021.

Effective Date: August 19, 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 EDUCATION

Title of Document: [Curriculum Guidelines for Instruction on the Safe Use of and Risks of Abuse of Prescription Drugs.](#)

Public Comment Deadline: August 18, 2021.

Effective Date: August 19, 2021.

Agency Contact: Vanessa Wigand, Coordinator of Health, Driver, Physical and Family Life Education, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-3300, or email vanessa.wigand@doe.virginia.gov.

* * *

Title of Document: [Guidelines for Practice Year 1 of the Early Childhood Unified Measurement and Improvement System.](#)

Public Comment Deadline: August 18, 2021.

Effective Date: August 19, 2021.

Agency Contact: Kris Meyers, Associate Director of Quality Measurement and Improvement, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-3394, or email kris.meyers@doe.virginia.gov.

* * *

Title of Document: [Virginia Teacher Performance Evaluation System Handbook.](#)

Public Comment Deadline: August 18, 2021.

Effective Date: August 19, 2021.

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

Title of Document: [Procedure Manual - Environmental Impact Review of Major State Facilities.](#)

Public Comment Deadline: August 18, 2021.

Effective Date: August 19, 2021.

Agency Contact: Bettina Sullivan, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4204, or email bettina.sullivan@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: [Allowance of Licensed School Psychologists as Outpatient Psychiatric Services Providers.](#)

Public Comment Deadline: August 18, 2021.

Effective Date: August 19, 2021.

Agency Contact: Emily McClellan, Policy and Research Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, or email emily.mcclellan@dmas.virginia.gov.

BOARD OF MEDICINE

Titles of Documents: [Disclosures by Licensed Midwives for High-Risk Pregnancy Conditions.](#)

[Telemedicine.](#)

Public Comment Deadline: August 18, 2021.

Effective Date: August 19, 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.

GENERAL NOTICES

STATE AIR POLLUTION CONTROL BOARD

State Implementation Plan - Proposed Revision - Reasonably Available Control Technology - 2015 Ozone National Ambient Air Quality Standard

Notice of action: The Department of Environmental Quality (DEQ) is seeking comment on a proposed plan to implement reasonably available control technology (RACT) in support of the 2015 ozone national ambient air quality standard (NAAQS) in the Northern Virginia Emissions Control Area. The Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia State Implementation Plan (SIP) in accordance with the requirements of § 110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Clean Air Act.

Purpose of notice: DEQ is seeking comment on the issue of whether the plan correctly certifies that there are no sources subject to the Control Techniques Guidelines (CTG) for the 2016 Oil and Natural Gas Industry in the Northern Virginia Emissions Control Area (Counties of Arlington, Fairfax, Loudoun, and Prince William, and Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park).

Public comment period: July 5, 2021, to August 5, 2021.

Public hearing: A public hearing will be conducted if a request is made in writing to the contact listed at the end of this notice. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Description of proposal: The proposal consists of a declaration that there are no sources subject to the 2016 CTG for the Oil and Natural Gas Industry in the Northern Virginia Emissions Control Area in support of the 2015 ozone NAAQS. A similar declaration for the 2008 ozone NAAQS was previously approved by EPA on February 10, 2021 (86 FR 8868). Section 10(a) of the Clean Air Act requires that following adoption of the revised 2015 ozone NAAQS, affected states reevaluate whether any of the CTGs apply to sources within ozone nonattainment areas or sources within the ozone transport region (OTR). The Northern Virginia Emissions Control Area is the only portion of Virginia with a 2015 marginal ozone nonattainment area and within the OTR. DEQ has reviewed all readily available data and determined that there are still no sources within the Northern Virginia Emissions Control Area that are subject to the 2016 Oil and Natural Gas CTG.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations

(40 CFR 51.102). The proposed document will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ on the last day of the comment period. All faxes must have a cover page that lists the intended recipient. All materials received are part of the public record.

