



# VIRGINIA

## REGISTER OF REGULATIONS

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OCTOBER 11, 2021

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Virginia Code Commission

<http://register.dls.virginia.gov>

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# THE VIRGINIA REGISTER INFORMATION PAGE

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**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](http://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; Leslie L. Lilley; Jennifer L. McClellan; Christopher R. Nolen; Don L. Scott, Jr.; Charles S. Sharp; Samuel T. Towell; Malfourd W. Trumbo; Amigo R. Wade.

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

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## PUBLICATION SCHEDULE AND DEADLINES

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

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### October 2021 through November 2022

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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 ( <b>Monday</b> )	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
39:1	August 10, 2022	August 29, 2022
39:2	August 24, 2022	September 12, 2022
39:3	September 7, 2022	September 26, 2022
39:4	September 21, 2022	October 10, 2022
39:5	October 5, 2022	October 24, 2022
39:6	October 19, 2022	November 7, 2022

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

#### Initial Agency Notice

Title of Regulation: **18VAC30-21. Regulations Governing Audiology and Speech-Language Pathology.**

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

Name of Petitioner: Rebecca Delbridge.

Nature of Petitioner's Request: To allow for supervision of assistants by speech-language pathologists via telepractice.

Agency Plan for Disposition of Request: The petition will be published on October 11, 2021, in the Virginia Register of Regulations and also posted on the Virginia Regulatory Town Hall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov) to receive public comment ending November 10, 2021. Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language. This matter may be discussed at the board meeting on October 19, 2021, in the context of a periodic review of regulations. The petitioner will be informed of its decision.

Public Comment Deadline: November 10, 2021.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 597-4130, or email [audbd@dhp.virginia.gov](mailto:audbd@dhp.virginia.gov).

VA.R. Doc. No. PFR22-07; Filed September 9, 2021, 1:13 p.m.

### BOARD OF PSYCHOLOGY

#### Initial Agency Notice

Title of Regulation: **18VAC125-20. Regulations Governing the Practice of Psychology.**

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

Name of Petitioner: Diana Rexach.

Nature of Petitioner's Request: To amend requirements for residency in school psychology to accept five years of experience working as a school-psychologist limited in lieu of 1,500 hours of a supervised residency.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition has been filed with the Virginia Registrar of Regulations for publication on October 11, 2021, with a request for comment to be received until November 11, 2021. The petition will also be posted for comment on the Virginia Regulatory Town Hall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov).

At the next meeting of the Board of Psychology after the comment period, which is scheduled for December 14, 2021, the board will consider the petition and any comment received to decide whether or not to initiate the rulemaking process. The board will inform the petitioner of its decision after the comment period is concluded and the board has made its decision.

Public Comment Deadline: November 11, 2021.

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

VA.R. Doc. No. PFR22-09; Filed September 20, 2021, 1:21 p.m.



## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

#### Agency Decision

Title of Regulation: **24VAC35-30. VASAP Case Management Policy and Procedure Manual.**

Statutory Authority: §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

Name of Petitioner: Cynthia Hites.

Nature of Petitioner's Request: "I, Cynthia Hites, a citizen of the Commonwealth of Virginia, pursuant to § 2.2-4007 of the Code of Virginia, do humbly submit this petition.

For years VASAP has been flying blind regarding the number of false positive interlock readings being suffered by their clients.

Unexplained instances of failed interlock readings have classically been attributed to a glitch, or malfunction in an individual device, instead of VASAP admitting the issue is systemic in nature.

Utilizing the electrochemical fuel cell as sensor technology for interlock devices means a very high number of failed readings are expected due to sources other than consumed ethanol (C<sub>2</sub>H<sub>6</sub>O). ASAP has chosen to adopt this vastly inferior technology and has also grossly misapplied it.

In order to evaluate the full scope of effects wrought by using the fuel cell, it is now imperative the VASAP agency strive to quantify how this choice impacts the efficacy of its Interlock Program.

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# Petitions for Rulemaking

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Certain metrics need to be consistently and continually obtained for review in order to properly evaluate the VASAP IID program.

We need to know how many IIDs are installed, and how many failed readings (>.02) occur per device. Then, out of those fails, how many are deemed "violations," and of those "violations" the number of revocation hearings set, the number of clients denied due process by having their interlock time altered by ASAP, and the number of subsequent convictions.

It was estimated during a recent quarterly VASAP meeting that there are 200 failed IID readings per day. If this holds true, and if there are 7000 interlocks installed at any given time, then statistically, after 35 days, every single client has one failed reading; after 70 days that jumps to two failed readings per client, and these numbers are unacceptable.

A high number of failed interlock readings due to high BrAc would clearly be indicative of a failed program. Either the IID machines are detecting non-consumed ethanol at an unacceptably high rate, indicating systemic failure, or despite their installation, people in large numbers are deciding to attempt drunk driving, indicating systemic failure.

For VASAP to continue to neglect the obscenely high number of false positives and operate as if interlocks were reasonably accurate, would be irresponsible and highly suspect.

VASAP owes the citizens of Virginia a level of interlock accountability that, to this date, has not been realized. Without obtaining this empirical data, VASAP can continue to claim program integrity and assert purely anecdotal evidence that the interlock devices are accurate.

I would be very willing to wager that after the number of Virginia's false positives is ascertained, the interlock devices will lose all of their assumed credibility.

Employing any language the agency sees fit, I propose that the following amendment of interlock data acquisition be made to either 24VAC35-30-150, included in the annual VASAP Executive Summary, and/or included in an otherwise appropriate agency document, to be publicly disseminated on a yearly basis.

To be broken down by each individual ASAP, and by case worker, we need to know:

- 1) Number of IIDs installed
- 2) Number of failed IID readings per machine (per client).

Of all the interlock fails, further disseminated by:

- (A) Number of men, and number of women
- (B) Number of fails occurring upon rolling retest
- (C) Number of those clients with readings deemed "violations."

a) Number of clients with "violations" being given the benefit of a revocation hearing.

b) Number of clients with "violations" being given additional interlock time without being afforded due process.

(D) Number of these revocation hearings resulting in conviction.

Keeping track of these statistics will serve a vital role in affirming program integrity.

Most humbly,

Cynthia Hites"

Agency Decision: Request denied.

Statement of Reason for Decision: The petitioner requested that 24VAC35-30-150 be amended to require the Commission on the Virginia Alcohol Safety Action Program (VASAP) to collect an extensive variety of ignition interlock data. The request included an exhaustive list of data currently uncollected. The overwhelming amount of data requested by the petitioner would require the use of extensive resources from multiple agencies to include the Commission on VASAP, local Alcohol Safety Action Program offices, the Virginia Department of Motor Vehicles, and the courts. This will require the use of additional state tax dollars and extensive work by agencies that are already understaffed. Accordingly, the petition was denied.

Agency Contact: Richard L. Foy, Field Services Specialist, Commission on the Virginia Alcohol Safety Action Program, 1111 East Main Street, Suite 801, Richmond, VA 23219, telephone (804) 786-5895, or email [richard.foy@vasap.virginia.gov](mailto:richard.foy@vasap.virginia.gov).

VA.R. Doc. No. PFR21-32; Filed September 17, 2021, 1:13 p.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-193, Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concrete Products Facilities**. The purpose of the proposed action is to amend and reissue the existing general permit, which expires on December 31, 2023. This general permit regulation establishes limitations, monitoring requirements, and other conditions for point source discharges of wastewater and stormwater from concrete products facilities to surface waters in order to maintain surface water quality. Some issues that may need to be addressed as part of this proposed action include (i) updating or adding new definitions (e.g., drainage area); (ii) requiring online registrations and electronic discharge monitoring report submittals when this becomes available by the Department of Environmental Quality (DEQ) for this industry; (iii) adding chemicals or detergents used and proof of no discharge design to the registration statement; (iv) reviewing effluent limitations, monitoring frequencies, and other conditions based on past compliance history; (v) reviewing total maximum daily load requirements; (vi) reviewing special conditions to ensure they are updated and protective of water quality; (vii) reviewing stormwater requirements to see if they need updates based on the U.S. Environmental Protection Agency Industrial Multi-Sector General Permit and DEQ stormwater requirements in other general permits; and (ix) making consistent this permit's requirements with the General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880). Additional amendments may be identified following the submittal of public comments on this notice and by the technical advisory committee during deliberations of this general permit regulation.

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, and 124.

Public Comment Deadline: November 10, 2021.

Agency Contact: Elleanore M. Daub, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4111, FAX (804) 698-4178, or email [elleanore.daub@deq.virginia.gov](mailto:elleanore.daub@deq.virginia.gov).

VA.R. Doc. No. R22-6952; Filed September 9, 2021, 12:30 p.m.



## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Withdrawal of Notice of Intended Regulatory Action

Title of Regulation: **12VAC30-20. Administration of Medical Assistance Services.**

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

Notice is hereby given that the Department of Medical Assistance Services has WITHDRAWN the Notice of Intended Regulatory Action for **12VAC30-20, Administration of Medical Assistance Services**, that was published in [36:4 VA.R. 307 October 14, 2019](#). The notice was published concurrently with an emergency action that was effective November 14, 2019, through May 13, 2021. The amendments described in the notice were addressed through a fast-track regulatory action that was published in [37:24 VA.R. 3650-3656 July 19, 2021](#); therefore, the notice is withdrawn.

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](mailto:emily.mcclellan@dmas.virginia.gov).

VA.R. Doc. No. R20-5615; Filed September 21, 2021, 12:00 p.m.

#### Withdrawal of Notice of Intended Regulatory Action

Title of Regulation: **12VAC30-30. Groups Covered and Agencies Responsible for Eligibility Determination.**

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

Notice is hereby given that the Department of Medical Assistance Services has WITHDRAWN the Notice of Intended Regulatory Action for **12VAC30-30, Groups Covered and Agencies Responsible for Eligibility Determination**, that was published in [36:2 VA.R. 89-90 September 16, 2019](#). The notice was published concurrently with an emergency action that was effective October 15, 2019, through April 14, 2021. The amendments described in the notice were addressed through a fast-track regulatory action that was published in [37:24 VA.R. 3656-3658 July 19, 2021](#); therefore, the notice is withdrawn.

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](mailto:emily.mcclellan@dmas.virginia.gov).

VA.R. Doc. No. R20-5789; Filed September 21, 2021, 12:00 p.m.

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# REGULATIONS

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

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## 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.

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## TITLE 9. ENVIRONMENT

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### Final Regulation

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

**Title of Regulation:** **9VAC15-40. Small Renewable Energy Projects (Wind) Permit by Rule (amending 9VAC15-40-30).**

**Statutory Authority:** § 10.1-1197.6 of the Code of Virginia.

**Effective Date:** November 10, 2021.

**Agency Contact:** Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4178, or email mary.major@deq.virginia.gov.

#### Summary:

*Pursuant to Chapter 401 of the 2021 Acts of Assembly, Special Session I, the amendment changes the name "Secretariat of Natural Resources" to "Secretariat of Natural and Historic Resources."*

#### **9VAC15-40-30. Application for permit by rule for wind energy projects.**

A. The owner or operator of a small wind energy project with a rated capacity greater than five megawatts shall submit to the department a complete application, in which he satisfactorily accomplishes all of the following:

1. In accordance with § 10.1-1197.6 B 1 of the Code of Virginia, and as early in the project development process as practicable, furnishes to the department a notice of intent, to be published in the Virginia Register, that he intends to submit the necessary documentation for a permit by rule for a small renewable energy project;

2. In accordance with § 10.1-1197.6 B 2 of the Code of Virginia, furnishes to the department a certification by the governing body of the locality or localities wherein the small

renewable energy project will be located that the project complies with all applicable land use ordinances;

3. In accordance with § 10.1-1197.6 B 3 of the Code of Virginia, furnishes to the department copies of all interconnection studies undertaken by the regional transmission organization or transmission owner, or both, on behalf of the small renewable energy project;

4. In accordance with § 10.1-1197.6 B 4 of the Code of Virginia, furnishes to the department a copy of the final interconnection agreement between the small renewable energy project and the regional transmission organization or transmission owner indicating that the connection of the small renewable energy project will not cause a reliability problem for the system. If the final agreement is not available, the most recent interconnection study shall be sufficient for the purposes of this section. When a final interconnection agreement is complete, it shall be provided to the department. The department shall forward a copy of the agreement or study to the State Corporation Commission;

5. In accordance with § 10.1-1197.6 B 5 of the Code of Virginia, furnishes to the department a certification signed by a professional engineer licensed in Virginia that the maximum generation capacity of the small wind energy project, as designed, does not exceed 150 megawatts;

6. In accordance with § 10.1-1197.6 B 6 of the Code of Virginia, furnishes to the department an analysis of potential environmental impacts of the small renewable energy project's operations on attainment of national ambient air quality standards;

7. In accordance with § 10.1-1197.6 B 7 of the Code of Virginia, furnishes to the department, where relevant, an analysis of the beneficial and adverse impacts of the proposed project on natural resources. The owner or operator shall perform the analyses prescribed in 9VAC15-40-40. For wildlife, that analysis shall be based on information on the presence, activity, and migratory behavior of wildlife to be collected at the site for a period of time dictated by the site conditions and biology of the wildlife being studied, not exceeding 12 months;

8. In accordance with § 10.1-1197.6 B 8 of the Code of Virginia, furnishes to the department a mitigation plan pursuant to 9VAC15-40-60 that details reasonable actions to be taken by the owner or operator to avoid, minimize, or otherwise mitigate such impacts, and to measure the efficacy of those actions; provided, however, that the provisions of



this subdivision shall only be required if the department determines, pursuant to 9VAC15-40-50, that the information collected pursuant to § 10.1-1197.6 B 7 of the Code of Virginia and 9VAC15-40-40 indicates that significant adverse impacts to wildlife or historic resources are likely. The mitigation plan shall be an addendum to the operating plan of the wind energy project, and the owner or operator shall implement the mitigation plan as deemed complete and adequate by the department. The mitigation plan shall be an enforceable part of the permit by rule;

9. In accordance with § 10.1-1197.6 B 9 of the Code of Virginia, furnishes to the department a certification signed by a professional engineer licensed in Virginia that the project is designed in accordance with 9VAC15-40-80;

10. In accordance with § 10.1-1197.6 B 10 of the Code of Virginia, furnishes to the department an operating plan that includes a description of how the project will be operated in compliance with its mitigation plan, if such a mitigation plan is required pursuant to 9VAC15-40-50;

11. In accordance with § 10.1-1197.6 B 11 of the Code of Virginia, furnishes to the department a detailed site plan meeting the requirements of 9VAC15-40-70;

12. In accordance with § 10.1-1197.6 B 12 of the Code of Virginia, furnishes to the department a certification signed by the applicant that the small wind energy project has applied for or obtained all necessary environmental permits;

13. In accordance with § 10.1-1197.6 H and I of the Code of Virginia, furnishes to the department a certification signed by the applicant that the small wind energy project is being proposed, developed, constructed, or purchased by a person that is not a utility regulated pursuant to Title 56 of the Code of Virginia or provides certification that (i) the project's costs are not recovered from Virginia jurisdictional customers under base rates, a fuel factor charge, or a rate adjustment clause or (ii) the applicant is a utility aggregation cooperative formed under Article 2 (§ 56-231.38 et seq.) of Chapter 9.1 of Title 56 of the Code of Virginia;

14. Prior to authorization of the project and in accordance with §§ 10.1-1197.6 B 13 and B 14 of the Code of Virginia, conducts a 30-day public review and comment period and holds a public meeting pursuant to 9VAC15-40-90. The public meeting shall be held in the locality or, if the project is located in more than one locality, in a place proximate to the location of the proposed project; however, for projects located in nearshore waters or on state-owned submerged lands, the meeting shall be held in the locality that is the closest distance from the approximate center of the project's disturbance zone. Following the public meeting and public comment period, the applicant shall prepare a report summarizing the issues raised by the public and include any written comments received and the applicant's response to

those comments. The report shall be provided to the department as part of this application; and

15. In accordance with 9VAC15-40-110, furnishes to the department the appropriate fee.

B. Within 90 days of receiving all of the required documents and fees listed in subsection A of this section, the department shall determine, after consultation with other agencies in the Secretariat of Natural and Historic Resources, whether the application is complete and whether it adequately meets the requirements of this chapter, pursuant to § 10.1-1197.7 A of the Code of Virginia.

1. If the department determines that the application meets the requirements of this chapter, then the department shall notify the applicant in writing that he is authorized to construct and operate a small wind energy project pursuant to this chapter.

2. If the department determines that the application does not meet the requirements of this chapter, then the department shall notify the applicant in writing and specify the deficiencies.

3. If the applicant chooses to correct deficiencies in a previously submitted application, the department shall follow the procedures of this subsection and notify the applicant whether the revised application meets the requirements of this chapter within 60 days of receiving the revised application.

4. Any case decision by the department pursuant to this subsection shall be subject to the process and appeal provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

V.A.R. Doc. No. R22-6832; Filed September 21, 2021, 3:05 p.m.

**Final Regulation**

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

**Title of Regulation:** 9VAC15-60. **Small Renewable Energy Projects (Solar) Permit by Rule (amending 9VAC15-60-30).**

**Statutory Authority:** § 10.1-1197.6 of the Code of Virginia.

**Effective Date:** November 10, 2021.

**Agency Contact:** Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-

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# Regulations

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4423, FAX (804) 698-4178, or email mary.major@deq.virginia.gov.

## Summary:

*Pursuant to Chapter 401 of the 2021 Acts of Assembly, Special Session I, the amendment changes the name "Secretariat of Natural Resources" to "Secretariat of Natural and Historic Resources."*

### **9VAC15-60-30. Application for permit by rule for solar energy projects with rated capacity greater than five megawatts and disturbance zone greater than 10 acres.**

A. The owner or operator of a small solar energy project with a rated capacity greater than five megawatts and a disturbance zone greater than 10 acres, provided that the project does not otherwise meet the criteria for Part III (9VAC15-60-130 A or B) of this chapter, shall submit to the department a complete application in which he satisfactorily accomplishes all of the following:

1. In accordance with § 10.1-1197.6 B 1 of the Code of Virginia, and as early in the project development process as practicable, furnishes to the department a notice of intent, to be published in the Virginia Register, that he intends to submit the necessary documentation for a permit by rule for a small renewable energy project;
2. In accordance with § 10.1-1197.6 B 2 of the Code of Virginia, furnishes to the department a certification by the governing body of the locality or localities wherein the small renewable energy project will be located that the project complies with all applicable land use ordinances;
3. In accordance with § 10.1-1197.6 B 3 of the Code of Virginia, furnishes to the department copies of all interconnection studies undertaken by the regional transmission organization or transmission owner, or both, on behalf of the small renewable energy project;
4. In accordance with § 10.1-1197.6 B 4 of the Code of Virginia, furnishes to the department a copy of the final interconnection agreement between the small renewable energy project and the regional transmission organization or transmission owner indicating that the connection of the small renewable energy project will not cause a reliability problem for the system. If the final agreement is not available, the most recent interconnection study shall be sufficient for the purposes of this section. When a final interconnection agreement is complete, it shall be provided to the department. The department shall forward a copy of the agreement or study to the State Corporation Commission;
5. In accordance with § 10.1-1197.6 B 5 of the Code of Virginia, furnishes to the department a certification signed by a professional engineer licensed in Virginia that the maximum generation capacity of the small solar energy project, as designed, does not exceed 150 megawatts;

6. In accordance with § 10.1-1197.6 B 6 of the Code of Virginia, furnishes to the department an analysis of potential environmental impacts of the small renewable energy project's operations on attainment of national ambient air quality standards;

7. In accordance with § 10.1-1197.6 B 7 of the Code of Virginia, furnishes to the department, where relevant, an analysis of the beneficial and adverse impacts of the proposed project on natural resources. The owner or operator shall perform the analyses prescribed in 9VAC15-60-40. For wildlife, that analysis shall be based on information on the presence, activity, and migratory behavior of wildlife to be collected at the site for a period of time dictated by the site conditions and biology of the wildlife being studied, not exceeding 12 months;

8. In accordance with § 10.1-1197.6 B 8 of the Code of Virginia, furnishes to the department a mitigation plan pursuant to 9VAC15-60-60 that details reasonable actions to be taken by the owner or operator to avoid, minimize, or otherwise mitigate such impacts, and to measure the efficacy of those actions; provided, however, that the provisions of this subdivision shall only be required if the department determines, pursuant to 9VAC15-60-50, that the information collected pursuant to § 10.1-1197.6 B 7 of the Code of Virginia and 9VAC15-60-40 indicates that significant adverse impacts to wildlife or historic resources are likely. The mitigation plan shall be an addendum to the operating plan of the solar energy project, and the owner or operator shall implement the mitigation plan as deemed complete and adequate by the department. The mitigation plan shall be an enforceable part of the permit by rule;

9. In accordance with § 10.1-1197.6 B 9 of the Code of Virginia, furnishes to the department a certification signed by a professional engineer licensed in Virginia that the project is designed in accordance with 9VAC15-60-80;

10. In accordance with § 10.1-1197.6 B 10 of the Code of Virginia, furnishes to the department an operating plan that includes a description of how the project will be operated in compliance with its mitigation plan, if such a mitigation plan is required pursuant to 9VAC15-60-50;

11. In accordance with § 10.1-1197.6 B 11 of the Code of Virginia, furnishes to the department a detailed site plan meeting the requirements of 9VAC15-60-70;

12. In accordance with § 10.1-1197.6 B 12 of the Code of Virginia, furnishes to the department a certification signed by the applicant that the small solar energy project has applied for or obtained all necessary environmental permits;

13. In accordance with § 10.1-1197.6 H and I of the Code of Virginia, furnishes to the department a certification signed by the applicant that the small solar energy project is being proposed, developed, constructed, or purchased by a person that is not a utility regulated pursuant to Title 56 of the Code

**Final Regulation**

of Virginia or provides certification that (i) the project's costs are not recovered from Virginia jurisdictional customers under base rates, a fuel factor charge, or a rate adjustment clause, or (ii) the applicant is a utility aggregation cooperative formed under Article 2 (§ 56-231.38 et seq.) of Chapter 9.1 of Title 56 of the Code of Virginia;

14. Prior to authorization of the project and in accordance with § 10.1-1197.6 B 13 and B 14 of the Code of Virginia, conducts a 30-day public review and comment period and holds a public meeting pursuant to 9VAC15-60-90. The public meeting shall be held in the locality or, if the project is located in more than one locality, in a place proximate to the location of the proposed project. Following the public meeting and public comment period, the applicant shall prepare a report summarizing the issues raised by the public and include any written comments received and the applicant's response to those comments. The report shall be provided to the department as part of this application; and

15. In accordance with 9VAC15-60-110, furnishes to the department the appropriate fee.

B. Within 90 days of receiving all of the required documents and fees listed in subsection A of this section, the department shall determine, after consultation with other agencies in the Secretariat of Natural and Historic Resources, whether the application is complete and whether it adequately meets the requirements of this chapter pursuant to § 10.1-1197.7 A of the Code of Virginia.

1. If the department determines that the application meets the requirements of this chapter, then the department shall notify the applicant in writing that he is authorized to construct and operate a small solar energy project pursuant to this chapter.

2. If the department determines that the application does not meet the requirements of this chapter, then the department shall notify the applicant in writing and specify the deficiencies.

3. If the applicant chooses to correct deficiencies in a previously submitted application, the department shall follow the procedures of this subsection and notify the applicant whether the revised application meets the requirements of this chapter within 60 days of receiving the revised application.

4. Any case decision by the department pursuant to this subsection shall be subject to the process and appeal provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

VA.R. Doc. No. R22-6833; Filed September 21, 2021, 3:08 p.m.

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

**Title of Regulation:** **9VAC15-70. Small Renewable Energy Projects (Combustion) Permit by Rule (amending 9VAC15-70-30).**

**Statutory Authority:** § 10.1-1197.6 of the Code of Virginia.

**Effective Date:** November 10, 2021.

**Agency Contact:** Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4178, or email mary.major@deq.virginia.gov.

**Summary:**

*Pursuant to Chapter 401 of the 2021 Acts of Assembly, Special Session I, the amendment changes the name "Secretariat of Natural Resources" to "Secretariat of Natural and Historic Resources."*

**9VAC15-70-30. Application.**

A. The owner or operator of a combustion energy project with a rated capacity greater than five megawatts, provided that the project does not otherwise meet the criteria for Part III (9VAC15-70-130) of this chapter, shall submit to the department a complete application in which he satisfactorily accomplishes all of the following:

1. In accordance with § 10.1-1197.6 B 1 of the Code of Virginia, and as early in the project development process as practicable, furnishes to the department a notice of intent, to be published in the Virginia Register of Regulations, that he intends to submit the necessary documentation for a permit by rule for a small renewable energy project;

2. In accordance with § 10.1-1197.6 B 2 of the Code of Virginia, furnishes to the department a certification by the governing body of the locality or localities wherein the small renewable energy project will be located that the project complies with all applicable land use ordinances;

3. In accordance with § 10.1-1197.6 B 3 of the Code of Virginia, furnishes to the department copies of all interconnection studies undertaken by the regional transmission organization or transmission owner, or both, on behalf of the small renewable energy project;

4. In accordance with § 10.1-1197.6 B 4 of the Code of Virginia, furnishes to the department a copy of the final

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# Regulations

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interconnection agreement between the small renewable energy project and the regional transmission organization or transmission owner indicating that the connection of the small renewable energy project will not cause a reliability problem for the system. If the final agreement is not available, the most recent interconnection study shall be sufficient for the purposes of this section. When a final interconnection agreement is complete, it shall be provided to the department. The department shall forward a copy of the agreement or study to the State Corporation Commission;

5. In accordance with § 10.1-1197.6 B 5 of the Code of Virginia, furnishes to the department a certification signed by a professional engineer licensed in Virginia that the maximum generation capacity of the combustion energy project, as designed, does not exceed 20 megawatts;

6. In accordance with § 10.1-1197.6 B 6 of the Code of Virginia, furnishes to the department an analysis of potential environmental impacts of the small renewable energy project's operations on attainment of national ambient air quality standards;

7. In accordance with § 10.1-1197.6 B 7 of the Code of Virginia, furnishes to the department, where relevant, an analysis of the beneficial and adverse impacts of the proposed project on natural resources. The owner or operator shall perform the analyses prescribed in 9VAC15-70-40. For wildlife, that analysis shall be based on information on the presence, activity, and migratory behavior of wildlife to be collected at the site for a period of time dictated by the site conditions and biology of the wildlife being studied, not exceeding 12 months;

8. In accordance with § 10.1-1197.6 B 8 of the Code of Virginia, furnishes to the department a mitigation plan pursuant to 9VAC15-70-70 that details reasonable actions to be taken by the owner or operator to avoid, minimize, or otherwise mitigate such impacts, and to measure the efficacy of those actions; provided, however, that the provisions of this subdivision shall only be required if the department determines pursuant to 9VAC15-70-50 that the information collected pursuant to § 10.1-1197.6 B 7 of the Code of Virginia and 9VAC15-70-40 indicates that significant adverse impacts to wildlife or historic resources are likely;

9. In accordance with § 10.1-1197.6 B 9 of the Code of Virginia, furnishes to the department a certification signed by a professional engineer licensed in Virginia that the project is designed in accordance with 9VAC15-70-80;

10. In accordance with § 10.1-1197.6 B 10 of the Code of Virginia, furnishes to the department an operating plan describing how any standards established in this chapter applicable to the permit by rule will be achieved;

11. In accordance with § 10.1-1197.6 B 11 of the Code of Virginia, furnishes to the department a detailed site plan meeting the requirements of 9VAC15-70-70;

12. In accordance with § 10.1-1197.6 B 12 of the Code of Virginia, furnishes to the department a certification signed by the applicant that the combustion energy project has applied for or obtained all necessary environmental permits;

13. In accordance with § 10.1-1197.6 H and I of the Code of Virginia, furnishes to the department a certification signed by the applicant that the small combustion energy project is being proposed, developed, constructed, or purchased by a person that is not a utility regulated pursuant to Title 56 of the Code of Virginia or provides certification that (i) the project's costs are not recovered from Virginia jurisdictional customers under base rates, a fuel factor charge, or a rate adjustment clause, or (ii) the applicant is a utility aggregation cooperative formed under Article 2 (§ 56-231.38 et seq.) of Chapter 9.1 of Title 56 of the Code of Virginia;

14. Prior to authorization of the project and in accordance with §§ 10.1-1197.6 B 13 and B 14 of the Code of Virginia, conducts a 30-day public review and comment period and holds a public meeting pursuant to 9VAC15-70-90. The public meeting shall be held in the locality or, if the project is located in more than one locality, in a place proximate to the location of the proposed project. Following the public meeting and public comment period, the applicant shall prepare a report summarizing the issues raised by the public and include any written comments received and the applicant's response to those comments. The report shall be provided to the department as part of this application; and

15. In accordance with 9VAC15-70-110, furnishes to the department the appropriate fee.

B. Within 90 days of receiving all of the required documents and fees listed in subsection A of this section, the department shall determine, after consultation with other agencies in the Secretariat of Natural and Historic Resources, whether the application is complete and whether it adequately meets the requirements of this chapter, pursuant to § 10.1-1197.7 A of the Code of Virginia.

1. If the department determines that the application meets the requirements of this chapter, then the department shall notify the applicant in writing that he is authorized to construct and operate a combustion energy project pursuant to this chapter.

2. If the department determines that the application does not meet the requirements of this chapter, then the department shall notify the applicant in writing and specify the deficiencies.

3. If the applicant chooses to correct deficiencies in a previously submitted application, the department shall follow the procedures of this subsection and notify the

applicant whether the revised application meets the requirements of this chapter within 60 days of receiving the revised application.

4. Any case decision by the department pursuant to this subsection shall be subject to the process and appeal provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

VA.R. Doc. No. R22-6834; Filed September 21, 2021, 3:10 p.m.

**STATE WATER CONTROL BOARD**

**Forms**

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

**Title of Regulation:** **9VAC25-115. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities.**

**Agency Contact:** Gary, Graham, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4178, or email gary.graham@deq.virginia.gov.

FORMS (9VAC25-115)

[Change of Ownership Agreement Form \(rev. 3/2014\)](#)

[Change of Ownership Agreement Form \(rev. 4/2019\)](#)

[Department of Environmental Quality Water Division Permit Application Fee Form, Form 5 \(rev. 10/2018\)](#)

~~[Registration Statement for the General Virginia Pollutant Discharge Elimination System \(VPDES\) Permit for Seafood Processing Facilities, July 2016 reissuance \(rev. 4/2016\)](#)~~

[Registration Statement for the General Virginia Pollutant Discharge Elimination System \(VPDES\) Permit for Seafood Processing Facilities \(rev. 7/2021\)](#)

[Virginia DEQ No Exposure Certification for Exclusion from VPDES Industrial Activity Stormwater Permitting, Form SW-NEC \(rev. 9/2020\)](#)

VA.R. Doc. No. R22-6950; Filed September 21, 2021, 3:58 p.m.



**TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS**

**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:** **10VAC5-220. Qualified Education Loan Servicers (adding 10VAC5-220-10 through 10VAC5-220-90).**

**Statutory Authority:** §§ 6.2-2622 and 12.1-13 of the Code of Virginia.

**Effective Date:** October 1, 2021.

**Agency Contact:** Dustin Physioc, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 786-0831, FAX (804) 371-9416, or email dustin.physioc@scc.virginia.gov.

**Summary:**

*Pursuant to Chapters 1198 and 1250 of the 2020 Acts of Assembly, which establish a licensing and regulatory framework for qualified education loan servicers, the new regulation establishes the amount required for the surety bond, annual reporting requirements, the procedure for documenting eligibility for automatic issuance of a license, the application and renewal process, the annual fee schedule, and procedures for submitting information to the Bureau of Financial Institutions. Changes to the proposed regulation include (i) adding parameters regarding the adjustment of the surety bond amount after initial licensure and (ii) changing the time period within which a licensed qualified education loan servicer must update its information in its records with the Nationwide Multistate Licensing System and Registry to 30 days from when a change takes effect and clarifying the exception to this requirement.*

AT RICHMOND, SEPTEMBER 8, 2021

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2021-00007

Ex Parte: In the matter of Adopting Regulations Governing Qualified Education Loan Servicers under Chapter 26 of Title 6.2 of the Code of Virginia

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# Regulations

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## ORDER ADOPTING REGULATIONS

On March 9, 2021, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Bureau of Financial Institutions ("Bureau") to adopt regulations governing qualified education loan servicers, to be set forth in Chapter 220 of Title 10 of the Virginia Administrative Code.

The Bureau submitted the proposed regulations pursuant to Chapters 1198 and 1250 of the 2020 Virginia Acts of Assembly, which amended the Code of Virginia ("Code") by adding Chapter 26 of Title 6.2 (§ 6.2-2600 et seq.) of the Code ("Chapter 26"). Chapter 26 establishes a licensing and regulatory framework for qualified education loan servicers effective on July 1, 2021. The regulations implement the provisions of Chapter 26 by, among other things, establishing the amount required for the surety bond, annual reporting requirements, the procedure for documenting eligibility for automatic issuance of a license, the application and renewal process, the annual fee schedule, and procedures for submitting information to the Bureau.

The Order to Take Notice and proposed regulations were published in the Virginia Register of Regulations on March 29, 2021, posted on the Commission's website, and sent to various persons. All interested persons were afforded the opportunity to file written comments or request a hearing on or before April 16, 2021. Initial comments on the proposed regulations were filed by Virginia21; the New Virginia Majority; the Virginia Poverty Law Center ("VPLC"); the National Association of Student Loan Administrators ("NASLA"); Progress Virginia Education Fund; and the Student Loan Servicing Alliance ("SLSA").<sup>1</sup> The Commission did not receive any requests for a hearing.

Several commenters expressed concern that the proposed regulations do not impose additional reporting requirements and provided recommendations regarding the types of additional reporting that the Commission should require from licensees.<sup>2</sup> Additionally, two commenters raised preemption concerns. NASLA asserted in its comments that application of Chapter 26 and the proposed regulations to federal guarantors is preempted by federal law, and the doctrine of intergovernmental immunity bars direct state regulation of federal contractors such as federal guarantors. SLSA asserted in its comments that federal student loans are preempted from any licensing regime.

The Bureau considered the comments filed and responded to them in its Response to Comments ("Response"), which the Bureau filed with the Clerk of the Commission on May 17, 2021. The Bureau found the proposed additional reporting requirements unnecessary and did not recommend additional reporting requirements in the regulations at this time. In response to the preemption and intergovernmental immunity claims, the Bureau asserted, among other things, that the proposed regulations are consistent with Chapter 26 and

impose requirements that are within the Commission's authority under § 6.2-2622 of the Code. The Bureau requested that the Commission incorporate the modifications to the proposed regulations set forth in its Response and enter an order adopting the modified proposed regulations.

On July 9, 2021, the Commission issued an Order Requesting Additional Comments, requesting the Bureau, NASLA, SLSA, and any interested person desiring so (including others that previously filed comments), to file comments further addressing the issues of federal preemption and intergovernmental immunity raised in this docket. The Commission requested interested persons to file such comments in this docket on or before August 16, 2021.

Senator Janet Howell, Delegate Marcus Simon, Delegate Marcia "Cia" Price, the Office of the Attorney General of Virginia ("Attorney General"), the Office of Federal Student Aid of the Department of Education, the Student Borrower Protection Center, AARP Virginia, the Center for Responsible Lending, Consumer Reports, the Fairfax County Federation of Teachers (AFT Local 2401), the New Virginia Majority, the Norfolk Federation of Teachers, Progress Virginia, the Commonwealth Institute for Fiscal Analysis, Virginia21, the Virginia Civic Engagement Table, Virginia Organizing, the VPLC, NASLA, SLSA, and the Bureau filed comments in response to the Commission's July 9, 2021 Order.

NOW THE COMMISSION, upon consideration of this matter, finds that it should adopt the proposed regulations, as modified by the Bureau's recommendations, effective October 1, 2021. The Commission expresses appreciation to all those who submitted written comments for its consideration. We have considered all the comments filed in this matter, including those from the Attorney General, which we find persuasive. We therefore reject the arguments brought forth by SLSA and NASLA regarding preemption and intergovernmental immunity claims. Further, in adopting the regulations, we decline to adopt additional reporting requirements at this time. We adopt the regulations as recommended by the Bureau in its Response.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed regulations, as modified herein and attached hereto, are adopted effective October 1, 2021.
- (2) This Order and the attached regulations shall be made available on the Commission's website: [scc.virginia.gov/pages/Case-Information](http://scc.virginia.gov/pages/Case-Information).
- (3) The Commission's Division of Information Resources shall provide a copy of this Order and the regulations to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.
- (4) This case is dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

A COPY of this Order and the attached regulations shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and to the Commissioner of Financial Institutions, who shall send by e-mail or U.S. mail a copy of this Order and the attached regulations to all persons who commented in this proceeding and such other interested persons as he may designate.

<sup>1</sup>The Commission made a limited exception in an order dated July 9, 2021, to accept SLSA's comments out of time.

<sup>2</sup>See, e.g., comments of Virginia 21, Progress Virginia Education Fund, New Virginia Majority, and the VPLC. The reporting requirements were one of a number of issues commenters identified in connection with the proposed regulations.

Chapter 220  
Qualified Education Loan Servicers

**10VAC5-220-10. Definitions.**

A. The following term when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

"Chapter 26" means Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2 of the Code of Virginia.

B. Other terms used in this chapter shall have the meanings set forth in § 6.2-100 or 6.2-2600 of the Code of Virginia.

**10VAC5-220-20. Surety bond standards.**

Pursuant to § 6.2-2604 of the Code of Virginia, a surety bond shall be filed with the commissioner and continuously maintained thereafter in full force by each licensee. The form of the bond will be prescribed and provided by the commissioner. The bond amount required for licensure shall be \$50,000 or such other amount as may be prescribed by the commissioner, but not exceeding \$500,000. After initial licensure, the bond amount required may be adjusted [ annually ] as the commissioner deems necessary [ based upon information related to the licensee's servicing volume and other factors the commissioner deems pertinent ].

**10VAC5-220-30. Procedure for documenting eligibility through the Registry for automatic issuance of a license.**

A. Pursuant to subsection A of § 6.2-2602 of the Code of Virginia, a person shall be exempt from the application procedures described in subsections A and B of § 6.2-2603 of the Code of Virginia upon determination by the commissioner that the person (i) has an agreement with the U.S. Secretary of Education under 20 USC § 1078(b), solely to the extent of the person's actions as a guarantor that engages in averting defaults or (ii) is a party to a contract awarded by the U.S. Secretary of Education under 20 USC § 1087f.

B. In order to document eligibility for this exemption, a person shall:

1. Complete and submit the Registry's company filing form for the person through the Registry. Such filing shall be accompanied by the fee required by subsection C of § 6.2-2603 of the Code of Virginia and the surety bond required by § 6.2-2604 of the Code of Virginia;

2. Upload a copy of the agreement or contract described in subsection A of this section through the Registry; and

3. Provide any additional information through the Registry that the commissioner deems necessary to determine a person's eligibility for the exemption.

**10VAC5-220-40. Nationwide Multistate Licensing System and Registry.**

A. Applications for a license under Chapter 26 shall be made through the Registry in accordance with instructions provided by the commissioner. The commissioner may provide these instructions through the Registry, on the commission's website, or by any other means the commissioner deems appropriate.

B. Every licensee shall maintain current information in its records with the Registry. [ ~~Any~~ Except as otherwise required by §§ 6.2-2607 C and 6.2-2612 A of the Code of Virginia, any ] changes to a licensee's information in its records [ ~~with the Registry~~ ] shall be updated no later than [ ~~10~~ 30 ] days from when the change takes effect [ ~~unless this chapter or Chapter 26 provides otherwise~~ ].

C. If (i) any provision of Chapter 26 requires a licensee to provide the bureau, commissioner, or commission with a written notice and (ii) the Registry enables licensees to submit such notice through the Registry, then a licensee shall be deemed to have complied with the written notice requirement if the licensee timely submits the required notice through the Registry.

D. A qualified education loan servicer license shall expire at the end of each calendar year unless it is renewed by a licensee on or after November 1 of the same year. However, licenses that are granted between November 1 and December 31 shall not expire until the end of the following calendar year. Except as otherwise provided in § 6.2-2602 B 2 of the Code of Virginia, a license shall be renewed upon the commissioner finding that the licensee has (i) requested license renewal through the Registry and (ii) complied with any requirements associated with the renewal request that are imposed by the Registry.

E. If a licensee fails to timely meet the requirements specified in subsection D of this section but meets such requirements before March 1 of the following calendar year, the license shall be reinstated and renewed upon payment of a reinstatement fee of \$100.

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## **10VAC5-220-50. Books, accounts, and records.**

A. A licensee shall maintain in its principal place of business all books, accounts, and records required by Chapter 26 and this chapter.

B. A licensee may maintain records electronically, provided (i) the records are readily available for examination by the bureau and (ii) the licensee complies with [ all applicable provisions of ] the Uniform Electronic Transactions Act (§ 59.1-479 et seq. of the Code of Virginia), the Electronic Signatures in Global and National Commerce Act (15 USC § 7001 et seq.), and any other applicable laws.

## **10VAC5-220-60. Responding to requests from the Bureau of Financial Institutions; providing false, misleading, or deceptive information.**

A. If the bureau requests information from an applicant to complete a deficient application filed under § 6.2-2603 or 6.2-2609 of the Code of Virginia and the information is not received within 60 days of the request, the application shall be deemed abandoned unless a request for an extension of time is received and approved by the bureau prior to the expiration of the 60-day period.

B. When the bureau requests a written response, books, records, documentation, or other information from a licensee in connection with the bureau's investigation, enforcement, or examination of compliance with applicable laws, the licensee shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the bureau and when considering a request for an extension of time to respond, the bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information and such other factors as the bureau determines to be relevant under the circumstances. If a licensee described in subsection A of § 6.2-2602 of the Code of Virginia is unable to deliver a written response, books, records, documentation, or other information requested by the bureau, the licensee shall provide the bureau with documentation asserting the basis for the licensee's inability to comply with this subsection not later than 30 days from the date of the bureau's request.

C. A licensee or applicant shall not provide any information to the bureau, either directly or through the Registry, that is false, misleading, or deceptive.

## **10VAC5-220-70. Annual reporting requirements.**

Pursuant to subsection B of § 6.2-2612 of the Code of Virginia, each licensee shall annually, on or before March 1, file a written report with the commissioner or Registry

containing such information as the commissioner may require concerning the licensee's business and operations during the preceding calendar year.

In addition to other information required by the commissioner, the licensee shall provide the total number and dollar amount of qualified education loans serviced by the licensee pursuant to Chapter 26.

## **10VAC5-220-80. Schedule for annual fees for the examination, supervision, and regulation of qualified education loan servicers.**

Pursuant to § 6.2-2614 of the Code of Virginia, the commission sets the following schedule of annual fees to be paid by licensees. Such fees are to defray the costs of examination, supervision, and regulation of licensees by the bureau. The fees are related to the actual costs of the bureau, the volume of business of the licensees, and to other factors relating to supervision and regulation.

The annual fee shall be \$1,000 per licensee plus \$0.48 per qualified education loan serviced by the licensee pursuant to Chapter 26 during the calendar year preceding the year of the assessment. In cases where a licensee was not licensed under Chapter 26 as of December 31 of the calendar year preceding the year of the assessment, the annual fee shall be \$0.

Fees shall be assessed on or before April 1 every calendar year. By law the fee must be paid on or before May 1.

The written report filed annually by each licensee pursuant to 10VAC5-220-70 shall provide the basis for its assessment.

Fees prescribed and assessed pursuant to this schedule are apart from and do not include the following: (i) the reimbursement for expenses permitted by subsection B of § 6.2-2614 of the Code of Virginia and (ii) the annual license renewal fee authorized by subsection B of § 6.2-2601 of the Code of Virginia.

## **10VAC5-220-90. Commission authority.**

The commission may, at its discretion, waive [ ] or grant exceptions to any provision of this chapter for good cause shown.

VA.R. Doc. No. R21-6711; Filed September 9, 2021; 2:48 p.m.





**TITLE 12. HEALTH**

**STATE BOARD OF HEALTH**

**Final Regulation**

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

**Title of Regulation:** 12VAC5-371. Regulations for the Licensure of Nursing Facilities (amending 12VAC5-371-10, 12VAC5-371-140, 12VAC5-371-180).

**Statutory Authority:** §§ 32.1-12 and 32.1-127 of the Code of Virginia.

**Effective Date:** November 11, 2021.

**Agency Contact:** Rebekah E. Allen, Senior Policy Analyst, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2102, FAX (804) 527-4502, or email regulatorycomment@vdh.virginia.gov.

**Summary:**

*Pursuant to Chapter 219 of the 2021 Acts of Assembly, Special Session I, an amendment requires each nursing home and certified nursing facility establish and implement policies to ensure a patient's access to and use of an intelligent personal assistant provided by a patient while the patient is receiving inpatient services.*

*Pursuant to Chapter 525 of the 2021 Acts of Assembly, Special Session I, the other amendment requires each nursing home and certified nursing facility establish a protocol to allow patients to receive visits from clergy consistent with guidance from the Centers for Disease Control and Prevention and the Centers for Medicare and Medicaid Services and subject to compliance with any applicable federal or state guidance having the effect of limiting visitation when there is a declared public health emergency related to a communicable disease of public health threat.*

**12VAC5-371-10. Definitions.**

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

"Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish, or deprivation by an individual, including caretaker, of goods or services that are

necessary to attain or maintain physical, mental, and psychosocial well-being. This includes verbal, sexual, physical, or mental abuse.

"Administrator" means the individual licensed by the Virginia Board of Long-Term Care Administrators and who has the necessary authority and responsibility for management of the nursing facility.

"Admission" means the process of acceptance into a nursing facility, including orientation, rules and requirements, and assignment to appropriate staff. Admission does not include readmission to the facility after a temporary absence.

"Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 of the Code of Virginia, or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provision of § 54.1-2983 of the Code of Virginia.

"Assessment" means the process of evaluating a resident for the purpose of developing a profile on which to base services. Assessment includes information gathering, both initially and on an ongoing basis, designed to assist the multi-disciplinary staff in determining the resident's need for care, and the collection and review of resident-specific data.

"Attending physician" means a physician currently licensed by the Virginia Board of Medicine and identified by the resident, or legal representative, as having the primary responsibility in determining the delivery of the resident's medical care.

"Barrier crime" means any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 of the Code of Virginia.