To review the proposal: The proposal is available on the DEQ Air Public Notices website at <https://www.deq.virginia.gov/permits-regulations/public-notices/air>. The proposal may also be obtained by contacting the DEQ representative listed at the end of this notice. The public may make an appointment to review the proposal between 8:30 a.m. and 4:30 p.m. of each business day until the close of the comment period at Department of Environmental Quality - Main Street Office, Suite 1400, 1111 East Main Street, Richmond, VA, telephone (804) 698-4070 or Department of Environmental Quality - Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4178.

STATE CORPORATION COMMISSION

Bureau of Insurance

May 5, 2021

Administrative Letter 2021-03

To: All Insurers and Rate Service Organizations Licensed to Write Motor Vehicle Insurance in Virginia

RE: SB 1182 and Filings for Revised Minimum Financial Responsibility Limits

Effective January 1, 2022, the minimum financial responsibility (FR) limits for all motor vehicle policies will increase to \$30,000 for bodily injury to or death of one person in any one accident and \$60,000 for bodily injury to or death of two or more persons. The limit for injury to or destruction of property of others in any one accident will remain at \$20,000. See Senate Bill 1182 (2021 Special Session 1).

The new FR minimum limits will apply to new and renewal motor vehicle policies effective on or after January 1, 2022.

Prior to that date, Insurers must have rates or rating factors filed for the new minimum bodily injury liability limits.

General Notices

Insurers should remove any references to the prior minimum FR limits of \$25,000/\$50,000 from their rating manuals.

Rates or rating factors for the corresponding minimum limits for uninsured motorist coverage must be filed as well.

In addition, pursuant to § 46.2-316 of the Code of Virginia, insurers must provide double the minimum FR limits when an insured has been convicted of certain alcohol-related offenses. Thus, insurers must file rates or rating factors to accommodate limits of \$60,000/\$120,000/\$40,000 for bodily injury and property damage liability and uninsured motorist coverages when providing FR-44 certificates.

Effective January 1, 2025, the minimum FR limits will increase to \$50,000/\$100,000/\$25,000. Insurers must have rates or rating factors filed for those limits prior to the effective date of the increase.

Each insurer may decide whether to require new uninsured motorist selection/rejection forms for existing policies based on the new minimum limits.

Please contact the Property and Casualty Division of the Bureau of Insurance at (804) 371-9965 with your questions about Administrative Letter 2021-03

/s/ Scott A. White, Commissioner of Insurance

Contact Information: Katie Johnson, Policy Advisor, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9688, or email katie.johnson@scc.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Draft Virginia State Water Resources Plan - Notice of Availability and Opportunity for Public Comment

The Virginia Department of Environmental Quality (DEQ) will release the draft 2020 Virginia State Water Resources Plan (State Plan) on June 28, 2021, for public comment. The 45-day public comment period will end August 13, 2021.

The State Plan, as required by § 62.1-44.38 of the Code of Virginia, is published at five-year intervals and compiles information provided to DEQ by localities on water sources, demand projections, water use data, and information collected through annual withdrawal reporting and withdrawal permit reporting into a central document. DEQ analyzes this information by completing cumulative impact analysis (CIA) modeling of surface water and groundwater resources. The first State Plan was published in 2015. The draft 2020 State Plan includes advances in CIA modeling, updated current and future water use and discharge data, and the addition of several new modeling scenarios that evaluate the impacts of climate change. The draft 2020 State Plan also includes 20 distinct regional analyses conducted at river basin scale which will allow evaluation of results beyond the statewide trends. The draft 2020 State Plan will be available beginning June 28,

2021, through August 13, 2021, on the DEQ website at <https://www.deq.virginia.gov/water/water-quantity/water-supply-planning/virginia-water-resources-plan>.

A free public informational webinar summarizing the draft 2020 State Plan is scheduled for July 8, 2021, at 2 p.m. During the webinar, DEQ will provide an overview of the draft 2020 State Plan's purpose and key results. Questions submitted during the webinar will be answered via a FAQ document to be posted subsequently on the DEQ website. Register for the webinar at <https://attendee.gotowebinar.com/register/1705437508121133328>.