"Board" means the Board of Health.

"Cannabidiol oil" means the same as the term is defined in subsection A of § 54.1-3408.3 of the Code of Virginia.

"Certified nurse aide" means the title that can only be used by individuals who have met the requirements to be certified, as defined by the Virginia Board of Nursing, and who are listed in the nurse aide registry.

"Chemical restraint" means a psychopharmacologic drug (a drug prescribed to control mood, mental status, or behavior) that is used for discipline or convenience and not required to treat medical symptoms or symptoms from mental illness or mental retardation that prohibit an individual from reaching his highest level of functioning.

"Clinical record" means the documentation of health care services, whether physical or mental, rendered by direct or indirect resident-provider interactions. An account compiled by physicians and other health care professionals of a variety of resident health information, such as assessments and care

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details, including testing results, medicines, and progress notes.

"Commissioner" means the State Health Commissioner.

"Complaint" means any allegation received by the Department of Health other than an incident reported by the facility staff. Such allegations include abuse, neglect, exploitation, or violation of state or federal laws or regulations.

"Comprehensive plan of care" means a written action plan, based on assessment data, that identifies a resident's clinical and psychosocial needs, the interventions to meet those needs, treatment goals that are measurable and that documents the resident's progress toward meeting the stated goals.

"Construction" means the building of a new nursing facility or the expansion, remodeling, or alteration of an existing nursing facility and includes the initial and subsequent equipping of the facility.

"Criminal record report" means either the criminal record clearance with respect to convictions for barrier crimes or the criminal history record from the Central Criminal Records Exchange of the Virginia Department of State Police.

"Department" means the Virginia Department of Health.

"Dignity" means staff, in their interactions with residents, carry out activities which assist a resident in maintaining and enhancing the resident's self-esteem and self-worth.

"Discharge" means the process by which the resident's services, delivered by the nursing facility, are terminated.

"Discharge summary" means the final written summary of the services delivered, goals achieved and post-discharge plan or final disposition at the time of discharge from the nursing facility. The discharge summary becomes a part of the clinical record.

"Drug" means (i) articles or substances recognized in the official United States "Drug" Pharmacopoeia National Formulary or official Homeopathic Pharmacopoeia of the United States, or any supplement to any of them; (ii) articles or substances intended for the use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animal; (iii) articles or substances, other than food, intended to affect the structure or any function of the body of man or other animal; and (iv) articles or substances intended for use as a component of any article specified in clause (i), (ii), or (iii). This does not include devices or their components, parts or accessories.

"Electronic monitoring" means an unmanned video recording system with or without audio capability installed in the room of a resident.

"Emergency preparedness plan" means a component of a nursing facility's safety management program designed to manage the consequences of natural disasters or other

emergencies that disrupt the nursing facility's ability to provide care.

"Employee" means a person who performs a specific job function for financial remuneration on a full-time or part-time basis.

"Facility-managed" means an electronic monitoring system that is installed, controlled, and maintained by the nursing facility with the knowledge of the resident or legal representative in accordance with the facility's policies.

"Full-time" means a minimum of 35 hours or more worked per week in the nursing facility.

"Intelligent personal assistant" means a combination of an electronic device and a specialized software application designed to assist users with basic tasks using a combination of natural language processing and artificial intelligence, including such combinations known as digital assistants or virtual assistants.

"Legal representative" means a person legally responsible for representing or standing in the place of the resident for the conduct of his affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney, trustee, or other person expressly named by a court of competent jurisdiction or the resident as his agency in a legal document that specifies the scope of the representative's authority to act. A legal representative may only represent or stand in the place of a resident for the function for which he has legal authority to act.

"Medication" means any substance, whether prescription or over-the-counter drug, that is taken orally or injected, inserted, topically applied, or otherwise administered.

"Neglect" means a failure to provide timely and consistent services, treatment, or care to a resident necessary to obtain or maintain the resident's health, safety, or comfort or a failure to provide timely and consistent goods and services necessary to avoid physical harm, mental anguish, or mental illness.

"Nursing facility" means any nursing home as defined in § 32.1-123 of the Code of Virginia.

"OLC" means the Office of Licensure and Certification of the Virginia Department of Health.

"Person" means any individual, corporation, partnership, association, trust, or other legal entity, whether governmental or private, owning, managing, or operating a nursing facility.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's own body.

"Policy" means a written statement that describes the principles and guides and governs the activities, procedures and operations of the nursing facility.

"Procedures" means a series of activities designed to implement program goals or policy, which may or may not be written, depending upon the specific requirements within this chapter. For inspection purposes, there must be evidence that procedures are actually implemented.

"Progress note" means a written statement, signed and dated by the person delivering the care, consisting of a pertinent, chronological report of the resident's care. A progress note is a component of the clinical record.

"Qualified" means meeting current legal requirements of licensure, registration or certification in Virginia; having appropriate training and experience commensurate with assigned responsibilities; or, if referring to a professional, possessing an appropriate degree or having documented equivalent education, training or experience.

"Quality assurance" means systematic activities performed to determine the extent to which clinical practice meets specified standards and values with regard to such things as appropriateness of service assignment and duration, appropriateness of facilities and resources utilized, adequacy and clinical soundness of care given. Such activities should also assure changes in practice that do not meet accepted standards. Examples of quality assurance activities include the establishment of facility-wide goals for resident care, the assessment of the procedures used to achieve the goals, and the proposal of solutions to problems in attaining those goals.

"Readmission" means a planned return to the nursing facility following a temporary absence for hospitalization, off-site visit or therapeutic leave, or a return stay or confinement following a formal discharge terminating a previous admission.

"Resident" means the primary service recipient, admitted to the nursing facility, whether that person is referred to as a client, consumer, patient, or other term.

"Resident-managed" means an electronic monitoring system that is installed, controlled, and maintained by the resident with the knowledge of the nursing facility.

"Supervision" means the ongoing process of monitoring the skills, competencies and performance of the individual supervised and providing regular, face-to-face guidance and instruction.

"Sworn disclosure" means a written statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or outside the Commonwealth, by an applicant for compensated employment with a nursing facility.

"THC-A oil" means the same as the term is defined in subsection A of § 54.1-3408.3 of the Code of Virginia.

"Volunteer" means a person who, without financial remuneration, provides services to the nursing facility.

## **12VAC5-371-140. Policies and procedures.**

A. The nursing facility shall implement written policies and procedures approved by the governing body.

B. All policies and procedures shall be reviewed at least annually, with recommended changes submitted to the governing body for approval.

C. A written record of the annual policy review, including at least the review dates, participants, recommendations and action dates of the governing body, shall be maintained.

D. Administrative and operational policies and procedures shall include:

1. Administrative records;
2. Admission, transfer and discharge;
3. Medical direction and physician services;
4. Nursing direction and nursing services;
5. Pharmaceutical services, including drugs purchased outside the nursing facility;
6. Dietary services;
7. Social services;
8. Activities services;
9. Restorative and rehabilitative resident services;
10. Contractual services;
11. Clinical records;
12. Resident rights and grievances;
13. Quality assurance and infection control and prevention;
14. Safety and emergency preparedness procedures;
15. Professional and clinical ethics, including:
  - a. Confidentiality of resident information;
  - b. Truthful communication with residents;
  - c. Observance of appropriate standards of informed consent and refusal of treatment; and
  - d. Preservation of resident dignity, with special attention to the needs of the aged, the cognitively impaired, and the dying; and
16. Nursing facility security.

E. Personnel policies and procedures shall include:

1. Written job descriptions that specify authority, responsibility, and qualifications for each job classification;
2. An on-going plan for employee orientation, staff development, in-service training and continuing education;

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3. An accurate and complete personnel record for each employee including:

- a. Verification of current professional license, registration, or certificate or completion of a required approved training course;
- b. Criminal record check;
- c. Verification that the employee has reviewed or received a copy of the job description;
- d. Orientation to the nursing facility, its policies and to the position and duties assigned;
- e. Completed continuing education program approved for the employee as determined by the outcome of the annual performance evaluation;
- f. Annual employee performance evaluations; and
- g. Disciplinary action taken; and

4. Employee health-related information retained in a file separate from personnel files.

F. Financial policies and procedures shall include:

1. Admission agreements;
2. Methods of billing:
  - a. Services not included in the basic daily or monthly rate;
  - b. Services delivered by contractors of the nursing facility; and
  - c. Third party payers;
3. Resident or designated representative notification of changes in fees and charges;
4. Correction of billing errors and refund policy;
5. Collection of delinquent resident accounts; and
6. Handling of resident funds.

G. A nursing facility shall establish and implement policies to ensure the permissible access to and use of an intelligent personal assistant provided by a patient while receiving inpatient services. Such policies shall ensure protection of health information in accordance with the requirements of the federal Health Insurance Portability and Accountability Act of 1996 (42 USC § 1320d et seq.).

H. Policies shall be made available for review, upon request, to residents and their designated representatives.

H. I. Policies and procedures shall be readily available for staff use at all times.

## **12VAC5-371-180. Infection control.**

A. The nursing facility shall establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to prevent the development and transmission of disease and infection.

B. The infection control program shall encompass the entire physical plant and all services.

C. The infection control program addressing the surveillance, prevention and control of infections in the nursing facility shall include:

1. Procedures to isolate the infecting organism;
2. Access to handwashing equipment for staff;
3. Training of staff in proper handwashing techniques, according to accepted professional standards, to prevent cross contamination;
4. Implementation of universal precautions by direct resident care staff;
5. Prohibiting employees with communicable diseases or infections from direct contact with residents or their food, if direct contact will transmit disease;
6. Monitoring staff performance of infection control practices;
7. Handling, storing, processing and transporting linens, supplies and equipment in a manner that prevents the spread of infection;
8. Handling, storing, processing and transporting regulated medical waste in accordance with applicable regulations;
9. Maintaining an effective pest control program; and
10. Staff education regarding infection risk-reduction behavior.

D. The nursing facility shall report promptly to its local health department diseases designated as "reportable" according to 12VAC5-90-80 when such cases are admitted to or are diagnosed in the nursing facility and shall report any outbreak of infectious disease as required by 12VAC5-90. An outbreak is defined as an increase in incidence of any infectious disease above the usual incidence at the nursing facility.

E. During a declared public health emergency related to a communicable disease of public health threat, the nursing facility shall establish a protocol to allow residents to receive visits from a rabbi, priest, minister, or clergy of any religious denomination or sect consistent with guidance from the Centers for Disease Control and Prevention and the Centers for Medicare and Medicaid Services and subject to compliance with any executive order, order of public health, department guidance, or any other applicable federal or state guidance having the effect of limiting visitation.

1. Such protocol may restrict the frequency and duration of visits and may require visits to be conducted virtually using interactive audio or video technology.

2. Any such protocol may require the person visiting a resident pursuant to this subsection to comply with all reasonable requirements of the nursing facility adopted to

protect the health and safety of the person, residents, and staff of the nursing facility.

VA.R. Doc. No. R22-6877; Filed September 13, 2021, 12:24 p.m.

**DEPARTMENT OF MEDICAL ASSISTANCE  
SERVICES**

**Final Regulation**

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

**Title of Regulation:** **12VAC30-10. State Plan under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (amending 12VAC30-10-40).**

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

**Effective Date:** November 11, 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.

**Background:** Section 1902(a)(73) of the Social Security Act (42 USC § 1902) mandates that states in which an Indian health program or Urban Indian organization furnishes health care services establish a process for the state Medicaid agency, that is the Department of Medical Assistance Services (DMAS) in Virginia, to seek advice on a regular, ongoing basis from designees of the Indian health programs. Consultation is required concerning Medicaid matters having a direct impact on the Indian health programs. Virginia newly has an Indian health program that furnishes health care services, including services under Medicaid, for Pamunkey Tribe community members. DMAS must solicit advice prior to the submission of any plan amendments, waiver requests, and proposals for demonstration projects that are likely to have a direct effect on tribal members, Indian health programs, and Urban Indian organizations. DMAS has identified a program designee as an advisory contact through which the dissemination of information will occur.

**Summary:**

*The amendments conform the regulation to a requirement of the Social Security Act for the state Medicaid agency to maintain interactive communication with any Indian health organizations or Urban Indian programs that provide health services to tribal members regarding Medicaid*

*program changes that may likely have a direct effect on the administration of program services.*

**12VAC30-10-40. State Medical Care Advisory Committee.**

A. There is an advisory committee to the Medicaid agency director on health and medical care services established in accordance with and meeting all the requirements of 42 CFR 413.12 431.12.

B. Tribal consultation. Section 1902(a)(73) of the Social Security Act requires a state in which one or more Indian health programs or Urban Indian organizations furnish health care services to establish a process for the state Medicaid agency to seek advice on a regular, ongoing basis from designees of Indian health programs, whether operated by the Indian Health Service, a Tribe, or Tribal organizations under the Indian Self-Determination and Education Assistance Act (P.L. 93-638) or Urban Indian Organizations under the Indian Health Care Improvement Act (25 USC § 1601 et seq.), concerning Medicaid matters having a direct impact on Indian health programs.

C. The Department of Medical Assistance Services (DMAS) seeks advice on an ongoing basis from federally recognized tribes, Indian health programs, and Urban Indian organizations on matters related to Medicaid and Children's Health Insurance Program programs. DMAS has identified a program designee as an advisory contact, through which, the dissemination of information will occur. Designees from each Tribe, Indian health program, and Urban Indian organization receive written communication from DMAS about State Plan amendments, waiver proposals, waiver extensions, waiver amendments, and waiver renewals before any of these documents are submitted to the Centers for Medicare and Medicaid Services. Tribes, Indian health programs, and Urban Indian organizations may request additional information and may request meetings to discuss the proposed changes. DMAS invites these groups to request additional information or offer comments on proposed changes within 30 days of the notification of State Plan amendments, waiver proposals, waiver extensions, waiver amendments, or waiver renewals. For emergency-related submissions, such as a natural disaster or a legislative mandate, DMAS seeks information requests, comments, or proposed changes within 15 days of notification. The coordination of this consultation process was established through an email communication with designees from each Tribe and Indian health program on January 29, 2021. To maintain a cooperative channel of communication and informative dialogue between DMAS and the Tribal organizations, the agency sought out and will continue to seek advice on a regular, ongoing basis via email, teleconference, or meetings.

VA.R. Doc. No. R22-6863; Filed September 13, 2021, 1:29 p.m.

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# Regulations

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## Forms

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

**Title of Regulation:** **12VAC30-122. Community Waiver Services for Individuals with Developmental Disabilities.**

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

FORMS (12VAC30-122)

Supports Intensity Scale - Adult Version™ (ages 16 and up), SIS-A, copyright 2015, American Association on Intellectual and Developmental Disabilities

Supports Intensity Scale - Children's Version™ (ages 5-16), SIS-C, copyright 2016, American Association on Intellectual and Developmental Disabilities

[Virginia Supplemental Questions \(eff. 10/2014\)](#)

~~Skill Competencies for Professionals and Direct Support Staff in Virginia Supporting Adolescents and Adults with Autism, developed by Virginia Autism Council, June 1, 2014, DMAS P201 (filed 1/2019)~~

[Virginia Developmental Disabilities Autism Competencies, DMAS P-201 \(rev. 9/2017\)](#)

[Medicaid Long-Term Care Communication Form, DMAS-225 \(rev. 12/2015\)](#)

[Virginia Individual Developmental Disabilities Eligibility Survey - Infants' Version, DMAS-P235 \(eff. 3/2016\)](#)

[Virginia Individual Developmental Disabilities Eligibility Survey - Children's Version, DMAS-P236 \(eff. 4/2016\)](#)

[Virginia Individual Developmental Disabilities Eligibility Survey - Adult Version, DMAS-P237 \(eff. 3/2016\)](#)

~~Behavioral Support Competencies for Direct Support Providers and Professionals in Virginia Supporting Individuals with Developmental Disabilities, developed by the Virginia Department of Behavioral Health and Developmental Services, August 2015, DMAS P240a (filed 1/2019)~~

[Virginia Developmental Disabilities Behavioral Competencies, DMAS P241a \(rev. 9/2017\)](#)

[Developmental Disabilities DSP and Supervisor Competencies Checklist, DMAS 241a \(eff. 5/2021\)](#)

[Direct Support Professional Assurance to Confirm Successful Completion of Training and Testing Requirements for the DD Waivers, DMAS P242a \(eff. 5/2021\)](#)

~~Virginia's Health Competencies for Direct Support Professionals and Supervisors Who Support Individuals with Developmental Disabilities—Health Competencies Checklist, DMAS P244a (eff. 6/2016)~~

[Department of Behavioral Health and Developmental Services Health Competencies Checklist, DMAS P244a and P241a \(rev. 1/2017\)](#)

[Community Housing Guide: Housing Road Map \(form date 10/2019\)](#)

[Community Housing Guide: Tenant Screening \(form date 10/2019\)](#)

~~FIS Family and Individual Supports Request for Supervision Hours in Personal Assistance, DMAS-P257 (05/28)~~

~~CE Community Learning Request for Supervision Hours in Personal Assistance, DMAS-P257 (05/28)~~

VA.R. Doc. No. R22-6965; Filed September 17, 2021, 3:00 p.m.



## TITLE 14. INSURANCE

### STATE CORPORATION COMMISSION

#### Proposed Regulation

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

**Titles of Regulations:** **14VAC5-340. Rules Governing Standards for the Content of Fire Insurance or Fire Insurance in Combination with Other Coverages (repealing 14VAC5-340-10 through 14VAC5-340-150).**

**14VAC5-341. Rules Governing Standards for the Content of Dwelling Property Insurance Policies (adding 14VAC5-341-10 through 14VAC5-341-90).**

**14VAC5-342. Rules Governing Standards for the Content of Homeowners Insurance Policies (adding 14VAC5-342-10 through 14VAC5-342-130).**

**Statutory Authority:** §§ 12.1-13, 38.2-223, and 38.2-2108 of the Code of Virginia.

**Public Hearing Information:** A hearing will be scheduled upon request.

**Public Comment Deadline:** October 15, 2021.

Agency Contact: Katie Johnson, Insurance Policy Advisor, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9688, FAX (804) 371-9873, or email [katie.johnson@scc.virginia.gov](mailto:katie.johnson@scc.virginia.gov).

Summary:

*The proposed amendments repeal 14VAC5-340 and replace it with two new chapters, 14VAC5-341 and 14VAC5-342. 14VAC5-340 is outdated, having been in place without revision since 1982. The proposed new regulations (i) establish minimum standards for the contents of dwelling property and homeowners insurance policies; (ii) improve readability; (iii) preserve basic coverages for consumers; (iv) clarify specific areas for certainty and consistency in interpretation, such as occasional rental, unoccupied and vacant premises, and incidental business activities; (v) address exposures that have emerged since 1982, such as virtual currency, home-sharing, drones and hovercraft, and the use of the residence for telework; and (vi) incorporate offers of coverage that are required by statute.*

AT RICHMOND, SEPTEMBER 10, 2021

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2021-00092

Ex Parte: In the matter of Repealing Rules Governing Standards for the Content of Fire Insurance or Fire Insurance in Combination with Other Coverages, Adopting New Rules Governing Standards for the Content of Dwelling Property Insurance Policies and Adopting New Rules Governing Standards for the Content of Homeowners Insurance Policies

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code. Section 38.2-2108 of the Code provides that the Commission may establish standards for the content of policies written to insure owner-occupied dwellings issued or delivered in the Commonwealth.

The rules and regulations issued by the Commission pursuant to §§ 38.2-223 and 38.2-2108 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy also may be found at the Commission's website: [scc.virginia.gov/case](http://scc.virginia.gov/case).

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to repeal Chapter 340 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Standards for the Content of Fire Insurance or Fire Insurance in Combination with Other Coverages" set out at 14 VAC 5-

340-10 through 14 VAC 5-340-150.9; to adopt a new chapter, Chapter 341 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Standards for the Content of Dwelling Property Insurance Policies," which are recommended to be set out at 14 VAC 5-341-10 through 14 VAC 5-341-90; and to adopt a new chapter, Chapter 342 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Standards for the Content of Homeowners Insurance Policies," which are recommended to be set out at 14 VAC 5-342-10 through 14 VAC 5-342-120.

The repeal of Chapter 340 is necessary because these rules are outdated, having been in place without revision since 1982.

The proposed new rules in Chapter 341 and 342 establish minimum standards for the contents of dwelling property and homeowners insurance policies. Further, the proposed new rules offer improved readability; preserve basic coverages for consumers; provide clarity in specific areas for certainty and consistency in interpretation, such as occasional rental, unoccupied and vacant premises, and incidental business activities; address exposures that have emerged since 1982, such as virtual currency, home-sharing, drones and hovercraft and the use of the residence for telework; and incorporate offers of coverage that are required by statute.

The proposed new rules in Chapters 341 and 342 have an effective date of January 1, 2022 and require compliance for policies delivered or issued for delivery in Virginia with effective dates on and after July 1, 2023. Insurers and rate service organizations are required to submit filings for compliance with these chapters no later than December 31, 2022.

NOW THE COMMISSION is of the opinion that the Rules at Chapter 340 of Title 14 of the Virginia Administrative Code should be repealed, and the proposed new rules at Chapters 341 and 342 of Title 14 of the Virginia Administrative Code should be considered for adoption with a proposed effective date of January 1, 2022.

Accordingly, IT IS ORDERED THAT:

(1) The proposal to repeal Chapter 340 of Title 14 of the Virginia Administrative Code; adopt a new chapter proposed at Chapter 341 of Title 14 of the Virginia Administrative Code, recommended to be set out at 14 VAC 5-341-10 through 14 VAC 5-341-90; and adopt a new chapter proposed at Chapter 342 of Title 14 of the Virginia Administrative Code, recommended to be set out at 14 VAC 5-342-10 through 14 VAC 5-342-120, is attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose the repeal of Chapter 340 and the adoption of the proposed new Chapters 341 and 342 shall file such comments or hearing request on or before October 15, 2021, with Bernard J. Logan, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case

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No. INS-2021-00092. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be addressed adequately in written comments. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: [scc.virginia.gov/case](http://scc.virginia.gov/case). All comments shall refer to Case No. INS-2021-00092.

(3) The Bureau shall file its statement of position in response to any comments filed pursuant to Ordering Paragraph 2 on or before November 15, 2021.

(4) If no written request for a hearing on the proposed repeal and adoption of proposed new rules as outlined in this Order is received on or before October 15, 2021, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may repeal Chapter 340 and adopt proposed Chapters 341 and 342 of Title 14 of the Virginia Administrative Code as submitted by the Bureau.

(5) The Bureau shall provide notice of the proposal to all carriers licensed in Virginia to write fire and homeowners insurance as well as to all Property and Casualty interested persons.

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

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

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

(9) This matter is continued.

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

## Chapter 341

### Rules Governing Standards for the Content of Dwelling Property Insurance Policies

#### **14VAC5-341-10. Scope and applicability.**

A. This chapter sets forth the standards of content for policies of dwelling property insurance covering owner-occupied dwellings, including condominium units. This chapter applies to insurers licensed to do business in Virginia and issuing policies of dwelling property insurance pursuant to the

provisions of Chapter 21 (§ 38.2-2100 et seq.) of Title 38.2 of the Code of Virginia.

B. Compliance with this chapter is required for policies delivered or issued for delivery in Virginia with effective dates on and after July 1, 2023. Insurers and rate service organizations shall submit filings for compliance with this chapter no later than December 31, 2022.

C. No insurer shall represent to a prospective purchaser or a policyholder that a dwelling property policy subject to the provisions of this chapter is a homeowners policy as defined in § 38.2-130 of the Code of Virginia.

D. This chapter does not apply to policies that:

1. Are lender-placed;

2. Insure owner-occupied farms;

3. Insure manufactured homes as defined in § 46.2-100 of the Code of Virginia, except for policies insuring manufactured homes as defined in § 46.2-653.1 of the Code of Virginia;

4. Are issued pursuant to Chapter 27 (§ 38.2-2700 et seq.) of Title 38.2 of the Code of Virginia;

5. Are issued pursuant to Chapter 48 (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia; or

6. Primarily insure the personal property of renters.

E. Insurers shall file with the commission all policies or endorsements for approval before use.

F. Policies and endorsements shall not be less favorable than the provisions set forth in this chapter. Insurers may provide broader and more favorable coverages, terms, and conditions than those set forth in this chapter. Insurers may use any policy language that is not less favorable to the insured and complies with provisions of this chapter.

#### **14VAC5-341-20. Severability.**

If a provision of this chapter or its application to a person or circumstance is for any reason held to be invalid by a court, the remainder of this chapter and the application of the provisions to other persons or circumstances shall not be affected.

#### **14VAC5-341-30. Definitions.**

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

"Actual cash value" means the amount equal to the replacement cost minus depreciation of damaged or stolen property at the time of the loss.

"Aircraft" means a machine or device capable of atmospheric flight, including hobby or model aircraft, drones, self-propelled missiles, and spacecraft.



"Business" means a trade, profession, or occupation whether full-time, part-time, or occasional activity, including (i) farming, (ii) the rental of the whole or a part of the residence premises by an insured, (iii) the business use of part of the residence premises, or (iv) home-sharing.

"Business" shall not include:

1. The occasional rental of the whole or a part of the residence premises for dwelling purposes;
2. The rental or holding for rental of a part of the residence premises for no more than two roomers or boarders for use as a primary residence;
3. The rental of a part of the residence premises as a private garage;
4. The rental of a part of the residence premises as an office, school, or studio; or
5. The insured's use of the residence premises for remote work under an agreement with the insured's employer.

"Commission" means the State Corporation Commission.

"Condominium unit" means a dwelling as defined in § 55.1-1900 of the Code of Virginia.

"Dwelling" means any residential structure specifically named in the policy.

"Farms" or "farming" means the use of land and buildings primarily for agricultural purposes with the objective of raising animals to produce food for sale or distribution to the public and growing crops for sale or distribution to the public.

"Fixtures" means permanently installed components of the dwelling or other structures including wells; plumbing systems; pumps; air conditioning equipment, systems, and parts; heating equipment, systems, and parts; hot water heaters; lighting systems; or built-in appliances and other components where removal would deface or damage the dwelling.

"Functional replacement cost" means the cost to repair or replace the damaged dwelling or other structures with less costly common construction materials and methods that are functionally equivalent to materials and methods used in the original construction.

"Home-sharing" means rental or offering for rental of the residence premises or a part of the residence premises for lodging purposes made available through an online-enabled application, website, or digital network. Home-sharing is not occasional rental as defined in this section. An individual occupying the residence premises through home-sharing is not a roomer, boarder, tenant, or guest.

"Hovercraft" means a self-propelled air cushioned vehicle that can travel over land and water.

"Insured" means (i) any person named as an insured in the policy, (ii) if residents of the named insured's household, the

named insured's spouse if not a named insured, and relatives of either, and (iii) other persons younger than 21 years of age in the care of an insured.

"Motor vehicle" means a vehicle that is self-propelled or designed for self-propulsion and is designed or licensed for use on public roads.

"Occasional rental" means (i) rental of the residence premises or a part of the residence premises for up to seven days, whether consecutive or random, in any policy term; (ii) rental of the residence premises that generates revenue of up to \$2,500; or (iii) a combination of clauses (i) and (ii) of this definition. Occasional rental does not include home-sharing as defined in this section.

"Pollutant" means solid, liquid, gaseous, thermal, or radioactive irritants or contaminants, including acids, alkalis, chemicals, fumes, vapors, and waste.

"Recreational motor vehicle" means a motor vehicle designed for recreational use off public roads and not subject to motor vehicle registration.

"Replacement cost" means the cost to repair or replace the damaged or stolen property with material of like kind and quality without deduction for depreciation.

"Residence employee" means an employee of an insured who provides maintenance or domestic services for the residence premises.

"Residence premises" means the dwelling, other structures, and grounds at the location named in the policy.

"Theft" means an act of stealing or attempt to steal, including loss of property from a known place under circumstances when a probability of theft exists.

"Vacant" means a dwelling (i) that has not been occupied as a residence for more than 30 consecutive days immediately before a loss and (ii) where most of the named insured's personal property has been removed such that the dwelling is not functional as a customary place of residence. A dwelling is not occupied if the dwelling is being used without the permission of an insured. A dwelling under construction or being remodeled, repaired, or renovated is not vacant.

"Vandalism" or "malicious mischief" means the willful and malicious damage to or destruction of the property excluding loss by pilferage, theft, burglary, or larceny.

## **14VAC5-341-40. Mandatory property coverages.**

A. Insurers shall provide coverage for the dwelling on the residence premises including fixtures.

1. Insurers shall also provide coverage for materials and supplies while located on the residence premises and intended for use in construction, alteration, or repair of the dwelling or other structures.

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2. For a dwelling that is a condominium unit, insurers shall provide a limit of liability of at least \$5,000 for the dwelling and fixtures that are the responsibility of the condominium unit owner.

B. Insurers shall provide coverage for other structures and the fixtures of other structures on the residence premises.

1. Insurers shall provide a limit of liability of at least 10% of the dwelling limit of liability.

2. Insurers may exclude coverage for other structures that are used for business or rented or held for rental unless the structure is (i) rented to roomers, boarders, or tenants of the dwelling or (ii) rented for use solely as a private garage.

3. For condominium units, insurers shall provide coverage for other structures and fixtures of other structures that are the responsibility of the condominium unit owner.

C. Insurers shall provide coverage for (i) breakage of glass or safety glazing material that is part of a dwelling or other structure and (ii) damage to covered property by glass that is part of a dwelling or other structure. This coverage does not increase the limit of liability that applies to the damaged covered property. Insurers may exclude loss if the dwelling was vacant.

D. Insurers shall provide coverage for the expenses incurred for the removal of debris of covered property damaged by a covered cause of loss and the expense for the removal of fallen trees that damage covered property. Expenses for debris removal are included within the limit of liability applicable to the damaged property.

E. Insurers shall provide coverage for contractual fire department service charges and volunteer fire department service charges as follows:

1. Contractual fire department service charges where the fire department is called to save or protect insured property from a covered cause of loss. Insurers may limit this coverage to a residence premises not located within the limits of a city, municipality, or fire protection district furnishing fire department services.

2. Fire department service charges made by volunteer fire departments pursuant to § 38.2-2130 of the Code of Virginia.

3. Insurers shall provide at least \$250 of coverage for each type of fire department service charges.

4. Insurers may not apply a deductible to the coverages in subdivisions 1 and 2 of this subsection.

F. Insurers shall offer ordinance or law coverage, subject to the exclusions or limitations within this chapter, pursuant to § 38.2-2124 of the Code of Virginia at the dwelling limit of liability within the policy or as an endorsement. This limit of liability is in addition to the limit of liability applicable to the dwelling. Insurers may make other limits of liability available

for insureds to purchase. When ordinance or law coverage is provided within the policy or as an endorsement, subdivision A 3 of 14VAC5-341-70 does not apply.

G. Insurers shall provide coverage of at least 10% of the dwelling limit of liability for the increase in necessary living expenses when the dwelling is uninhabitable due to a covered cause of loss. Insurers shall provide coverage of at least 20% of the household and personal property limit of liability for condominium units.

1. Insurers shall provide this coverage for the time reasonably required to return the dwelling to a habitable condition or for the insured's household to become settled in any permanent quarters.

2. Insurers shall provide additional living expense coverage for at least two weeks while a civil authority limits access to the residence premises as a result of damage to neighboring premises by a covered cause of loss.

3. Insurers may exclude living expenses that do not continue.

4. This coverage is not limited by the expiration date of the policy.

H. Insurers shall provide coverage of at least 10% of the dwelling limit of liability for the fair rental value of a part of the dwelling or other structures. Insurers shall provide coverage of at least 20% of the household and personal property limit of liability for condominium units.

1. Insurers shall provide this coverage for the time reasonably required to restore the dwelling or other structures to a tenantable condition following damage caused by a covered cause of loss.

2. Insurers shall provide fair rental value coverage for at least two weeks while a civil authority limits access to the residence premises as a result of damage to neighboring premises by a covered cause of loss.

3. Insurers may exclude expenses that do not continue.

4. Insurers may exclude coverage for loss or expense due to cancellation of a lease or agreement.

5. This coverage is not limited by the expiration date of the policy.

6. Insurers may not apply a deductible to this coverage.

I. Insurers shall provide coverage for damage to trees, shrubs, plants, or lawns caused by fire, lightning, explosion, riot, civil commotion, aircraft, or vehicles not owned or operated by a resident of the residence premises. When expanded or open causes of loss are provided by the policy, insurers shall also include coverage for damage to trees, shrubs, plants, or lawns caused by vandalism and malicious mischief, and actual or attempted burglary.

1. Insurers shall provide a limit of liability for this coverage of at least 5.0% of the dwelling limit of liability.

2. Insurers may limit the amount of coverage to no more than \$250 for each tree, shrub, or plant on the residence premises. The limit of coverage includes debris removal coverage when the tree, plant, or shrub does not cause damage to covered property.

J. Insurers shall provide coverage for loss or damage to property while removed or being removed from the residence premises because the property is endangered by a covered cause of loss.

1. Coverage is provided for damage from any cause subject to the exclusions and limitations permitted in this chapter.

2. Insurers shall provide this coverage for at least 30 days for each removal.

3. This coverage is not limited by the expiration date of the policy.

4. This coverage does not increase the limit of liability that applies to the damaged covered property.

K. Insurers shall provide coverage for the cost of making reasonable repairs to protect covered property from further damage when the repairs are directly attributable to damage caused by a covered cause of loss. The repairs are included as part of the amount of the loss.

L. If expanded or open causes of loss are provided by the policy, insurers shall pay the cost incurred to tear out and replace the part of the dwelling or other structure necessary to gain access to the system or appliance from which the water or steam escaped if a loss to the dwelling or other structures is caused by water or steam escaping from a system or appliance. Insurers may exclude loss to the system or appliance from which the water or steam escapes.

M. Insurers shall provide coverage for direct physical loss to the dwelling, other structures, and household and personal property involving collapse of a dwelling or other structure or any part of a dwelling or other structure:

1. Caused by one or more of the following:

a. The causes of loss in subsection C of 14VAC5-341-60;

b. Hidden decay;

c. Hidden insect or vermin damage;

d. Weight of contents, equipment, animals, or people;

e. Weight of rain that collects on a roof; or

f. Use of defective materials or methods in construction, remodeling, or renovation if the collapse occurs during the construction, remodeling, or renovation.

2. Loss to an awning, fence, patio, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf, or dock is

not included under subdivisions 1 b through 1 f of this subsection unless the loss is a direct result of the collapse of a building.

3. Collapse does not include settling, cracking, shrinking, bulging, or expansion.

4. This coverage does not increase the limit of liability applicable to the damaged covered property.

5. Insurers may exclude collapse when providing only basic causes of loss set forth in subsection B of 14VAC5-341-60.

## **14VAC5-341-50. Optional coverage for household and personal property.**

A. Insurers may offer coverage for household and personal property. If offered:

1. Insurers shall provide coverage for household and personal property on the residence premises that is owned or used by an insured.

2. At the request of the named insured at the time of loss, insurers shall provide coverage for household and personal property owned by a:

a. Guest while the property is on the residence premises or

b. Residence employee while the property is on the residence premises.

B. Insurers shall provide coverage for the insured's property (i) on the residence premises during an occasional rental or (ii) on the part of the residence premises occupied by roomers, boarders, or tenants.

C. Insurers shall provide coverage for household and personal property while it is being moved to the insured's new principal residence within the United States. Insurers shall provide coverage for property while it is being moved for 30 days from the date that moving the property begins. The household and personal property limit of liability applies to property being moved to another location. If the move began during the policy term, coverage may not be limited by the expiration of the policy.

D. Insurers shall provide coverage for the following types of household and personal property at limits of at least the following:

1. \$500 total per loss on cemetery property on or off the residence premises including monuments, headstones, grave markers, and urns.

2. \$100 total per loss on coin collections, medals, gold, platinum, and silver, except goldware and gold-plated ware shall not be deemed to be gold and silverware and silver-plated ware shall not be deemed to be silver.

3. \$500 total per loss on passports, tickets, or stamp collections.

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4. \$1,000 total per loss on watercraft, trailers used with watercraft, and watercraft furnishings, equipment, and outboard motors. This limit does not apply to rowboats or canoes.

5. \$500 on trailers, semi-trailers, and campers not otherwise covered in this chapter.

## **14VAC5-341-60. Causes of loss.**

A. Insurers shall provide, at a minimum, the basic causes of loss in subsection B of this section. If an insurer provides expanded causes of loss, the causes of loss may be no less favorable than the causes of loss in subsections B and C of this section. If an insurer provides open causes of loss, the causes of loss may be no less favorable than the causes of loss in subsection D of this section. The same causes of loss shall apply to the dwelling and other structures. Insurers may offer basic, expanded, or open causes of loss for household and personal property.

B. When providing basic causes of loss, insurers shall provide coverage for direct loss caused by the following:

1. Fire or lightning.

2. Windstorm or hail. Insurers may exclude loss to:

a. The interior of the dwelling or other structure or the household and personal property within caused by rain, snow, sand, or dust unless the rain, snow, sand, or dust enters through an opening caused by the force of wind or hail;

b. Windmills, wind pumps, or towers; crop silos or contents; or metal smokestacks;

c. Grain, hay, straw, or other crops, when outside;

d. Overhead structures, including supports and screening, constructed principally of cloth, metal, fiberglass, or plastic erected to provide protection from the elements;

e. Signs;

f. Satellite dishes; radio or television antennas, including lead-in wiring, masts, or towers;

g. Fences; seawalls or property line and other free-standing walls;

h. Greenhouses, hothouses, slathouses, trellises, pergolas, cabanas, or outdoor equipment pertaining to the service of the residence premises;

i. Wharves, docks, piers, boathouses, bulkheads, or other structures located over or partially over water and the household and personal property on or within;

j. Property damaged by water from sprinklered equipment or from other piping, unless the equipment or piping was damaged as a direct result of wind or hail; or

k. Watercraft while not inside a fully enclosed building. This provision does not apply to rowboats or canoes.

3. Explosion.

4. Riot or civil commotion.

5. Aircraft.

6. Vehicles.

7. Sudden or accidental damage from smoke or soot, other than smoke from agricultural smudging or industrial operations.

C. Insurers may offer the following expanded causes of loss. If provided, coverage shall be for direct loss to the covered property from the causes of loss listed in subsection B of this section and the following causes of loss:

1. Vandalism, malicious mischief, and burglary. Insurers may exclude loss if the dwelling was vacant. If a covered cause of loss ensues, insurers shall provide coverage for the ensuing loss.

2. Falling objects. Insurers may exclude loss to:

a. Property within the dwelling or other structure that is caused by a falling object unless the falling object first damages the exterior of the roof or walls of the dwelling or other structure; or

b. The falling object itself.

3. Weight of ice, snow, or sleet that damages the (i) dwelling, (ii) other structure, or (iii) household and personal property contained in a dwelling or other structure if the weight of ice, snow, or sleet first damages the dwelling or other structure. Insurers may exclude loss to:

a. Awnings and their supports; or

b. Fences, pavements, patios, swimming pools, foundations, retaining walls, bulkheads, piers, wharves, or docks.

4. Sudden and accidental tearing apart, cracking, burning, or bulging of a steam or hot water heating system, or of an appliance for heating water, but excluding loss caused by or resulting from freezing.

5. Freezing of plumbing, heating, or air conditioning systems, and domestic appliances. Insurers may exclude loss caused by or resulting from freezing while a dwelling is under construction, vacant, or unoccupied for a period in excess of four consecutive days unless the insured has (i) exercised due diligence in maintaining heat in the dwelling or other structure or (ii) drained the systems and appliances and shut off the water supply.

6. Accidental discharge, leakage, or overflow of water or steam from within a plumbing, heating, or air conditioning system, or domestic appliance. This does not include loss caused by or resulting from freezing.

7. Sudden and accidental injury from electrical currents artificially generated to electrical appliances, devices, fixtures, and wiring.

D. Insurers may offer open causes of loss. If provided, insurers shall provide coverage for direct loss to the dwelling and other structures and may exclude direct loss caused by any of the following:

1. Wear and tear; marring or scratching; deterioration; inherent vice; latent defect; mechanical breakdown; rust, mold, or wet or dry rot; pollutants, smog, smoke from agricultural smudging or industrial operations; settling, cracking, shrinkage, bulging, or expansion of pavements, patios, foundations, walls, floors, roofs, or ceilings; or birds, vermin, rodents, insects, or animals owned or kept by an insured. If a covered cause of loss ensues, insurers shall provide coverage for the ensuing loss.

2. Vandalism and malicious mischief, burglary, or glass breakage if the dwelling was vacant. If a covered cause of loss ensues, insurers shall provide coverage for the ensuing loss.

3. Continuous or repeated seepage or leakage of water or steam over a period of weeks, months, or years. This exclusion does not apply to household and personal property.

4. Windstorm, hail, ice, snow, or sleet to any of the following property:

a. Overhead structures, including supports and screening, constructed principally of cloth, metal, fiberglass, or plastic, erected to provide protection from the elements;

b. Outdoor radio or television antennas including the lead-in wiring, masts, or towers;

c. Fences;

d. Seawalls or property line and other free-standing walls;

e. Greenhouses, hothouses, slathouses, trellises, pergolas, or cabanas;

f. Outdoor equipment pertaining to the service of the residence premises; or

g. Wharves, docks, piers, boathouses, bulkheads, or other structures located over or partially over water and the household and personal property on or within.

5. Theft of property that is not an integral part of the dwelling or other structures at the time of loss or from a dwelling or other structure that is under construction.

6. Collapse, except as required by subsection M of 14VAC5-341-40.

#### **14VAC5-341-70. Permitted exclusions.**

A. For all causes of loss, insurers may exclude loss caused directly or indirectly by any of the following:

1. Water, as follows:

a. Flood, ground surface water, waves, seiche, tidal water or tidal waves, overflow of a body of water, or spray from any of these;

b. Water that backs up through sewers or drains;

c. Water that overflows or is discharged from a sump pump or other type of system designed to remove subsurface water that is drained from the foundation area;

d. Water below the surface of the ground including water that exerts pressure on or flows, seeps, or leaks through (i) sidewalks; (ii) driveways; (iii) foundations; (iv) swimming pools; (v) walls; (vi) basements or floors; or (vii) doors, windows, or other openings; or

e. Material carried or moved by water referred to in subdivisions 1 a, 1 b, and 1 c of this subsection.

The exclusions for water loss in subdivisions 1 a through 1 e of this subsection do not apply to an ensuing loss caused by fire or explosion.

2. Earth movement, natural or man-made, including earthquake, volcanic eruption, landslide, mudflow, or other earth movement caused by sinking, rising, shifting, or expansion. Insurers shall provide coverage for an ensuing loss caused by fire, explosion, or breakage of glass that is a part of the dwelling or other structures.

3. Enforcement of ordinances or laws regulating the construction, repair, or demolition of dwellings or other structures. Insurers shall provide coverage when an ordinance or law requires the use of safety glass in replacement of damaged glass that is a part of the dwelling or other structures.

4. Interruption of power or other utility service furnished to the residence premises if the interruption takes place away from the residence premises. Insurers shall provide coverage for the ensuing loss if a covered cause of loss ensues on the residence premises because of the power interruption.

5. Enemy attack by armed forces including action taken by military, naval, or air forces in resisting an actual or immediately impending enemy attack, including invasion, insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating, or defending against the event; order of civil authority except acts of destruction at the time of and for preventing the spread of fire, provided that the fire did not originate from an excluded cause of loss.

6. Nuclear reaction, nuclear radiation, or radioactive contamination as set forth in § 38.2-2102 of the Code of Virginia.

7. Freezing, thawing, or by the pressure of ice, snow, or water to fences, pavements, patios, swimming pools, foundations, retaining walls, bulkheads, piers, wharves, or docks.

8. The exclusions in subdivisions 1 through 7 of this subsection apply if one or more of the following concurrently contribute to the loss:

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a. Weather conditions;

b. Acts or decisions including the failure to act or decide of a person, group, organization, or governmental body;

c. Faulty, inadequate, or defective:

(1) Planning, zoning, development, surveying, or siting;

(2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, or compaction;

(3) Materials used in repair, construction, renovation, or remodeling; or

(4) Maintenance.

**B. Insurers may exclude direct loss caused by:**

1. An intentional act by a person insured under the policy that was directed or committed by that person, but only with respect to that person.

2. Neglect of the insured to use all reasonable means to protect the property during and after a loss.

**C. Insurers may exclude coverage for the following types of property:**

1. Accounts, bills, currency including virtual or digital, deeds, evidences of debt, money, scrip, stored value cards, smart cards, securities, bullion, manuscripts; letters of credit, bank notes, or notes other than bank notes;

2. Aircraft and parts except insurers shall provide coverage for (i) drones without cameras and drones that are not capable of carrying people or cargo; or (ii) hobby aircraft or model aircraft that is not capable of carrying people or cargo;

3. Animals, birds, or fish;

4. Business property;

5. Electronic equipment that is permanently installed in a motor vehicle;

6. Tapes, wires, records, discs, or other media used with electronic equipment in a motor vehicle while the property is in or on a motor vehicle;

7. Motor vehicles, motorized bicycles, and hovercraft except (i) vehicles used to service the residence premises, (ii) utility trailers that are not licensed for road use, and (iii) electric mobility devices designed to assist an individual that has a disability;

8. Property of (i) tenants and (ii) roomers and boarders not related to the insured;

9. Property rented to others, except as provided in subsection B of 14VAC5-341-50;

10. Property that is unlawful to own or possess under state or federal law; or

11. Property that is separately described and specifically insured by this insurance or other insurance.

## **14VAC5-341-80. Loss settlement provisions.**

**A. Insurers shall include loss settlement provisions in accordance with this section.**

**B. When providing only basic causes of loss for the dwelling and other structures, insurers may provide loss settlement on an actual cash value basis. When providing actual cash value loss settlement, insurers shall apply actual cash value loss settlement as follows:**

1. Subject to the limit of liability, insurers may pay the smaller of the following amounts:

a. Cost to repair or replace with like kind and quality; or

b. Actual cash value of the damaged property.

2. Insurers may apply actual cash value loss settlement to:

a. Household and personal property;

b. Outdoor radio and television antennas; satellite dishes;

c. Awnings; or

d. Property described under subsections A and B of 14VAC5-341-40, and permanently installed flooring (including wall-to-wall carpeting) when providing only basic causes of loss set forth in subsection B of 14VAC5-341-60.