Note that questions asked during the webinar will not be considered public comment. Written comments on the draft 2020 State Plan can be sent to the contact person listed at the end of this notice. Commenters must include name, (US mail) address, telephone number, and email address. Responses to public comment received will be included as an appendix to the final draft of the 2020 State Plan.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4178.

BOARD OF MEDICAL ASSISTANCE SERVICES

Notice of Intent to Amend the Virginia State Plan for Medical Assistance Pursuant to § 1902(a)(13) of the Social Security Act (42 USC § 1396a(a)(13)) - Office-Based Opioid Treatment Changed to Office-Based Addiction Treatment

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review using the contact information at the end of this notice.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted in writing within 30 days of this notice publication to Emily McClellan, and such comments are available for review at the same address. Comments may also be submitted in writing on the Virginia Regulatory Town Hall at <https://townhall.virginia.gov/L/generalnotice.cfm>.

In accordance with Item 313.PPPPP of the 2021 Appropriations Act, DMAS will be making the following changes:

Methods & Standards for Establishing Payment Rates-Other Types of Care (12VAC30-80)

The state plan is being revised to expand the substance use disorder service called "Preferred Office-Based Opioid Treatment," which has been available only to individuals with a primary diagnosis of opioid use disorder, to individuals with a substance-related or addictive disorder.

The expected increase in annual aggregate expenditures is \$881,307 in state general funds, \$1,255,580 in federal funds, and \$40,675 in special funds in federal fiscal year 2022.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Draft Plan First Provider Manual

The draft Plan First Provider Manual Chapter IV is now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/providers/general-information/medicaid-provider-manual-drafts/> for public comment until July 25, 2021.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Abbott Truck Sales Inc.

An enforcement action has been proposed for Abbott Truck Sales Inc. for violations in King William County. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Abbott Truck Sales site. 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 will accept comments by hand-delivery, email, fax, or postal mail from July 19, 2021, to August 19, 2021.

Contact Information: Matt Richardson, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, FAX (804) 698-4178, or email matthew.richardson@deq.virginia.gov.

Proposed Enforcement Action for Bluestone Farm Solar LLC

An enforcement action has been proposed for Bluestone Farm Solar LLC for violations in Mecklenburg County. The State

Water Control Board proposes to issue a consent order to resolve violations associated with the Bluestone Farm Solar site. 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 will accept comments by hand-delivery, email, fax, or postal mail from July 19, 2021, to August 19, 2021.

Contact Information: Matt Richardson, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, FAX (804) 698-4178, or email matthew.richardson@deq.virginia.gov.

Proposed Enforcement Action for the Carroll County Public Service Authority

An enforcement action has been proposed for the Carroll County Public Service Authority for violations of the State Water Control Law at the I-77 Exit 1 wastewater treatment plant in Carroll County. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact person will accept comments by email or postal mail from July 20, 2021, through August 19, 2021.

Contact Information: Jonathan Chapman, Enforcement Specialist, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email jonathan.chapman@deq.virginia.gov.

Proposed Enforcement Action for Fiberlight LLC

An enforcement action has been proposed for Fiberlight LLC for violations of the State Water Control Law along the Atlantic Coast Long Haul Fiber Optic Cable Installation Project route in Albemarle County and Nelson County. A description of the proposed action is available at the office listed or online at www.deq.virginia.gov/permits-regulations/public-notices. Comments will be accepted by the contact person from July 19, 2021, through August 18, 2021.

Contact Information: Kristen Sadtler, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, or email kristen.sadtler@deq.virginia.gov.

Proposed Enforcement Action for Harbour East Sewage Disposal Corporation

An enforcement action has been proposed for Harbour East Sewage Disposal Corporation for violations in Chesterfield County, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Harbour East Village waste water treatment plant. 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.

General Notices

The staff contact will accept comments by hand-delivery, email, fax at (804) 698-4178, or postal mail at Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from July 19, 2021, to August 19, 2021.