**C. If the loss settlement provision in subsection B of this section does not apply, insurers shall apply replacement cost less settlement as follows:**

1. Insurers shall apply replacement cost loss settlement to the dwelling and other structures, including permanently installed flooring. Wall-to-wall carpeting is permanently installed flooring.

2. Insurers may limit replacement cost settlement to the following:

a. The limit of liability applicable to the dwelling or other structures;

b. The replacement cost of the dwelling or other structures or a part of the dwelling or other structures on the residence premises and intended for the same occupancy and use; or

c. The amount spent in repairing or replacing the dwelling or other structures or a part of the dwelling or other structures and intended for the same occupancy and use.

3. The insured may assert a claim for the actual cash value of the dwelling or other structures without prejudicing the insured's right to make further claim for the difference between the actual cash value and the replacement cost in accordance with § 38.2-2119 B of the Code of Virginia. The claim for the difference must be made within six months of (i) the last date on which the insured received a payment for

actual cash value or (ii) date of entry of a final order of a court of competent jurisdiction declaratory of the right of the insured to full replacement cost, whichever shall last occur.

4. When the repair or replacement cost is \$2,500 or less, insurers shall be liable for the full cost of repair or replacement before the repair or replacement has been completed.

5. Insurers may apply an insurance-to-value ratio for replacement cost loss settlement as follows:

a. Insurers may require an insurance-to-value ratio of no more than 80% before full replacement cost loss settlement applies.

b. If the insurance-to-value ratio is less than 80% for the damaged dwelling or other structure, an insurer may limit its liability for loss to the larger of the following:

(1) The actual cash value of that part of the dwelling or other structures; or

(2) That proportion of the full cost of repair or replacement without deduction for depreciation of that part of the dwelling or other structure damaged or destroyed that the whole amount of insurance applicable to the dwelling or other structure for the cause of loss bears to 80% of the full replacement cost of the dwelling or other structure.

c. In calculating the 80% insurance-to-value ratio, insurers shall disregard the cost of (i) excavations; (ii) underground flues and pipes; (iii) underground wiring and drains; and (iv) brick, stone, and concrete foundations, piers, and other supports that are below the under surface of the lowest basement floor, or where there is no basement, that are below the surface of the ground inside the foundation walls.

6. Insurers may provide replacement cost loss settlement on household and personal property as authorized by § 38.2-2119 B of the Code of Virginia.

D. Insurers may offer functional replacement cost loss settlement for the property described in subsections A and B of 14VAC5-341-40, under the conditions outlined in this subsection.

1. Functional replacement cost is only permitted at the option of the insured.

2. Insurers may not apply functional replacement cost loss settlement to property that qualifies for an amount of insurance equal to 80% or more of the full replacement cost of the dwelling or other structure.

3. Insurers shall provide the notice required by § 38.2-2119 C of the Code of Virginia.

4. Insurers may limit functional replacement cost loss settlement to the following:

a. The limit of liability applicable to the dwelling or other structures;

b. The amount necessary to repair or replace the damaged property with functionally equivalent property at a lower cost than would be required to replace the damaged property with material of like kind and quality; or

c. The amount spent in repairing or replacing the dwelling or other structure or part of the dwelling or other structure intended for the same occupancy and use.

E. Insurers shall determine loss to property that is part of a pair or set in a reasonable and fair proportion of the total value of the pair or set.

F. Insurers shall adjust losses with the named insured and shall pay the named insured unless another payee is specifically named.

G. Insurers shall restore the limits of liability after a loss is paid.

H. Insurers may apply a property deductible unless prohibited or otherwise limited in this chapter. Insurers may apply a special property deductible for the following causes of loss (i) wind, (ii) hail, or (iii) theft. No more than one deductible may be applied to a loss. The amount of any property deductible may not exceed 10% of the dwelling limit of coverage.

I. Insurers may (i) take all or part of the damaged property at the agreed or appraised value or (ii) repair, rebuild, or replace the damaged property with other of like kind and quality within a reasonable time. Within 30 days after receiving the insured's proof of loss, the insurer shall provide notice to the insured of the insurer's decision to (i) take the property at the agreed or appraised value or (ii) repair, rebuild, or replace the damaged property.

## **14VAC5-341-90. Policy conditions.**

A. Insurers shall include the following statutory conditions:

1. The nuclear clause set forth in § 38.2-2102 of the Code of Virginia;

2. The conditions set forth § 38.2-2104 of the Code of Virginia;

a. Assignment of the policy.

b. The time that coverage begins and ends.

3. The conditions set forth in § 38.2-2105 of the Code of Virginia;

a. Abandonment.

b. Appraisal.

c. Mortgagees interests and obligations.

d. Pro rata liability.

e. Requirements in case loss occurs.

f. Suit.

g. When loss payable.

B. Insurers shall include the following conditions:

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1. If an insurer adopts revisions of the forms or endorsements that would broaden coverage currently provided without additional premium charge, the insurer shall automatically apply the broadened coverage from the effective date of the revisions.
2. If a named insured dies, insurers shall modify the definition of insured as follows:
  - a. The named insured includes:
    - (1) The spouse, if not already a named insured and if a resident of the household at the time of the death; and
    - (2) The legal representative with respect to the residence premises and property of the deceased insured at the time of the death.
  - b. Insured also includes:
    - (1) Members of the deceased's household who were insured at the time of the named insured's death, but only while residents of the residence premises; and
    - (2) Persons having proper temporary custody of the insured property until the appointment and qualification of the legal representative.
3. Insurers may not invalidate the policy if the insured waives, in writing, before a loss any right of recovery against a party for loss occurring on the residence premises. If not waived, the insurer may require from the insured an assignment of all right of recovery against a party for loss to the extent that the insurer made payment.
4. Terms or conditions in the policy that are less favorable than those provided for in this chapter or the applicable statutes are construed to conform to this chapter and those statutes.
5. Insurers shall include the relevant termination provisions in §§ 38.2-2113 and 38.2-2114 of the Code of Virginia in the policy. In addition, the following apply:
  - a. Return premium calculations resulting from an insurer-initiated termination shall be pro rata.
  - b. Terminations for non-payment of premium shall be calculated pro rata.
  - c. Return premium calculations resulting from an insured-initiated termination may be short rate except the penalty may not be more than 10% of the pro rata premium for the expired time.
  - d. Insurers may not refuse to renew the policy except in accordance with the provisions of §§ 38.2-2113 and 38.2-2114 of the Code of Virginia.
- C. Insurers may include any of the following conditions. Insurers may:
  1. Restrict the application of the policy to loss during the policy term.

2. Void the entire policy (i) if, whether before or after the loss, an insured has willfully concealed or misrepresented any material fact or circumstance concerning the insurance or the interest of the insured in the insurance or (ii) in the case of fraud or false swearing by the insured relating to the insurance.
3. Require the insured to notify the police if loss is by theft.
4. Require that coverage under the policy is excess over a service agreement, home warranty, or similar service warranty.
5. Require that a bailee for hire may not benefit under the policy.
6. Elect to waive a policy provision. Any waiver of a policy provision by the insurer must be in writing.
7. Exclude coverage, refuse to pay claims, or refuse to provide benefits under a policy if those actions would expose the insurer to a violation of applicable trade or economic sanctions, laws, or regulations, including those administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control.

## Chapter 342

### Rules Governing Standards for the Content of Homeowners Insurance Policies

#### **14VAC5-342-10. Scope and applicability.**

A. This chapter sets forth the standards of content for policies of homeowners insurance, including policies insuring owner-occupied condominium units. This chapter applies to insurers licensed to do business in Virginia and issuing policies of homeowners insurance and condominium unit owners insurance pursuant to Chapter 21 (§ 38.2-2100 et seq.) of Title 38.2 of the Code of Virginia.

B. Compliance with this chapter is required for policies delivered or issued for delivery in Virginia with effective dates on and after July 1, 2023. Insurers and rate service organizations shall submit filings for compliance with this chapter no later than December 31, 2022.

C. Pursuant to § 38.2-130 of the Code of Virginia, homeowners insurance policies are indivisible package policies that insure owner-occupied dwellings.

D. This chapter does not apply to policies that:

1. Are lender-placed;
2. Insure owner-occupied farms;
3. Insure manufactured homes as defined in § 46.2-100 of the Code of Virginia, except for policies insuring manufactured homes as defined in § 46.2-653.1 of the Code of Virginia;
4. Primarily insure the personal property of renters;



5. Are issued pursuant to Chapter 27 (§ 38.2-2700 et seq.) of Title 38.2 of the Code of Virginia; or

6. Are issued pursuant to Chapter 48 (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia.

E. Insurers shall file with the commission all policies and endorsements for approval before use.

F. Policies and endorsements shall not be less favorable than the provisions set forth in this chapter. Insurers may provide broader and more favorable coverages, terms and conditions than those set forth in this chapter. Insurers may use any policy language that is not less favorable to the insured and complies with provisions of this chapter.

#### **14VAC5-342-20. Severability.**

If a provision of this chapter or its application to a person or circumstance is for any reason held to be invalid by a court, the remainder of this chapter and the application of the provisions to other persons or circumstances shall not be affected.

#### **14VAC5-342-30. Definitions.**

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

"Actual cash value" means the amount equal to the replacement cost minus depreciation of damaged or stolen property at the time of the loss.

"Aircraft" means a machine or device capable of atmospheric flight, including hobby or model aircraft, drones, self-propelled missiles, and spacecraft.

"Bodily injury" means bodily harm, sickness, or disease, including care, loss of services, and resulting death.

"Business" means a trade, profession, or occupation whether full-time, part-time, or occasional activity, including (i) farming, (ii) the rental of the whole or a part of the residence premises by an insured, (iii) the business use of a part of the insured premises, or (iv) home-sharing.

"Business" shall not include:

1. The occasional rental of the whole or a part of the residence premises for dwelling purposes;
2. The rental or holding for rental of a part of the residence premises for no more than two roomers or boarders for use as a primary residence;
3. The rental of a part of the residence premises as a private garage;
4. The rental of a part of the residence premises as an office, school, or studio; or
5. The insured's use of the residence premises for-remote work under an agreement with the insured's employer.

"Commission" means the State Corporation Commission.

"Condominium unit" means a dwelling as defined in § 55.1-1900 of the Code of Virginia.

"Covered watercraft" means a (i) sailing vessel with or without auxiliary power that is less than 26 feet in length; (ii) a vessel that is powered by an engine with less than 26 horsepower; and (iii) rowboats and canoes.

"Dwelling" means any residential structure specifically named in the policy.

"Farms" or "farming" means the use of land and buildings primarily for agricultural purposes with the objective of raising animals to produce food for sale or distribution to the public and growing crops for sale or distribution to the public.

"Fixtures" means permanently installed components of the dwelling or other structures including wells; plumbing systems; pumps; air conditioning equipment, systems, and parts; heating equipment, systems, and parts; hot water heaters; lighting systems; or built-in appliances and other components where removal would deface or damage the dwelling.

"Functional replacement cost" means the cost to repair or replace the damaged dwelling or other structures with less costly common construction materials and methods that are functionally equivalent to materials and methods used in the original construction.

"Home-sharing" means rental or offering for rental the residence premises or a part of the residence premises for lodging purposes made available through an online-enabled application, website, or digital network. Home-sharing is not occasional rental as defined in this section. An individual occupying the residence premises through home-sharing is not a roomer, boarder, tenant, or guest.

"Hovercraft" means a self-propelled air cushioned vehicle that can travel over land and water.

"Insured" means:

1. Any person named as an insured in the policy, and if residents of the named insured's household, the named insured's spouse if not a named insured, and the relatives of either;
2. Other persons younger than 21 years of age in the care of an insured; and
3. Under personal liability and medical payments coverage:
  - a. A person having custody or possession of an insured's pet, unless the custody or possession is in the course of the person's business or without the insured's permission;
  - b. A person using or having custody or possession of an insured's covered watercraft unless the use, custody, or possession is in the course of the person's business or without the insured's permission; and

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c. Residence employees while engaged in the duties of their employment with respect to a motor vehicle, recreational motor vehicle, hovercraft, or covered watercraft insured under the policy.

"Insured premises" means:

1. Under property coverage, any residence premises specifically named in the policy; and
2. Under personal liability and medical payments coverages:
  - a. Any residence premises specifically named in the policy;
  - b. Any premises not owned by an insured except where an insured is temporarily residing;
  - c. A residence premises acquired by the named insured or named insured's spouse during the policy term;
  - d. Individual or family cemetery plots or burial vaults owned by the named insured;
  - e. Unimproved land, other than land used for farming, owned by or rented to an insured; and
  - f. Land, other than land used for farming, owned by or rented to an insured on which a dwelling is being built as a residence for the insured.

"Medical payments" means expenses for necessary medical, surgical, x-ray, dental services, prosthetic devices, ambulance, hospital, professional nursing, rehabilitation, pharmaceuticals, and funeral services.

"Motor vehicle" means a vehicle that is self-propelled or designed for self-propulsion and is designed or licensed for use on public roads.

"Occasional rental" means: in any one policy term, (i) rental of the residence premises or a part of the residence premises for up to seven days, whether consecutive or random, (ii) rental of the residence premises that generates revenue of up to \$2,500, or (iii) a combination of clauses (i) and (ii) of this definition. Occasional rental is not home-sharing as defined in this section.

"Occurrence" means an accident, including continuous or repeated exposure to the same generally harmful conditions that results in bodily injury or property damage during the policy term.

"Pollutant" means solid, liquid, gaseous, thermal, or radioactive irritants or contaminants, including acids, alkalis, chemicals, fumes, vapors, and waste.

"Property damage" means injury to or destruction of tangible property and loss of use of tangible property.

"Recreational motor vehicle" means a vehicle designed for recreational use off public roads and not subject to motor vehicle registration.

"Replacement cost" means the cost to repair or replace the damaged or stolen property with material of like kind and quality without deduction for depreciation.

"Residence employee" means an employee of an insured who provides maintenance or domestic services for the residence premises or who performs similar duties elsewhere except in connection with an insured's business.

"Residence premises" means (i) a dwelling, other structures, and grounds at the location named in the policy; and (ii) that part of any other building occupied by the named insured or spouse for residential purposes.

"Theft" means an act of stealing or attempt to steal, including loss of property from a known place under circumstances when a probability of theft exists.

"Vacant" means a dwelling (i) that has not been occupied as a residence for more than 30 consecutive days immediately before a loss and (ii) where most of the named insured's personal property has been removed such that the dwelling is not functional as a customary place of residence. A dwelling is not occupied if the dwelling is being used without the permission of an insured. A dwelling under construction or being remodeled, repaired, or renovated is not vacant.

"Vandalism" or "malicious mischief" means the willful and malicious damage to or destruction of the property excluding loss by pilferage, theft, burglary, or larceny.

## **14VAC5-342-40. Mandatory property coverages.**

A. Insurers shall provide coverage to the dwelling on the residence premises including fixtures.

1. Insurers shall also provide coverage for materials and supplies while located on the residence premises and intended for use in construction, alteration, or repair of the dwelling or other structures.
2. For a dwelling that is a condominium unit, insurers shall provide a limit of liability of at least \$5,000 for the dwelling and fixtures that are the responsibility of the condominium unit owner.

B. Insurers shall provide coverage for other structures and the fixtures of other structures on the residence premises.

1. Insurers shall provide a limit of liability of at least 10% of the dwelling limit of liability.
2. Insurers may exclude coverage for other structures that are used for business or rented or held for rental unless the structure is (i) rented to roomers, boarders, or tenants of the dwelling or (ii) rented for use solely as a private garage.
3. For condominium units, insurers shall provide coverage for other structures and fixtures of other structures that are the responsibility of the condominium unit owner.

C. Insurers shall provide coverage for household and personal property owned or used by an insured while it is anywhere in the world.

1. Insurers shall provide a limit of liability for household and personal property coverage that is at least 50% of the dwelling limit of liability. For condominium units, the limit of liability for household and personal property shall be determined by the insured and the insurer.

2. At the request of the named insured at the time of loss, insurers shall provide coverage for household and personal property owned by a:

- a. Guest while in a residence occupied by an insured;
- b. Residence employee while the property is in a residence occupied by an insured; and
- c. Residence employee while the residence employee is engaged in the service of an insured and the property is in the physical custody of the residence employee.

3. Insurers shall provide coverage for the insured's property (i) on the residence premises during an occasional rental; or (ii) on the part of the residence premises occupied by roomers, boarders, or tenants.

4. Insurers shall provide coverage for household and personal property while it is being moved to the insured's new principal residence within the United States. Insurers shall provide coverage for property while it is being moved for 30 days from the date that moving the property begins. The household and personal property limit of liability applies to property being moved to another location. If the move began during the policy term, coverage may not be limited by the expiration of the policy.

5. Insurers shall provide coverage for household and personal property while it is usually located away from the residence premises. Insurers shall provide a limit of liability for this coverage that is at least 10% of the limit of liability specified for household and personal property, but not less than \$1,000.

6. Insurers shall provide coverage for the following types of household and personal property at limits of at least the following:

- a. \$500 total per loss on cemetery property on or off the residence premises, including monuments, headstones, grave markers, and urns.
- b. \$100 total per loss on coin collections, medals, gold, platinum, and silver, provided, goldware and gold-plated ware shall not be deemed to be gold and silverware and silver-plated ware shall not be deemed to be silver.
- c. \$500 total per loss on passports, tickets, or stamp collections.
- d. \$1,500 total per loss for theft of jewelry, precious and semi-precious stones, and furs, and articles containing fur that represent its principal value; if open causes of loss are

provided, insurers may also apply this limit to misplacing or losing this property.

e. \$500 total per loss for theft of guns and related accessories; if open causes of loss are provided, insurers may also apply this limit to misplacing or losing this property.

f. \$1,000 total per loss on watercraft, trailers used with watercraft, and watercraft furnishings, equipment, and motors. This limit does not apply to rowboats or canoes.

g. \$500 on trailers, semi-trailers, and campers not otherwise covered in this chapter.

D. Insurers shall provide coverage for the expenses incurred for the removal of debris of covered property damaged by a covered cause of loss and the expense for the removal of fallen trees that damage covered property.

1. Expenses for debris removal are included within the limit of liability applicable to the damaged property, except as provided in subdivision 2 of this subsection.

2. When the amount payable for the damage to the property plus the expense of debris removal exceeds the limit of liability for the damaged property, insurers shall provide an additional 5.0% of the limit of liability applicable to the damaged covered property for debris removal expenses.

3. Insurers may not apply depreciation to debris removal expenses.

E. Insurers shall provide coverage for contractual fire department service charges and volunteer fire department service charges as follows:

1. Contractual fire department service charges where a fire department is called to save or protect insured property from a covered cause of loss. Insurers may limit this coverage to a residence premises not located within the limits of a city, municipality, or fire protection district furnishing fire department services.

2. Fire department service charges made by volunteer fire departments pursuant to § 38.2-2130 of the Code of Virginia.

3. Insurers shall provide at least \$250 of coverage for each type of fire department service charges.

4. Insurers may not apply a deductible or depreciation to the coverages in subdivisions 1 and 2 of this subsection.

F. Insurers shall offer ordinance or law coverage, subject to the exclusions or limitations within this chapter, pursuant to § 38.2-2124 of the Code of Virginia at the dwelling limit of liability within the policy or as an endorsement. This limit of liability is in addition to the limit of liability applicable to the dwelling. Insurers may make other limits of liability available for insureds to purchase. Insurers may not apply depreciation to this coverage. When ordinance or law coverage is provided within the policy or as an endorsement, subdivision C 1 c of 14VAC5-342-60 does not apply.

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G. Insurers shall offer coverage for water that backs up through sewer or drains, subject to the exclusions or limitations within this chapter, pursuant to § 38.2-2120 of the Code of Virginia at the dwelling limit of liability within the policy or as an endorsement. This limit of liability is in addition to the limit of liability applicable to the dwelling. Insurers may make other limits of liability available for insureds to purchase. Insurers may not apply depreciation to this coverage. When coverage for water that backs up through sewers or drains is provided within the policy or as an endorsement, subdivision C 1 a (2) of 14VAC5-342-60 does not apply.

H. Insurers shall provide coverage of at least 20% of the dwelling limit of liability for the increase in necessary living expenses when the dwelling is uninhabitable due to a covered cause of loss. Insurers shall provide coverage of at least 20% of the household and personal property limit of liability for condominium units.

1. Insurers shall provide this coverage for the time reasonably required to return the dwelling to a habitable condition or for the insured's household to become settled in any permanent quarters.

2. Insurers shall provide additional living expense coverage for at least two weeks while a civil authority limits access to the residence premises as a result of damage to neighboring premises by a covered cause of loss.

3. Insurers may exclude living expenses that do not continue.

4. This coverage is not limited by the expiration date of the policy.

5. Insurers may not apply a deductible to this coverage.

I. Insurers shall provide coverage of at least 20% of the dwelling limit of liability for the fair rental value of a part of the dwelling or other structures. Insurers shall provide at least 20% of the household and personal property limit of liability for condominium units.

1. Insurers shall provide this coverage for the time reasonably required to restore the dwelling or other structures to a tenantable condition following damage caused by a covered cause of loss.

2. Insurers shall provide fair rental value coverage for at least two weeks while a civil authority limits access to the residence premises as a result of damage to neighboring premises by a covered cause of loss.

3. Insurers may exclude expenses that do not continue.

4. Insurers may exclude coverage for loss or expense due to cancellation of a lease or agreement.

5. This coverage is not limited by the expiration date of the policy.

6. Insurers may not apply a deductible to this coverage.

J. Insurers shall provide coverage for damage to trees, shrubs, plants, or lawns caused by fire, lightning, explosion, riot, civil commotion, vandalism, malicious mischief, theft, aircraft, or vehicles not owned or operated by a resident of the premises.

1. Insurers shall provide a limit of liability for this coverage of at least 5.0% of the dwelling limit of liability.

2. Insurers may limit the amount of coverage to no more than \$500 for each tree, shrub, or plant on the premises. The limit of coverage includes debris removal coverage when the tree, plant, or shrub does not cause damage to covered property.

K. Insurers shall provide coverage for loss or damage to property while removed or being removed from the residence premises because the property is endangered by a covered cause of loss.

1. Coverage is provided for damage from any cause subject to the exclusions and limitations permitted in this chapter.

2. Insurers shall provide this coverage for at least 30 days for each removal.

3. This coverage is not limited by the expiration date of the policy.

4. This coverage does not increase the limit of liability that applies to the damaged covered property.

L. Insurers shall provide coverage for the cost of making reasonable repairs to protect covered property from further damage when the repairs are directly attributable to damage caused by a covered cause of loss. The repairs are included as part of the amount of the loss.

M. Insurers shall pay the cost incurred to tear out and replace the part of the dwelling or other structure necessary to gain access to the system or appliance from which the water or steam escaped if a loss to the dwelling or other structures is caused by water or steam escaping from a system or appliance. Insurers may exclude loss to the system or appliance from which the water or steam escapes. Insurers may not apply depreciation to this coverage.

N. Insurers shall provide coverage for direct physical loss to the dwelling, other structures, and household and personal property involving collapse of a dwelling or other structure or any part of a dwelling or other structure:

1. Caused by one or more of the following:

a. The causes of loss in subsection C of 14VAC5-342-50;

b. Hidden decay;

c. Hidden insect or vermin damage;

d. Weight of contents, equipment, animals, or people;

e. Weight of rain that collects on a roof; or

f. Use of defective materials or methods in construction, remodeling, or renovation if the collapse occurs during the construction, remodeling, or renovation.

2. Loss to an awning, fence, patio, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf, or dock is not included under subdivisions 1 b through 1 f of this subsection unless the loss is a direct result of the collapse of a building.

3. Collapse does not include settling, cracking, shrinking, bulging, or expansion.

4. This coverage does not increase the limit of liability applicable to the damaged covered property.

**14VAC5-342-50. Causes of loss.**

A. 1. Insurers shall provide open causes of loss for the dwelling and other structures.

2. Insurers shall provide coverage for direct loss to the dwelling and other structures on the residence premises subject to the exclusions and limitations permitted in this chapter.

B. 1. Insurers shall provide either open causes of loss or named causes of loss for household and personal property.

2. Insurers shall provide coverage for direct loss to household and personal property subject to the exclusions and limitations permitted in this chapter.

C. When named causes of loss for household and personal are provided, insurers shall provide coverage for direct loss caused by the following:

1. Fire or lightning.

2. Windstorm or hail.

a. Insurers may exclude loss to the interior of the dwelling or other structure or the household and personal property within caused by rain, snow, sand, or dust unless the rain, snow, sand, or dust enters through an opening caused by the force of wind or hail; and

b. Insurers may exclude loss to watercraft while not inside a fully enclosed building. This exclusion does not apply to rowboats or canoes.

3. Explosion.

4. Riot or civil commotion.

5. Aircraft.

6. Vehicles.

7. Sudden and accidental damage from soot or smoke, other than smoke from agricultural smudging or industrial operations.

8. Vandalism or malicious mischief.

9. Falling objects. Insurers may exclude loss to:

a. Property within a dwelling or other structure caused by a falling object unless the falling object first damages the

exterior of the roof or walls of the dwelling or other structure; or

b. The falling object itself.

10. Weight of ice, snow, or sleet that damages household and personal property contained in a dwelling or other structure if the weight of ice, snow, or sleet first damages the dwelling or other structure.

11. Sudden and accidental tearing apart, cracking, burning, or bulging of a steam or hot water heating system, or of an appliance for heating water, but excluding loss caused by or resulting from freezing.

12. Freezing of plumbing, heating, or air conditioning systems, and domestic appliances.

13. Accidental discharge, leakage, or overflow of water or steam from within a plumbing, heating, or air conditioning system, or domestic appliance.

14. Sudden and accidental injury from electrical currents artificially generated to electrical appliances, devices, fixtures, and wiring.

15. Theft of household and personal property, except insurers may exclude coverage for loss by theft:

a. If committed by an insured;

b. In or to a dwelling or other structure under construction, or of materials and supplies for use in the construction, unless the dwelling is occupied;

c. If committed by (i) roomers, (ii) boarders, or (iii) tenants, employees of the tenants, or members of the tenants' household;

d. Of money, bullion, silver, gold, platinum, coin collections, medals, bank notes, letters of credit, notes other than bank notes, passports, tickets, stamp collections, jewelry, silverware, goldware, pewterware, silver-plated ware, gold-plated ware, or furs while the part of the residence premises customarily occupied exclusively by an insured is rented to others;

e. Of household and personal property in a location other than the residence premises that is owned, rented, or occupied by an insured, except (i) while an insured is temporarily residing at that location and (ii) property of a student who is an insured if the student has been at that location at any time during the 45 days immediately before a loss; or

f. From the unauthorized use of a credit card or debit card; or loss by forgery or alterations of a written promise, order, or direction to pay a sum certain in money.

16. Breakage of glass that is a part of the dwelling or other structures if it results in damage to household and personal property. Insurers may exclude this coverage if the dwelling was vacant.

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## 14VAC5-342-60. Exclusions applicable to property coverages.

A. For policies providing open causes of loss, insurers may exclude direct loss to the dwelling, other structures, or household and personal property caused by any of the following:

1. Wear and tear; marring or scratching; deterioration; inherent vice; latent defect; mechanical breakdown; rust; mold; wet or dry rot; pollutants; smog; smoke from agricultural smudging or industrial operations; settling, cracking, shrinkage, bulging, or expansion of pavements, patios, foundations, walls, floors, roofs, or ceilings; or birds, vermin, rodents, insects, or animals owned or kept by an insured. If a covered cause of loss ensues, insurers shall provide coverage for the ensuing loss.

2. Theft in or to a dwelling under construction, or of materials or supplies for use in the construction, until construction is completed and the residence premises is occupied.

3. Vandalism and malicious mischief or glass breakage if the dwelling on the insured premises was vacant. If a covered cause of loss ensues, insurers shall provide coverage for the ensuing loss.

4. Collapse, except as required by subsection N of 14VAC5-342-40.

B. For policies providing open causes of loss, insurers may exclude direct loss to household and personal property caused by any of the following:

1. Breakage of eyeglasses, glassware, statuary, marbles, bric-a-brac, porcelains, and similar fragile articles, except jewelry, watches, bronzes, cameras, and photographic lenses. This exclusion shall not apply to loss caused by or resulting from the causes of loss in subsection C of 14VAC5-342-50, earthquake, and water not otherwise excluded.

2. Dampness of atmosphere or extremes of temperature unless the loss is directly caused by rain, snow, sleet, or hail.

3. Refinishing, renovating, or repairing property other than watches, jewelry, and furs.

4. From the unauthorized use of a credit card or debit card; or loss by forgery or alterations of a written promise, order, or direction to pay a sum certain in money.

5. Destruction or seizure by order of any government or public authority.

6. Collision, sinking, swamping, or stranding of watercraft, trailers used with watercraft, and watercraft furnishings, equipment, and motors. This exclusion does not apply to collision involving a motor vehicle.

C. For all causes of loss, insurers may:

1. Exclude loss caused directly or indirectly by any of the following:

a. Water, as follows:

(1) Flood, ground surface water, waves, seiche, tidal water or tidal waves, overflow of a body of water, or spray from any of these;

(2) Water that backs up through sewers or drains;

(3) Water that overflows or is discharged from a sump pump or other type of system designed to remove subsurface water that is drained from the foundation area;

(4) Water below the surface of the ground including water that exerts pressure on or flows, seeps, or leaks through (i) sidewalks; (ii) driveways; (iii) foundations; (iv) swimming pools; (v) walls; (vi) basements or floors; or (vii) doors, windows, or other openings;

(5) Material carried or moved by water referred to in subdivisions 1 a (1), 1 a (2), and 1 a (3) of this subsection; or

(6) The exclusions for water loss in subdivisions 1 a (1) through 1 a (5) of this subsection do not apply to:

(a) A loss by theft; or

(b) An ensuing loss caused by fire or explosion.

b. Earth movement, natural or manmade, including earthquake, volcanic eruption, landslide, mudflow, or other earth movement caused by sinking, rising, shifting, or expansion. Insurers shall provide coverage for:

(1) A loss by theft; or

(2) An ensuing loss caused by fire, explosion, or breakage of glass that is a part of the dwelling or other structures.

c. Enforcement of ordinances or laws regulating the construction, repair, or demolition of dwellings or other structures. Insurers shall provide coverage when an ordinance or law requires the use of safety glass in replacement of damaged glass that is a part of the dwellings or other structures.

d. Interruption of power or other utility service furnished to the insured premises if the interruption takes place away from the insured premises. Insurers shall provide coverage for the ensuing loss if a covered cause of loss ensues on the insured premises because of the power interruption.

e. Enemy attack by armed forces including action taken by military, naval, or air forces in resisting an actual or immediately impending enemy attack, invasion, insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating, or defending against the event; order of civil authority except acts of destruction at the time of and for preventing the spread of fire, provided that the fire did not originate from an excluded cause of loss.

f. Nuclear reaction, nuclear radiation, or radioactive contamination as set forth in § 38.2-2102 A of the Code of Virginia.

g. The exclusions in subdivisions 1 a through 1 f of this subsection apply if one or more of the following concurrently contribute to the loss:

(1) Weather conditions;

(2) Acts or decisions, or the failure to act or decide, of a person, group, organization, or governmental body; or

(3) Faulty, inadequate, or defective:

(a) Planning, zoning, development, surveying, or siting;

(b) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, or compaction;

(c) Materials used in repair, construction, renovation, or remodeling; or

(d) Maintenance.

2. Exclude direct loss caused by:

a. Freezing of or by discharge, leakage, or overflow from plumbing, heating, or air conditioning systems or domestic appliances. This exclusion applies only to a dwelling that is vacant, under construction, or unoccupied for four or more consecutive days, and the insured has failed to (i) exercise due diligence to maintain heat in the dwelling or other structures, or (ii) drain the systems and appliances and shut off the water supply.

b. Continuous or repeated seepage or leakage of water over a period of weeks, months, or years. This exclusion does not apply to household and personal property.

c. Freezing, thawing, or by the pressure or weight of ice or water to fences, pavements, patios, swimming pools, foundations, retaining walls, bulkheads, piers, wharves, or docks.

d. Windstorm or hail to the following property (i) overhead structures, including supports and screening, constructed principally of cloth, metal, fiberglass, or plastic and erected to provide protection from the elements; (ii) fences; (iii) seawalls; (iv) property line or other free-standing walls; (v) greenhouses, hothouses, slathouses, trellises, pergolas, or cabanas; (vi) wharves, docks, piers, boathouses, bulkheads, or other similar structures located over or partially over water and the property on or within these structures; or (vii) outdoor equipment pertaining to the service of the residence premises.

e. Neglect of the insured to use all reasonable means to protect the property during and after a loss.

f. An intentional act by a person insured under the policy that was directed or committed by that person, but only with respect to that person.

D. Insurers may exclude coverage for the following types of property:

1. Accounts, bills, or currency including virtual or digital, deeds, evidences of debt, money, scrip, stored value cards, smart cards, securities, bullion, manuscripts, letters of credit, bank notes, or notes other than bank notes;

2. Aircraft and parts except insurers shall provide coverage for (i) drones without cameras and drones that are not capable of carrying people or cargo and (ii) hobby aircraft or model aircraft that is not capable of carrying people or cargo;

3. Animals, birds, or fish;

4. Business property;

5. Electronic equipment that is permanently installed in a motor vehicle;

6. Tapes, wires, records, discs, or other media used with electronic equipment in a motor vehicle while the property is in or on a motor vehicle;

7. Motor vehicles, motorized bicycles, and hovercraft; except (i) vehicles used to service the residence premises, (ii) utility trailers that are not licensed for road use, and (iii) electric mobility devices designed to assist an individual that has a disability;

8. Property of (i) tenants and (ii) roomers and boarders not related to the insured;

9. Property rented to others except as provided in subdivision C 3 of 14VAC5-342-40;

10. Property that is unlawful to own or possess under state or federal law; or

11. Property that is separately described and specifically insured by this insurance or other insurance.

**14VAC5-342-70. Loss settlement condition.**

A. Insurers shall include loss settlement provisions in accordance with this section.

B. Insurers shall apply actual cash value loss settlement as follows:

1. Subject to the limit of liability, insurers may pay the smaller of the following amounts:

- a. Cost to repair or replace with like kind and quality; or
- b. Actual cash value of the damaged property.

2. Insurers may apply actual cash value loss settlement to:

- a. Household and personal property;
- b. Outdoor radio and television antennas; satellite dishes; or
- c. Awnings.

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C. Insurers shall apply replacement cost loss settlement as follows:

1. Insurers shall apply replacement cost loss settlement to property described under subsections A and B of 14VAC5-342-40, including permanently installed flooring. Wall-to-wall carpeting is permanently installed flooring.

2. Insurers may limit replacement cost loss settlement to the following:

a. The limit of liability applicable to the dwelling or other structure;

b. The replacement cost of the dwelling or other structure or a part of the dwelling or other structure on the residence premises and intended for the same occupancy and use; or

c. The amount spent in repairing or replacing the dwelling or other structure, or a part of the dwelling or other structure and intended for the same occupancy and use.

3. The insured may assert a claim for the actual cash value of the dwelling or other structure without prejudicing the insured's right to make further claim for the difference between the actual cash value and the replacement cost in accordance with § 38.2-2119 B of the Code of Virginia. The claim for the difference must be made within six months of (i) the last date on which the insured received a payment for actual cash value or (ii) date of entry of a final order of a court of competent jurisdiction declaratory of the right of the insured to full replacement cost, whichever shall last occur.

4. When the repair or replacement cost is \$2,500 or less, insurers shall be liable for the full cost of repair or replacement before the repair or replacement has been completed.

5. Insurers may apply an insurance-to-value ratio for replacement cost loss settlement as follows:

a. Insurers may require an insurance-to-value ratio of no more than 80% before full replacement cost loss settlement applies.

b. If the insurance-to-value is less than 80% for a dwelling or other structure, an insurer may limit its liability for loss to the larger of the following:

(1) The actual cash value of that part of the dwelling or other structures; or

(2) That proportion of the full cost of repair or replacement without deduction for depreciation of that part of the dwelling or other structure damaged or destroyed that the whole amount of insurance applicable to the dwelling or other structure for the cause of loss bears to 80% of the full replacement cost of the dwelling or other structure.

c. In calculating the 80% insurance-to-value ratio, insurers shall disregard the cost of (i) excavations; (ii) underground flues and pipes; (iii) underground wiring and drains; and (iv) brick, stone, and concrete foundations, piers, and other supports that are below the under surface of the lowest

basement floor, or where there is no basement that are below the surface of the ground inside the foundation walls.

6. Insurers may provide replacement cost loss settlement on household and personal property as authorized by § 38.2-2119 of the Code of Virginia.

D. Insurers may offer functional replacement cost loss settlement for the property described in subsections A and B of 14VAC5-342-40, under the conditions outlined in this subsection.

1. Functional replacement cost is only permitted at the option of the insured.

2. Insurers may not apply functional replacement cost loss settlement to property that qualifies for an amount of insurance equal to 80% or more of the full replacement cost of the dwelling or other structure.

3. Insurers shall provide the notice required by § 38.2-2119 C of the Code of Virginia.

4. Insurers may limit functional replacement cost loss settlement to the following:

a. The limit of liability applicable to the dwelling or other structure;

b. The amount necessary to repair or replace the property with functionally equivalent property at a lower cost than would be required to replace the property with material of like kind and quality; or

c. The amount spent to repair or replace the dwelling or other structure or part of the dwelling or other structure intended for the same occupancy and use.

E. Insurers shall determine loss to property that is part of a pair or set in a reasonable and fair proportion of the total value of the pair or set.

F. Insurers shall adjust losses with the named insured and shall pay the named insured unless another payee is specifically named.

G. Insurers shall restore the limits of liability after a loss is paid.

H. Insurers may apply a property deductible unless prohibited or otherwise limited in this chapter. Insurers may apply a special property deductible for the following causes of loss (i) wind, (ii) hail, or (iii) theft. No more than one deductible may be applied to a loss. The amount of any property deductible may not exceed 10% of the dwelling limit of coverage.

I. Insurers may (i) take all or part of the damaged property at the agreed or appraised value or (ii) repair, rebuild, or replace the damaged property with other of like kind and quality within a reasonable time. Within 30 days after receiving the insured's proof of loss, insurers shall provide notice to the insured of the insurer's decision to (i) take the property at the agreed or



appraised value or (ii) repair, rebuild, or replace the damaged property.

**14VAC5-342-80. Conditions applicable to property coverage.**

A. Insurers shall include the following statutory conditions:

1. The nuclear clause set forth in § 38.2-2102 of the Code of Virginia.
2. The conditions set forth in § 38.2-2104 of the Code of Virginia:
  - a. Assignment of the policy.
  - b. The time that coverage begins and ends.
3. The conditions set forth in § 38.2-2105 of the Code of Virginia:
  - a. Abandonment.
  - b. Appraisal.
  - c. Mortgagee interests and obligations.
  - d. Pro rata liability.
  - e. Requirements in case loss occurs.
  - f. Suit.
  - g. When loss payable.

B. Insurers may include any of the following conditions:

1. The insured shall notify the police when loss is by theft.
2. A bailee for hire shall not benefit under the policy.

**14VAC5-342-90. Personal liability coverage.**

A. Insurers shall provide personal liability coverage as follows:

1. Insurers shall pay on behalf of the insured all sums that the insured is legally obligated to pay as damages for bodily injury or property damage caused by a covered occurrence.
2. Insurers shall defend a suit against the insured seeking damages for bodily injury or property damage, even if any of the allegations of the suit are groundless, false, or fraudulent.
3. Insurers shall investigate any claim or suit and may settle any claim or suit as it deems expedient.
4. Insurers shall not be obligated to pay a claim or judgment after the limit of liability has been exhausted by payment of judgments or settlements.

B. In addition to the limit of liability applicable to personal liability coverage, insurers shall provide coverage for any of following personal liability claims expenses:

1. All expenses incurred by the insurer and all costs taxed against an insured in a suit defended by the insurer;

2. All premiums on appeal bonds required in a suit; premiums on bonds to release attachments in a suit for an amount not more than the applicable limit of liability of the policy; and the cost of bail bonds required of an insured because of an occurrence to which the policy applies, of at least \$250 per bail bond, except the insurer shall have no obligation to apply for or furnish the bonds;

3. Pre-judgment interest incurred;

4. Post-judgment interest on the part of a judgment that does not exceed the limit of the insurer's liability; and

5. Reasonable expenses incurred by an insured of at least \$50 per day. Reasonable expenses include (i) loss of earnings except loss of other income, (ii) vacation time, and (iii) other benefit loss because of an insured's attendance at hearings or trials or assistance with the investigation as requested.

C. In addition to the limit of liability applicable to personal liability coverage, insurers shall provide coverage for the following:

1. Insurers shall pay for damage to property of others caused by an insured during the policy period at the actual cash value or the cost to repair or replace the damaged property with other property of like kind and quality.

a. Insurers may limit this coverage to \$250 per occurrence.

b. Insurers may exclude damage to property of others:

(1) Caused intentionally by an insured 13 years of age or older;

(2) Rented to an insured;

(3) Owned by or rented to (i) roomers, (ii) boarders, (iii) tenants, or (iv) residents of the insured's household;

(4) Arising out of (i) an act or omission in connection with a premises owned, rented, or controlled by an insured other than the insured premises; (ii) business pursuits or professional services; or (iii) the ownership, maintenance, operation, use, loading, or unloading of a vehicle, trailer or semi-trailer, farming machinery or equipment, aircraft, or watercraft; or

(5) If the property is covered elsewhere under the policy.

2. Insurers shall pay expenses incurred by an insured at the time of an occurrence for first aid to others for bodily injury covered under the policy.

**14VAC5-342-100. Medical payments coverage.**

A. Insurers shall provide medical payments coverage in accordance with this chapter. This coverage applies:

1. While the person is on the insured premises with the permission of an insured.

2. While the person is elsewhere, if the bodily injury:

a. Arises out of a condition on the insured premises or the ways immediately adjoining;

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b. Is caused by the activities of an insured or by a residence employee during the residence employee's employment by the insured;

c. Is caused by an animal owned by or in the care of an insured; or

d. Is sustained by a residence employee and arises out of the residence employee's employment by the insured.

B. Insurers shall provide coverage for reasonable medical expenses incurred to each person injured within one year from the date of the occurrence.

## **14VAC5-342-110. Exclusions applicable to personal liability and medical payments coverage.**

A. Insurers may exclude losses under personal liability coverage for:

1. Liability assumed by the insured under contracts or agreements that are not in writing. This exclusion does not apply to liability that the insured would have had without a contract or agreement.

2. Liability assumed by the insured under a contract or agreement relating to the insured's business.

3. The insured's share of any loss assessment charged against all members of any property owners' association.

4. Bodily injury to a person covered or required to be covered under a workers' compensation or other similar law.

5. Damage to property owned by the insured.

6. Damage to property of others in the care, custody, or control of the insured.

7. Sickness, disease, or death of a residence employee unless written claim is made or suit is brought against the insured within 36 months after the end of the policy term.

B. Insurers may exclude losses under medical payments coverage:

1. To a person covered or required to be covered under a workers' compensation or other similar law;

2. To any person covered as an insured;

3. To a person, except a residence employee, regularly residing on the insured premises;

4. To a residence employee if the bodily injury occurs off the insured premises unless the injury arises out of the residence employee's employment by an insured; or

5. To a person on the insured premises because an insured's business is conducted on the premises or professional services are rendered on the premises.

C. Insurers may exclude occurrences applicable to personal liability and medical payments coverages arising from:

1. Aircraft. Insurers shall provide coverage for (i) drones without cameras and drones that are not capable of carrying people or cargo or (ii) hobby aircraft or model aircraft that are not capable of carrying people or cargo.

2. Motor vehicles, recreational motor vehicles, or hovercraft. Insurers shall provide coverage for:

a. Vehicles primarily used in servicing the residence premises while on or off the residence premises;

b. Golf carts used for golfing purposes within a golfing facility, including crossing public roads to access other parts of the golfing facility;

c. Recreational motor vehicles or hovercraft on an insured premises; and

d. Motor vehicles held in dead storage on the residence premises.

3. Watercraft that is powered by an engine with more than 25 horsepower and sailing vessels more than 26 feet in length with or without auxiliary power. Insurers shall provide coverage for bodily injury or property damage occurring on the insured premises.

4. Rendering of or failing to render professional services.

5. Business pursuits of an insured except for incidental business activities (i) conducted by an insured who is younger than 21 years of age, (ii) that produce revenues of no more than \$2,500 during the policy period, or (iii) a combination of clauses (i) and (ii) of this subdivision.

6. Any premises, owned, rented, or controlled by an insured other than the insured premises.

7. An intentional act by a person insured under the policy that was directed or committed by that person, but only with respect to that person.

8. War, invasion, insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating, or defending against any of these events.

9. Smuggling or trafficking.

10. Sexual molestation, corporal punishment, or physical or mental abuse.

11. Transmission of a communicable disease by an insured.

12. Manufacture, delivery, use, sale, transfer, or possession of property that is unlawful.

13. Manufacture, delivery, use, sale, transfer, or possession of a controlled substance, except for the legitimate use of prescription drugs by a person following the orders of a licensed medical provider.

14. Discharge of carbon monoxide pursuant to § 38.2-235 of the Code of Virginia.

15. Bodily injury to an insured as defined in subdivisions 1 and 2 of the definition of insured in 14VAC5-342-30.

16. Entrustment or supervision by an insured of any excluded aircraft, motor vehicle, recreational motor vehicle, hovercraft, or watercraft.

17. Vicarious liability for the actions of a minor using any excluded aircraft, motor vehicle, recreational motor vehicle, hovercraft, or watercraft.

18. Nuclear reaction, radiation, or radio-active contamination.

**14VAC5-342-120. Conditions applicable to personal liability and medical payments coverage.**

A. An insurer may limit its liability for personal liability coverage and medical payments coverage as follows:

1. For personal liability coverage, the limit of liability that applies to an occurrence is the total limit of the insurer's liability under personal liability coverage for all damages as the result of an occurrence.

2. For medical payments coverage, insurers may apply a limit of liability per person and a limit of liability for two or more persons as the result of an occurrence.

3. For personal liability and medical payments, the limit of liability applies separately to each insured against whom claim is made or suit is brought for an occurrence but does not increase the limit of liability that applies to an occurrence.

B. If an occurrence, claim, or suit occurs, insurers may require an insured to comply with any of the following:

1. To provide notice, in writing, as soon as practicable, containing details sufficient to establish a notice of claim.

2. If claim is made or suit is brought against an insured, to promptly send to the insurer every demand, notice, summons, or other process received by the insured or the representative of the insured.