Contact Information: Matthew Richardson, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, FAX (804) 698-4178, or email matthew.richardson@deq.virginia.gov.

Proposed Enforcement Action for the Middle Peninsula Regional Airport Authority

An enforcement action has been proposed for the Middle Peninsula Regional Airport Authority for violations in King and Queen County. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Middle Peninsula Regional Airport - Transient Apron Expansion site. 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 will accept comments by hand-delivery, email, fax, or postal mail from July 19, 2021, to August 19, 2021.

Contact Information: Matthew Richardson, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, FAX (804) 698-4178, or email matthew.richardson@deq.virginia.gov.

Proposed Enforcement Action for Mizpah Healthcare Group LLC

An enforcement action has been proposed for Mizpah Healthcare Group LLC for violations in Middlesex County. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Dockside Health and Rehab Center waste water treatment plant. 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 will accept comments by hand-delivery, email, fax, or postal mail from July 19, 2021, to August 19, 2021.

Contact Information: Matt Richardson, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, FAX (804) 698-4178, or email matthew.richardson@deq.virginia.gov.

Proposed Enforcement Action for the Town of Rural Retreat

An enforcement action has been proposed for the Town of Rural Retreat for violations of the State Water Control Law at the Rural Retreat wastewater treatment plant in Wythe County. A description of the proposed action is available at the Department of Environmental Quality office listed or online at

www.deq.virginia.gov. The staff contact will accept comments by email or postal mail from June 22, 2021, until August 19, 2021.

Contact Information: Jonathan Chapman, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email jonathan.chapman@deq.virginia.gov.

Proposed Enforcement Action for VIR Associates LLC

An enforcement action has been proposed for VIR Associates LLC for violations in Sussex County. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Fairfield Inn at Stony Creek site. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact will accept comments by hand-delivery, email, fax, or postal mail from July 19, 2021, to August 19, 2021.

Contact Information: Matthew Richardson, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, FAX (804) 698-4178, or email matthew.richardson@deq.virginia.gov.

Proposed Enforcement Action for Virginia Electric and Power Company

The State Water Control Board proposes to issue a consent special order to Virginia Electric and Power Company for alleged violation of the State Water Control Law at the Hollyfield Solar Project located in King William County. 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 will accept comments by email or postal mail.

Contact Information: Jeff Reynolds, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, or email jefferson.reynolds@deq.virginia.gov.

Notice of Intent to Approve Revised Advance Credit Fee Schedules in Several River Basins for Use by the Virginia Aquatic Resources Trust Fund

Pursuant to 9VAC25-210-116, the State Water Control Board is giving notice of its intent to approve revised advance credit fee schedules in several river basins for use by the Virginia Aquatic Resources Trust Fund (VARTF). VARTF is an approved in-lieu fee mitigation program (ILF Program), sponsored and operated by The Nature Conservancy (Sponsor). This public notice is specific to the Sponsor's 2021 request to increase their fee schedule in several basins, based on rising costs of existing VARTF projects and recent bids on mitigation related activities and credit purchases.

The board intends to approve the 2021 revised fee schedules. State regulation specifies that an ILF Program must have "A mechanism to establish fee amounts that will ensure each contribution will be adequate to compensate for the wetland acreage and functions or stream functions and water quality benefits lost in the impacted watershed." In the provided "VARTF 2021 Revised Fee Schedules" document, VARTF describes the circumstances leading to the requested 2021 revised fee schedules in each river basin.

A copy of this public notice and the VARTF 2021 revised fee schedules will be available on July 19, 2021, on the Department of Environmental Quality website Wetlands and Streams Public Notice page, under the Program and Regulatory section, at <https://www.deq.virginia.gov/permits-regulations/public-notices/water/wetlands-streams>.

Statutory Authority: §§ 62.1-44.15:20 through 62.1-44.15:23 of the Code of Virginia; 9VAC25-210-116 D.

Public Comment Deadline: 11:59 p.m. on August 19, 2021.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4178.

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.

General Notices