3. To (i) cooperate with the insurer; (ii) at the request of the insurer, assist in making settlements, in the conduct of suits, and in enforcing a right of contribution or indemnity against a person or organization who may be liable to the insured; (iii) attend hearings and trials; (iv) give and secure evidence; and (v) assist in obtaining the attendance of witnesses.

4. To obtain permission of the insurer before making a voluntary payment, assuming an obligation, or incurring expenses, other than first aid expenses.

5. Under damage to property of others, to:

a. Submit a sworn proof of loss within 60 days after an occurrence unless extended by the insurer.

b. Exhibit damaged property if within the insured's control.

C. For claims under medical payments coverage, insurers may require:

1. An injured person or someone on the injured person's behalf to provide details about the claim, in writing if requested.

2. An injured person or someone on the injured person's behalf to execute authorizations enabling the insurer to get copies of medical reports and records.

3. An injured person to submit to examinations by a medical professional selected by the insurer when and as often as the insurer reasonably requires.

D. For claims under medical payments coverage, insurers may pay the injured person or the person rendering medical services. Payment under medical payments coverage for each occurrence:

1. May reduce the amount payable for a covered injury; and

2. Is not an admission of liability by an insured or the insurer.

E. With respect to a suit under the policy, the insurer may:

1. Require that the insured not bring suit or action against the insurer unless the insured has complied with all the provisions of the policy.

2. Provide that no person or organization may join the insurer as a party to an action against the insured.

3. Require that the amount of the insured's obligation to pay has been determined by (i) judgment against the insured after trial or (ii) written agreement of the claimant and the insurer.

F. The insurer shall provide that its obligations under the policy are not relieved by the bankruptcy or insolvency of the insured or the insured's estate.

G. If execution on a judgment against the insured or the insured's personal representative is returned unsatisfied in an action brought to recover damages for injury or for loss or damage during the policy term, then an action may be maintained against the insurer for the amount of the judgment not exceeding the amount of the applicable limit of coverage.

H. If more than one policy applies to an occurrence, the insurer shall pay that proportion of the loss that the limit of liability of the policy bears to the total amount of insurance that applies to the loss. Except, insurers may provide liability coverage on an excess basis for vehicles or watercraft to which the policy applies. This condition does not apply to medical payments coverage.

**14VAC5-342-130. Policy Conditions.**

A. Insurers may restrict the application of the policy to loss or an occurrence during the policy term.

B. Insurers may void the entire policy (i) if, whether before or after a loss, the insured has willfully concealed or

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misrepresented any material fact or circumstance concerning the insurance or the interest of the insured in the insurance or (ii) in the case of any fraud or false swearing by the insured relating to the insurance.

C. If an insurer adopts any revision to its forms or endorsements that would broaden coverage currently provided without additional premium charge, the insurer shall automatically apply the broadened coverage from the effective date of the revisions.

D. If a named insured dies, insurers shall modify the definition of insured in 14VAC5-342-30 as follows:

1. The named insured includes:

- a. The spouse, if not already a named insured and if residing in the household at the time of the death; and
- b. The legal representative with respect to the insured premises and property of the deceased insured at the time of death.

2. Insured also includes:

- a. Members of the deceased's household who were insured at the time of the named insured's death but only while residents of the insured premises; and
- b. Persons having proper temporary custody of the insured property until the appointment and qualification of the legal representative.

E. Insurers may not invalidate the policy if the insured waives, in writing, before a loss any right of recovery against a party for loss occurring on the insured premises. If not waived, the insurer may require from the insured an assignment of all right of recovery against a party for a loss or occurrence to the extent that the insurer made payment.

F. Terms or conditions in the policy that are less favorable than those provided for in this chapter or the applicable statutes are construed to conform to this chapter and those statutes.

G. Insurers shall include the relevant termination provisions in §§ 38.2-2113 and 38.2-2114 of the Code of Virginia in the policy. In addition, the following apply:

- 1. Return premium calculations resulting from an insurer-initiated termination shall be pro rata.
- 2. Terminations for non-payment of premium shall be calculated pro rata.
- 3. Return premium calculations resulting from an insured-initiated termination may be a short rate calculation, except the penalty may not be more than 10% of the pro rata premium for the expired time.
- 4. Insurers may refuse to renew the policy in accordance with the provisions of §§ 38.2-2113 and 38.2-2114 of the Code of Virginia.

H. If an insurer elects to waive a policy provision, the waiver must be in writing.

I. Insurers may require that coverage under the policy is excess over a service agreement, home warranty, or similar service warranty.

J. Insurers may exclude coverage, refuse to pay claims, or refuse to provide benefits under a policy if those actions would expose the insurer to a violation of applicable trade or economic sanctions, laws, or regulations, including those administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control.

VA.R. Doc. No. R22-6887; Filed September 13, 2021, 12:18 p.m.

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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

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

**Title of Regulation:** **18VAC10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations (amending 18VAC10-20-10, 18VAC10-20-790).**

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

**Effective Date:** December 1, 2021.

**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, FAX (866) 465-6206, or email apelscidla@dpor.virginia.gov.

**Summary:**

*Pursuant to Chapters 500 and 501 of the 2021 Acts of Assembly, Special Session I, the amendments conform regulations concerning qualifications for licensure or*

*certification and standards of conduct to the requirements of § 19.2-389.3 of the Code of Virginia and remove requirements for reporting by applicants or licensees of misdemeanor marijuana convictions.*

**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 references, experience verification, degree verification, and verification of examination and licensure or certification.

"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 non-marijuana 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 exam;

4. Has not had a license, certification, or registration revoked or suspended for cause or been disciplined by 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 the Commonwealth or in another jurisdiction within the five years immediately preceding the filing of the application for licensure, certification, or registration by the Commonwealth.

"Good standing" means that the regulant holds a current or active license, certificate, or registration issued by any regulatory body that is not subject to a current sanction. The regulant shall be in good standing in every jurisdiction where licensed, certified, or registered.

"Place of business" means any location that, through professionals, offers or provides the services of architecture, engineering, land surveying, landscape architecture, 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 interior design.

"Professional" means an architect, professional engineer, land surveyor, landscape architect, or certified interior designer who holds a 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 the Commonwealth.

"Registrant" means a business holding a 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 license issued by the board 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.

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"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 profession indicated on his licenses or 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.

## **18VAC10-20-790. 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 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 non-marijuana misdemeanor that, in the judgment of the board, adversely affects the regulant's ability to perform satisfactorily within the regulated discipline. The board shall review the conviction pursuant to the provisions of § 54.1-204 of the Code of Virginia;
4. The regulant 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;
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.

VA.R. Doc. No. R22-6968; Filed September 21, 2021, 12:33 p.m.

## **AUCTIONEERS BOARD**

### **Final Regulation**

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

**Title of Regulation:** **18VAC25-21. Regulations of the Virginia Auctioneers Board (amending 18VAC25-21-20, 18VAC25-21-40, 18VAC25-21-50, 18VAC25-21-180).**

**Statutory Authority:** §§ 54.1-201 and 54.1-602 of the Code of Virginia.

**Effective Date:** December 1, 2021.

**Agency Contact:** Marian H. Brooks, Regulatory Administrator, Auctioneers Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email [auctioneers@dpor.virginia.gov](mailto:auctioneers@dpor.virginia.gov).

**Summary:**

*Pursuant to Chapters 500 and 501 of the 2021 Acts of Assembly, Special Session I, the amendments conform regulations concerning qualifications for licensure and standards of conduct to the requirements of § 19.2-389.3 of the Code of Virginia and remove requirements for reporting by applicants or licensees of misdemeanor marijuana convictions.*

### **18VAC25-21-20. Licensure.**

All persons or firms as defined in § 54.1-600 of the Code of Virginia who conduct auctions or offer their services to sell at auction in the Commonwealth are required to file a licensure application and pay the specified fee to the board. Applicants for individual licensure shall meet the following requirements:

1. Be at least 18 years of age.
2. Shall not have been previously found by any regulatory board or agency to have violated any applicable regulations or laws in the course of performing auctioneer duties or been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of a

non-marijuana misdemeanor involving moral turpitude or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline. Applicants for licensure who do not meet requirements set forth in this section may be approved for licensure following consideration by the board in accordance with § 54.1-204 of the Code of Virginia.

3. Successfully complete a course of study at a school of auctioneering that has obtained course approval from the board, or an equivalent course, and has passed the Virginia Licensed Auctioneer's Examination administered by the Auctioneers Board or its designee.

### **18VAC25-21-40. License by reciprocity.**

The board may issue a license to any individual applicant holding a license in any state, territory, or possession of the United States, with whom the board has established an act of reciprocity provided the requirements and standards under which the license was issued are substantially equivalent to those established by the board. At the time of application for licensure, the applicant must be currently licensed in the state in which reciprocity is established with the Commonwealth of Virginia. The board may deny an application if the licensed auctioneer has been found guilty (i) by any regulatory board or agency to have violated any applicable regulations or laws in the course of performing auctioneering duties or (ii) by a court of any non-marijuana misdemeanor, other criminal offense, or material misrepresentation in the course of performing auctioneer duties. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline.

Nonresident applicants shall also file with the board an irrevocable consent that service of process upon the director is valid and binding as the service of process upon the applicant.

### **18VAC25-21-50. Application.**

A. All applicants seeking licensure shall submit a fully executed application with the appropriate fee or fees attached. Applicants will be notified if their application is incomplete.

Applications for licensure by examination must comply with the requirements of the board's designee as to the deadline for submission of the application to the board's designee.

B. 1. If a corporation, limited liability company, or other entity, the application shall include copies of the certificate of incorporation or certificate of organization issued by the Virginia State Corporation Commission, articles and bylaws.

2. If a foreign corporation, foreign limited liability company, or other entity, the application shall include copies of the certificate of authority to conduct business issued by the Virginia State Corporation Commission, which shall be required in lieu of the certificates as required by subdivision 1 of this subsection.

3. Any firm applicant shall not have been previously found by any regulatory board or agency to have violated any applicable regulations or laws in the course of performing auctioneer duties or been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of a non-marijuana misdemeanor involving moral turpitude or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline. Applicants for licensure who do not meet requirements set forth in this section may be approved for licensure following consideration by the board in accordance with § 54.1-204 of the Code of Virginia.

C. All applications will be reviewed by the Auctioneers Board staff, or the board's designee, to determine eligibility for examination and licensure within 30 days of receipt at the offices of the Department of Professional and Occupational Regulation or the board's designee. However, failure to review an application within 30 days of receipt shall not imply or result in the automatic approval of the application. No applicant will be approved for licensure unless all requirements of this part of this chapter are met.

### **18VAC25-21-180. Discipline.**

The board has the power to fine any individual or firm licensee, or to suspend or revoke any license issued under the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) if it finds that:

1. The license was obtained, renewed or reinstated through fraud or misrepresentation;

2. The licensee has been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of a non-marijuana misdemeanor involving moral turpitude or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of prior criminal convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. A certified copy of a final order, decree or case decision by a court with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline;

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3. The licensee has been found by any regulatory board, agency, or jurisdiction where licensed to have had a license or registration suspended, revoked or surrendered in connection with a disciplinary action, who has been the subject of discipline in another jurisdiction or to have violated any applicable regulations or laws in the course of performing auctioneer duties. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline;

4. The licensee has not demonstrated reasonable care, judgment, or application of his knowledge and ability in the performance of auctioneering duties;

5. The licensee violated or assisted another to violate any provisions of Chapter 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), or 6 of Title 54.1 of the Code of Virginia, this chapter, or combined or conspired with or acted as agent, partner, or associate for another; or

6. The licensee fails to comply, or misrepresents any information pertaining to his compliance, with any of the continuing education requirements as contained in this chapter.

VA.R. Doc. No. R22-4918; Filed September 21, 2021, 12:34 p.m.

## BOARD FOR BARBERS AND COSMETOLOGY

### Final Regulation

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

**Titles of Regulations:** 18VAC41-20. **Barbering and Cosmetology Regulations (amending 18VAC41-20-20, 18VAC41-20-100, 18VAC41-20-120, 18VAC41-20-130, 18VAC41-20-280).**

**18VAC41-50. Tattooing Regulations (amending 18VAC41-50-20, 18VAC41-50-420).**

**18VAC41-60. Body-Piercing Regulations (amending 18VAC41-60-20, 18VAC41-60-220).**

**18VAC41-70. Esthetics Regulations (amending 18VAC41-70-20, 18VAC41-70-80, 18VAC41-70-90, 18VAC41-70-100, 18VAC41-70-110, 18VAC41-70-280).**

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

**Effective Date:** December 1, 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.

**Summary:**

*Pursuant to Chapters 500 and 501 of the 2021 Acts of Assembly, Special Session I, the amendments conform regulations concerning qualifications for licensure and certification and standards of conduct to the requirements of § 19.2-389.3 of the Code of Virginia and remove requirements for reporting by applicants or licensees of misdemeanor marijuana convictions.*

**18VAC41-20-20. General requirements for a barber, master barber, cosmetologist, nail technician, or wax technician license.**

A. Any individual wishing to engage in barbering, cosmetology, nail care, or waxing shall obtain a license in compliance with § 54.1-703 of the Code of Virginia and shall meet the following qualifications:

1. The applicant shall be in good standing as a licensed barber, master barber, cosmetologist, nail technician, or wax technician in Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure, any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's practice as a barber, master barber, cosmetologist, nail technician, or wax technician. This includes monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if he has been previously licensed in Virginia as a barber, master barber, cosmetologist, nail technician, or wax technician.

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein the board deems the applicant is unfit or unsuited to engage in barbering, cosmetology, nail care, or waxing. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose ~~his~~ the applicant's physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and



understands the Virginia barber and cosmetology license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

- a. All misdemeanor convictions involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury within two years of the date of the application; and
- b. All felony convictions within 20 years of the date of application.

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.

5. The applicant shall provide evidence satisfactory to the board that the applicant has passed the board-approved examination, administered either by the board or by independent examiners.

**B. Eligibility to sit for board-approved examination.**

1. Training in the Commonwealth of Virginia. Any person completing an approved barber, master barber, cosmetology, nail technician, or wax technician training program in a Virginia licensed barber, cosmetology, nail technician, or wax technician school, respectively, or a Virginia public school's barber, master barber, cosmetology, nail technician, or wax technician program approved by the Virginia Department of Education shall be eligible for examination.

2. Training outside of the Commonwealth of Virginia, but within the United States and its territories.

- a. Any person completing a barber training program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of 1,100 hours of training to be eligible for examination. If less than 1,100 hours of barber training was completed, an applicant must submit a certificate, diploma, or other documentation acceptable to the board verifying the completion of a substantially equivalent barber course and documentation of six months of barber work experience in order to be eligible for examination.
- b. Any person completing a master barber or cosmetology training program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of 1,500 hours of training to be eligible for examination. If less than 1,500 hours of master barber or cosmetology training was completed, an

applicant must submit a certificate, diploma, or other documentation acceptable to the board verifying the completion of a substantially equivalent master barber or cosmetology course and documentation of six months of master barber or cosmetology work experience in order to be eligible for examination.

c. Any person completing a nail technician training program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of 150 hours of training to be eligible for examination. If less than 150 hours of nail technician training was completed, an applicant must submit a certificate, diploma, or other documentation acceptable to the board verifying the completion of a substantially equivalent nail technician course and documentation of six months of nail technician work experience in order to be eligible for the nail technician examination.

d. Any person completing a wax technician training program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of 115 hours of training to be eligible for examination. If less than 115 hours of wax technician training was completed, an applicant must submit a certificate, diploma, or other documentation acceptable to the board verifying the completion of a substantially equivalent wax technician course and documentation of six months of wax technician work experience in order to be eligible for the wax technician examination.

**18VAC41-20-100. General requirements for a barber instructor certificate, cosmetology instructor certificate, nail technician instructor certificate, or wax technician instructor certificate.**

A. Any individual wishing to engage in barbering instruction, master barbering instruction, cosmetology instruction, nail care instruction, or waxing instruction shall meet the following qualifications:

- 1. The applicant shall be in good standing as a licensed barber, master barber, cosmetologist, nail technician, or wax technician, and instructor, respectively, in Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's practice as a barber, master barber, cosmetologist, nail technician, or wax technician, or in the practice of teaching any of those professions. This includes monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant has been previously licensed in Virginia as a barber

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instructor, master barber instructor, cosmetology instructor, nail technician instructor, or wax technician instructor.

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein the board deems the applicant is unfit or unsuited to engage in the instruction of barbering, cosmetology, nail care, or waxing. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action;

2. The applicant shall hold a current Virginia barber, master barber, cosmetology, nail technician, or wax technician license, respectively;

3. The applicant shall:

a. Pass a course in teaching techniques at the post-secondary educational level;

b. Complete an instructor training course approved by the Virginia Board for Barbers and Cosmetology under the supervision of a certified barber, master barber, cosmetologist, nail technician, or wax technician instructor in a barber, cosmetology, nail technician, or wax technician school, respectively; or

c. Pass an examination in barber, master barber, cosmetology, nail technician, or wax technician instruction respectively, administered by the board or by a testing service acting on behalf of the board; and

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury within two years of the date of the application; and

b. All felony convictions within 20 years of the date of application.

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.

B. Instructors shall be required to maintain a barber, master barber, cosmetology, nail technician, or wax technician license, respectively.

## **18VAC41-20-120. General requirements for a shop or salon license.**

A. Any firm wishing to operate a barbershop, cosmetology salon, nail salon, or waxing salon shall obtain a shop or salon license in compliance with § 54.1-704.1 of the Code of Virginia and shall meet the following qualifications in order to receive a license:

1. The applicant and all members of the responsible management shall be in good standing as a licensed shop or salon in Virginia and all other jurisdictions where licensed. The applicant and all members of the responsible management shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's operation of any barbershop, cosmetology salon, nail salon, or waxing salon or practice of the profession. This includes monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant or any member of the responsible management has been previously licensed in Virginia as a barbershop, cosmetology salon, nail salon, or waxing salon.

Upon review of the applicant's and all members of the responsible management's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in the operation of a barbershop, cosmetology salon, nail salon, or waxing salon. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose ~~his~~ the applicant's physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia barber and cosmetology license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm and all members of the responsible management regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury within two years of the date of the application; and

b. All felony convictions within 20 years of the date of application.

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.

5. The applicant shall disclose the firm's responsible management.

B. Shop or salon licenses are issued to firms as defined in this chapter and shall not be transferable and shall bear the same name and address of the business. Any changes in the name or address of the shop or salon shall be reported to the board in writing within 30 days of such changes. The board shall not be responsible for the licensee's, certificate holder's, or permit holder's failure to receive notices, communications, and correspondence caused by the licensee's, certificate holder's, or permit holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board.

C. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void and shall be returned to the board within 30 days of the change. Additionally, the firm shall apply for a new license, within 30 days of the change in the business entity. Such changes include:

1. Death of a sole proprietor;
2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and
3. Conversion, formation, or dissolution of a corporation, a limited liability company, an association, or any other business entity recognized under the laws of the Commonwealth of Virginia.

D. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association shall be reported to the board in writing within 30 days of the change.

E. The board or any of its agents shall be allowed to inspect during reasonable hours any licensed shop or salon for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter. For purposes of a board inspection, "reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee generally is not open to the public substantially during the same hours, "reasonable hours" shall mean the business hours when the licensee is open to the public.

## **18VAC41-20-130. General requirements for a school license.**

A. Any firm wishing to operate a barber, cosmetology, nail technician, or wax technician school shall submit an application to the board at least 60 days prior to the date for which approval is sought, obtain a school license in compliance with § 54.1-704.2 of the Code of Virginia, and meet the following qualifications in order to receive a license:

1. The applicant and all members of the responsible management shall be in good standing as a licensed school in Virginia and all other jurisdiction where licensed. The applicant and all members of the responsible management shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's operation of any barbering, cosmetology, nail, or waxing school or practice of the profession. This includes to monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant or any member of the responsible management has been previously licensed in Virginia as a barbering, cosmetology, nail, or waxing school.

Upon review of the applicant's and all members of the responsible management's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein the board deems the applicant is unfit or unsuited to engage in the operation of a barbering, cosmetology, nail, or waxing school. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose the applicant's physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia barber and cosmetology license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm and all members of the responsible management regarding criminal convictions in Virginia and all other jurisdictions:

- a. All misdemeanor convictions involving moral turpitude, sexual offense, non-marijuana drug distribution,

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or physical injury within two years of the date of the application; and

b. All felony convictions within 20 years of the date of application.

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.

5. The applicant shall disclose the firm's responsible management.

B. Barber, cosmetology, nail technician, and wax technician school licenses are issued to firms as defined in this chapter, shall not be transferable, and shall bear the same name and address as the school. Any changes in the name or the address of record or principal place of business of the school shall be reported to the board in writing within 30 days of such change. The board shall not be responsible for the licensee's, certificate holder's, or permit holder's failure to receive notices, communications, and correspondence caused by the licensee's, certificate holder's, or permit holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board. The name of the school must indicate that it is an educational institution. All signs, or other advertisements, must reflect the name as indicated on the license issued by the board and contain language indicating it is an educational institution.

C. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void and shall be returned to the board within 30 days of the change. Additionally, the firm shall apply for a new license within 30 days of the change in business entity. Such changes include:

1. Death of a sole proprietor;
2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and
3. Conversion, formation, or dissolution of a corporation, a limited liability company, an association, or any other business entity recognized under the laws of the Commonwealth of Virginia.

D. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association shall be reported to the board in writing within 30 days of the change.

E. Barber schools, cosmetology schools, nail schools, or waxing schools under the Virginia Department of Education shall be exempted from licensure requirements.

F. The board or any of its agents shall be allowed to inspect during reasonable hours any licensed school for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter. For purposes of a board inspection, "reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee generally is not open to the public substantially during the same hours, "reasonable hours" shall mean the business hours when the licensee is open to the public.

## **18VAC41-20-280. Grounds for license revocation or suspension; denial of application, renewal, or reinstatement; or imposition of a monetary penalty.**

The board may, in considering the totality of the circumstances, fine any licensee, certificate holder, or permit holder; suspend or revoke or refuse to renew or reinstate any license, certificate, or permit; or deny any application issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and this chapter if it finds that the licensee, certificate holder, permit holder, or applicant:

1. Is incompetent, or negligent in practice, or incapable mentally or physically, as those terms are generally understood in the profession, to practice as a barber, master barber, cosmetologist, nail technician, or wax technician, or to operate a shop, salon, or school;
2. Is convicted of fraud or deceit in the practice or teaching of barbering, master barbering, cosmetology, nail care, or waxing or fails to teach the curriculum as provided for in this chapter;
3. Attempts to obtain, obtained, renewed or reinstated a license, certificate, or temporary license by false or fraudulent representation;
4. Violates or induces others to violate, or cooperates with others in violating, any of the provisions of this chapter or Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of the establishment in which any barber, master barber, cosmetologist, nail technician, or wax technician may practice or offer to practice;
5. Offers, gives, or promises anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing barbering, master barbering, cosmetology, nail care, or waxing as defined in § 54.1-700 of the Code of Virginia;
6. Fails to respond to the board or any of its agents or provides false, misleading, or incomplete information to an inquiry by the board or any of its agents;
7. Fails or refuses to allow the board or any of its agents to inspect during reasonable hours any licensed shop, salon, or

school for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) or this chapter;

8. Fails to produce, upon request or demand of the board or any of its agents, any document, book, record, or copy thereof in a licensee's or owner's possession or maintained in accordance with these regulations;

9. Fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license, certificate, or permit;

10. Makes any misrepresentation or publishes or causes to be published any advertisement that is false, deceptive, or misleading;

11. Fails to notify the board in writing within 30 days of the suspension, revocation, or surrender of a license, certificate, or permit in connection with a disciplinary action in any jurisdiction or of any license, certificate, or permit that has been the subject of disciplinary action in any jurisdiction;

12. Has been convicted or found guilty, regardless of the manner of adjudication in Virginia or any other jurisdiction of the United States, of a misdemeanor involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt;

13. Fails to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty regardless of adjudication of any convictions as stated in subdivision 12 of this section;

14. Allows, as responsible management of a shop, salon, or school, a person who has not obtained a license or a temporary permit to practice as a barber, master barber, cosmetologist, nail technician, or wax technician unless the person is duly enrolled as a registered apprentice;

15. Allows, as responsible management of a school, a person who has not obtained an instructor certificate or a temporary permit to practice as a barber, master barber, cosmetologist, nail technician, or wax technician instructor;

16. Fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with sanitary requirements provided for in this chapter or any local, state, or federal law or regulation governing the standards of health and sanitation for the practices of barbering, master barbering, cosmetology, nail care, or

waxing, or the operation of barbershops, cosmetology salons, nail salons, or waxing salons; or

17. Fails to comply with all procedures established by the board and the testing service with regard to conduct at any board examination.

**18VAC41-50-20. General requirements for tattooer, limited term tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer.**

A. In order to receive a license as a tattooer, limited term tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer in compliance with § 54.1-703 of the Code of Virginia, an applicant must meet the following qualifications:

1. The applicant must be in good standing as a tattooer, limited term tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer in every jurisdiction where licensed, certified, or registered. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a tattooer, limited term tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer. The applicant shall disclose to the board at the time of application for licensure whether he has been previously licensed in Virginia as a tattooer, limited term tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer.

2. The applicant shall disclose ~~his~~ the applicant's physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia tattooing license laws and the board's tattooing regulations.

4. In accordance with § 54.1-204 of the Code of Virginia, the applicant must not have been convicted in any jurisdiction of a ~~misdemeanor or felony~~ or non-marijuana misdemeanor that directly relates to the profession of tattooing. The board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of tattooing. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The applicant shall provide a certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the applicant to the board within 10 days after all appeal rights have expired.

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5. The applicant shall provide evidence satisfactory to the board that the applicant has passed the board approved examination, administered either by the board or by a designated testing service.

6. Persons who (i) make application for licensure between October 1, 2006, and September 30, 2007; (ii) have completed three years of documented work experience within the preceding five years as a tattooer; and (iii) have completed a minimum of five hours of health education to include but not limited to bloodborne disease, sterilization, and aseptic techniques related to tattooing and first aid and CPR that is acceptable to the board are not required to complete subdivision 5 of this subsection.

**B. Eligibility to sit for board-approved examination.**

**1. Training in the Commonwealth of Virginia.**

a. Any person completing an approved tattooing apprenticeship program in a Virginia licensed tattoo parlor or completing an approved tattooing training program in a Virginia licensed school of tattooing, or completing a permanent cosmetic tattooing training program in a Virginia licensed permanent cosmetic tattooing school shall be eligible to sit for the applicable examination.

b. Any person completing master permanent cosmetic training that is acceptable to the board shall be eligible to sit for the examination. Training should be conducted in a permanent facility.

**2. Training outside of the Commonwealth of Virginia, but within the United States and its territories.**

a. Any person completing a tattooing or permanent cosmetic tattooing training or tattooing apprenticeship program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of training or apprenticeship to be eligible for examination. If less than required hours of tattooing or permanent cosmetic tattooing training or tattooing apprenticeship was completed, an applicant must submit (i) documentation acceptable to the board verifying the completion of a substantially equivalent tattooing training or tattooing apprenticeship or permanent cosmetic tattooing training or documentation of three years of work experience within the preceding five years as a tattooer, and (ii) documentation of completion of a minimum of five hours of health education to include but not limited to blood-borne disease, sterilization, and aseptic techniques related to tattooing and first aid and CPR that is acceptable to the board in order to be eligible for examination.

b. Any person completing master permanent cosmetic training that is acceptable to the board shall be eligible to sit for the examination. Training should be conducted in a permanent facility.

**18VAC41-50-420. Grounds for license or certificate revocation, suspension or probation; denial of application, renew.**

A. The board may, in considering the totality of the circumstances, fine any licensee or certificate holder and suspend, place on probation or revoke or refuse to renew or reinstate any license or certificate, or deny any application issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board if the board finds that:

1. The licensee, certificate holder, or applicant is incompetent, negligent in practice, or incapable mentally or physically, as those terms are generally understood in the profession, to practice as a tattooer, limited term tattooer, tattooer apprentice, permanent cosmetic tattooer, or master permanent cosmetic tattooer;

2. The licensee, certificate holder, or applicant is convicted of fraud or deceit in the practice of tattooing;

3. The licensee, certificate holder, or applicant obtained, attempted to obtain, renewed or reinstated a license by false or fraudulent representation;

4. The licensee, certificate holder, or applicant violates or induces others to violate, or cooperates with others in violating, any of the provisions of this chapter or Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of the establishment in which tattooers may practice or offer to practice;

5. The licensee, certificate holder, or applicant fails to produce, upon request or demand of the board or any of its agents, any document, book, record, or copy thereof in a licensee's or owner's possession or maintained in accordance with this chapter;

6. A licensee or certificate holder fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license. The board shall not be responsible for the licensee's or certificate holder's failure to receive notices, communications and correspondence caused by the licensee's or certificate holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board;

7. The licensee, certificate holder, or applicant publishes or causes to be published any advertisement that is false, deceptive, or misleading;

8. The licensee, certificate holder, or applicant fails to notify the board in writing within 30 days of the suspension, revocation, or surrender of a license or certificate in connection with a disciplinary action in any other jurisdiction or of any license or certificate that has been the subject of disciplinary action in any other jurisdiction; or

9. In accordance with § 54.1-204 of the Code of Virginia, the licensee or certificate holder has been convicted in any jurisdiction of a ~~misdemeanor or felony~~ or non-marijuana misdemeanor that directly relates to the profession of tattooing. The board shall have the authority to determine, based upon all the information available, including the regulant's record of prior convictions, if the regulant is unfit or unsuited to engage in the profession of tattooing or permanent cosmetic tattooing. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The applicant shall provide a certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the applicant to the board within 10 days after all appeal rights have expired.

B. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation or refuse to renew or reinstate the license of any tattoo parlor, limited term tattoo parlor, or permanent cosmetic tattoo salon or impose a fine as permitted by law, or both, if the board finds that:

1. The owner or operator of the tattoo parlor, limited term tattoo parlor, or permanent cosmetic tattoo salon fails to comply with the facility requirements of tattoo parlors, limited term tattoo parlors, or permanent cosmetic tattoo salons provided for in this chapter or in any local ordinances; or
2. The owner or operator allows a person who has not obtained a license to practice as a tattooer, limited term tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer unless the person is duly enrolled as an apprentice.

C. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation, or refuse to renew or reinstate the license of any school or impose a fine as permitted by law, or both, if the board finds that:

1. An instructor of the approved school fails to teach the curriculum as provided for in this chapter;
2. The owner or director of the approved school permits or allows a person to teach in the school without a current tattooing instructor certificate; or
3. The instructor, owner or director is guilty of fraud or deceit in the teaching of tattooing.

D. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation, or refuse to renew or reinstate the license of any licensee or impose a fine as permitted by law, or

both, if the board finds that the licensee fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with any local, state or federal law or regulation governing the standards of health and sanitation for the practice of tattooing.

**18VAC41-60-20. General requirements.**

A. In order to receive a license as a body piercer in compliance with § 54.1-703 of the Code of Virginia, an applicant must meet the following qualifications:

1. The applicant shall be in good standing as a body piercer in every jurisdiction where licensed, certified, or registered. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a body piercer. The applicant shall disclose to the board at the time of application for licensure whether he has been previously licensed in Virginia as a body piercer.
2. The applicant shall disclose ~~his~~ the applicant's physical address. A post office box is not acceptable.
3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia body-piercing license laws and the board's body-piercing regulations.
4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose a conviction, in any jurisdiction, of any ~~misdemeanor or felony~~ or non-marijuana misdemeanor. Any plea of nolo contendere shall be considered a conviction for this purpose of this section. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt. The board, at its discretion, may deny licensure or certification to any applicant in accordance with § 54.1-204 of the Code of Virginia.
5. The applicant shall provide evidence satisfactory to the board that the applicant has passed the board-approved examination, administered either by the board or by a designated testing service.
6. Persons who (i) make application between April 1, 2007, and March 31, 2008; (ii) have completed three years of documented work experience within the preceding five years as a body piercer; and (iii) have completed a minimum of five hours of health education including but not limited to blood borne disease, sterilization, and aseptic techniques related to body piercing and first aid and CPR that is acceptable to the board are not required to complete subdivision 5 of this subsection.

B. Eligibility to sit for board-approved body-piercer examination.

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1. Training in the Commonwealth of Virginia. Any person completing an approved body-piercing apprenticeship program in a Virginia licensed body-piercing salon shall be eligible to sit for the examination.

2. Training outside of the Commonwealth of Virginia, but within the United States and its territories. Any person completing a body-piercing training or apprenticeship program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of training or apprenticeship to be eligible for examination. If less than required hours of body-piercing training or body-piercing apprenticeship was completed, an applicant must submit (i) documentation acceptable to the board verifying the completion of a substantially equivalent body-piercing training or body-piercing apprenticeship or documentation of three years of work experience within the preceding five years as a body piercer and (ii) documentation of completion of a minimum of five hours of health education to include ~~but not limited to~~ blood borne disease, sterilization, and aseptic techniques related to body piercing and first aid and CPR that is acceptable to the board in order to be eligible for examination.

C. In order to receive a license as a body piercer ear only, an applicant must meet the following qualifications:

1. The applicant shall have completed a minimum of three hours of health education to include ~~but not limited to~~ blood borne disease and first aid that is acceptable to the board and provide verification of training on a mechanized, presterilized ear-piercing system that penetrates the outer perimeter or lobe of the ear or both and aftercare of piercing.

2. The applicant shall be in good standing in every jurisdiction where licensed, certified, or registered. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in another jurisdiction in connection with the applicant's licensed, certified, or registered practice. The applicant shall disclose to the board at the time of application for licensure whether he has been previously licensed in Virginia in any profession regulated by the board.

3. The applicant shall disclose ~~his~~ the applicant's physical address. A post office box is not acceptable.

4. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia body-piercing license laws and the board's body-piercing regulations.

5. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose a conviction, in any jurisdiction, of any ~~misdemeanor or felony~~ or non-marijuana misdemeanor. Any plea of nolo contendere shall be considered a conviction for this purpose of this section. The record of a conviction certified or authenticated in such form

as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt. The board, at its discretion, may deny licensure or certification to any applicant in accordance with § 54.1-204 of the Code of Virginia.

## **18VAC41-60-220. Grounds for license revocation or suspension or probation; denial of application, renewal, or reinstatement; or imposition of a monetary penalty.**

A. The board may, in considering the totality of the circumstances, fine any licensee and suspend, place on probation or revoke or refuse to renew or reinstate any license, or deny any application issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board if the board finds that:

1. The licensee is incompetent or negligent in practice, or incapable mentally or physically, as those terms are generally understood in the profession, to practice as a body piercer or body piercer ear only;

2. The licensee or applicant is convicted of fraud or deceit in the practice body piercing or body piercing ear only;

3. The licensee or applicant attempted to obtain, obtained, renewed, or reinstated a license by false or fraudulent representation;

4. The licensee or applicant violates or induces others to violate, or cooperates with others in violating, any of the provisions of this chapter or Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of the establishment in which body piercers or body piercers ear only may practice or offer to practice;

5. The licensee or applicant fails to produce, upon request or demand of the board or any of its agents, any document, book, record, or copy thereof in a licensee's or owner's possession or maintained in accordance with this chapter;

6. A licensee fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license. The board shall not be responsible for the licensee's failure to receive notices, communications and correspondence caused by the licensee's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board;

7. The licensee or applicant publishes or causes to be published any advertisement that is false, deceptive, or misleading;

8. The licensee or applicant fails to notify the board in writing within 30 days of the suspension, revocation, or surrender of a license, certificate, or permit in connection with a disciplinary action in any other jurisdiction or of any license, certificate, or permit which has been the subject of disciplinary action in any other jurisdiction;



9. The licensee or applicant has been convicted or found guilty in any jurisdiction of any ~~misdemeanor~~ or felony or non-marijuana misdemeanor. Any plea of nolo contendere shall be considered a conviction for the purpose of this section. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt; or

10. The licensee, certificate holder, temporary license holder, or applicant fails to notify the board in writing within 30 days that the licensee, certificate holder, temporary license holder, or applicant has pleaded guilty or nolo contendere or was convicted and found guilty of any ~~misdemeanor~~ or felony or non-marijuana misdemeanor.

B. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation, or refuse to renew or reinstate the license of any body-piercing salon or body-piercing ear only salon or impose a fine as permitted by law, or both, if the board finds that:

1. The owner or operator of the body-piercing salon or body-piercing ear only salon fails to comply with the facility requirements of body-piercing salons or body-piercing ear only salons provided for in this chapter or in any local ordinances; or

2. The owner or operator allows a person who has not obtained a license to practice as a body piercer or body piercer ear only unless the person is duly enrolled as an apprentice.

C. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation, or refuse to renew or reinstate the license of any licensee or impose a fine as permitted by law, or both, if the board finds that the licensee fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with any local, state, or federal law or regulation governing the standards of health and sanitation for the practice of body piercing or body piercing ear only.

**18VAC41-70-20. General requirements for an esthetician license or master esthician license.**

A. Any individual wishing to engage in esthetics or master esthetics shall obtain a license in compliance with § 54.1-703 of the Code of Virginia and meet the following qualifications:

1. The applicant shall be in good standing as a licensed esthetician in Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's practice as an esthetician. This includes monetary penalties, fines, suspensions, revocations, surrender of a

license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure whether he has been previously licensed in Virginia as an esthetician or master esthetician.

Upon review of an applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in esthetics or master esthetics. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose ~~his~~ the applicant's physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia esthetics license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury within two years of the date of the application; and

b. All felony convictions within 20 years of the date of application.

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.

5. The applicant shall provide evidence satisfactory to the board that the applicant has passed the board-approved examination requirement administered either by the board or by independent examiners.

B. Eligibility to sit for board-approved examination.

1. Training in the Commonwealth of Virginia. Any person completing an approved esthetics training program or a master esthetics training program in a Virginia licensed esthetics school shall be eligible for the applicable examination.

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2. Training outside of the Commonwealth of Virginia. Any person completing esthetics training that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of training to be eligible for examination. If less than the required hours of esthetics training was completed, an applicant must submit a certificate, diploma, or other documentation acceptable to the board verifying the completion of a substantially equivalent esthetics course and documentation of six months of work experience as an esthetician in order to be eligible for the esthetician examination.

### **18VAC41-70-80. General requirements for spa license.**

A. Any firm wishing to operate an esthetics spa shall obtain a spa license in compliance with § 54.1-704.1 of the Code of Virginia, and shall meet the following qualifications in order to receive a license:

1. The applicant, and all members of the responsible management, shall be in good standing as a licensed spa in Virginia and all other jurisdictions where licensed. The applicant and all members of the responsible management shall disclose to the board at the time of application for licensure, any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's operation of any esthetics spa or practice of the profession. This includes monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant or any member of responsible management has been previously licensed in Virginia as an esthetics spa.

Upon review of the applicant's and all members of the responsible management's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in the operation of an esthetics spa. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose ~~his~~ the applicant's physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia esthetics license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm and all members of the responsible management regarding criminal convictions in Virginia and all other jurisdictions:

- a. All misdemeanor convictions involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury within two years of the date of the application; and
- b. All felony convictions within 20 years of the date of application.

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.

5. The applicant shall disclose the firm's responsible management.

B. Spa licenses are issued to firms as defined in this chapter and shall not be transferable and shall bear the same name and address of the business. Any changes in the name or address of the spa shall be reported to the board in writing within 30 days of such changes. The board shall not be responsible for the licensee's, certificate holder's, or permit holder's failure to receive notices, communications, and correspondence caused by the licensee's, certificate holder's, or permit holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board.

C. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void and shall be returned to the board within 30 days of the change. Additionally, the firm shall apply for a new license, within 30 days of the change in the business entity. Such changes include:

1. Death of a sole proprietor;
2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and
3. Conversion, formation, or dissolution of a corporation, a limited liability company, association, or any other business entity recognized under the laws of the Commonwealth of Virginia.

D. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association shall be reported to the board in writing within 30 days of the change.

E. The board or any of its agents shall be allowed to inspect during reasonable hours any licensed spa for compliance with

provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter. For purposes of a board inspection, "reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee generally is not open to the public substantially during the same hours, "reasonable hours" shall mean the business hours when the licensee is open to the public.

**18VAC41-70-90. General requirements for a school license.**

A. Any firm wishing to operate an esthetics school shall submit an application to the board at least 60 days prior to the date for which approval is sought, obtain a school license in compliance with § 54.1-704.2 of the Code of Virginia, and meet the following qualifications in order to receive a license:

1. The applicant and all members of the responsible management shall be in good standing as a licensed school in Virginia and all other jurisdictions where licensed. The applicant and all members of the responsible management shall disclose to the board at the time of application for licensure, any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's operation of any esthetics school or practice of the profession. This includes monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant or any member of the responsible management has been previously licensed in Virginia as an esthetics school.

Upon review of the applicant's and all members of the responsible management's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in the operation of an esthetics school. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose ~~his~~ the applicant's physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia esthetics license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm and all members of the responsible management

regarding criminal convictions in Virginia and all other jurisdictions:

- a. All misdemeanor convictions involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury within two years of the date of the application; and
- b. All felony convictions within 20 years of the date of application.

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.

5. The applicant shall disclose the firm's responsible management.

B. Esthetics school licenses are issued to firms as defined in this chapter and shall not be transferable and shall bear the same name and address as the school. Any changes in the name or the address of record or principal place of business of the school shall be reported to the board in writing within 30 days of such change. The board shall not be responsible for the licensee's, certificate holder's, or permit holder's failure to receive notices, communications, and correspondence caused by the licensee's, certificate holder's, or permit holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board. The name of the school must indicate that it is an educational institution. All signs or other advertisements must reflect the name as indicated on the license issued by the board and contain language indicating it is an educational institution.

C. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void and shall be returned to the board within 30 days of the change. Additionally, the firm shall apply for a new license within 30 days of the change in business entity. Such changes include:

- 1. Death of a sole proprietor;
- 2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and
- 3. Conversion, formation, or dissolution of a corporation, a limited liability company, an association, or any other business entity recognized under the laws of the Commonwealth of Virginia.

D. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association shall be reported to the board in writing within 30 days of the change.

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E. Esthetics schools under the Virginia Department of Education shall be exempted from licensure requirements.

F. The board or any of its agents shall be allowed to inspect during reasonable hours any licensed school for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter. For purposes of a board inspection, "reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee generally is not open to the public substantially during the same hours, "reasonable hours" shall mean the business hours when the licensee is open to the public.

## **18VAC41-70-100. General requirements for an esthetics instructor certificate.**

A. Any individual wishing to engage in esthetics instruction shall meet the following qualifications:

1. The applicant shall be in good standing as a licensed esthetician in Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's practice as an esthetician. This includes monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure whether he has been previously licensed in Virginia as an esthetician or master esthetician.

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in esthetics. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action;

2. The applicant shall hold a current Virginia esthetics license;

3. The applicant shall complete one of the following qualifications:

- a. Pass a course in teaching techniques at the postsecondary educational level; or
- b. Complete an instructor training course approved by the Virginia Board for Barbers and Cosmetology under the supervision of a certified esthetics instructor or master esthetics instructor in an esthetics school and pass an examination in esthetics instruction administered by the

board or by a testing service acting on behalf of the board; and

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

- a. All misdemeanor convictions involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury within two years of the date of the application; and
- b. All felony convictions within 20 years of the date of application.

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.

B. Instructors shall be required to maintain a Virginia esthetician license.

## **18VAC41-70-110. General requirements for a master esthetics instructor certificate.**

A. Any individual wishing to engage in master esthetics instruction shall meet the following qualifications:

1. The applicant shall be in good standing as a licensed master esthetician in Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's practice as a master esthetician. This includes monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant has been previously licensed in Virginia as an esthetician or master esthetician.

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in esthetics or master esthetics. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action;

2. The applicant shall hold a current Virginia master esthetician license;

3. The applicant shall complete one of the following qualifications:

- a. Pass a course in teaching techniques at the postsecondary educational level; or
- b. Complete an instructor training course approved by the Virginia Board for Barbers and Cosmetology under the supervision of a certified esthetics instructor or master esthetics instructor in an esthetics school and pass an examination in esthetics instruction administered by the board or by a testing service acting on behalf of the board; and

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

- a. All misdemeanor convictions involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury within two years of the date of the application; and
- b. All felony convictions within 20 years of the date of application.

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.

B. Instructors shall be required to maintain a Virginia master esthetician license.

**18VAC41-70-280. Grounds for license revocation, probation, or suspension; denial of application, renewal or reinstatement; or imposition of a monetary penalty.**

The board may, in considering the totality of the circumstances, fine any licensee, certificate holder, or temporary license holder; suspend, place on probation, revoke, or refuse to renew or reinstate any license, certificate, or temporary license; or deny any application issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and this chapter if the board finds that the licensee, certificate holder, permit holder, or applicant:

- 1. Is incompetent, negligent, or incapable mentally or physically, as those terms are generally understood in the profession, to practice as an esthetician;
- 2. Is convicted of fraud or deceit in the practice or teaching of esthetics, fails to teach in accordance with the board-approved curriculum, or fails to comply with 18VAC41-70-190 D when making an assessment of credit hours awarded;
- 3. Attempts to obtain, obtained, renewed, or reinstated a license, certificate, or temporary license by false or fraudulent representation;

4. Violates, induces others to violate, or cooperates with others in violating any of the provisions of this chapter or Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of the establishment in which any esthetician may practice or offer to practice;

5. Offers, gives, or promises anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing esthetics or master esthetics;

6. Fails to respond to the board or any of its agents or provides false, misleading, or incomplete information to an inquiry by the board or any of its agents;

7. Fails or refuses to allow the board or any of its agents to inspect during reasonable hours any licensed spa or school for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter;

8. Fails to produce, upon request or demand of the board or any of its agents, any document, book, record, or copy thereof in a licensee's, certificate holder's, temporary license holder's, applicant's, or owner's possession or maintained in accordance with this chapter;

9. Fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license, certificate, or temporary license;

10. Makes any misrepresentation or publishes or causes to be published any advertisement that is false, deceptive, or misleading;

11. Fails to notify the board in writing within 30 days of the suspension, revocation, or surrender of a license or temporary license in connection with a disciplinary action in any jurisdiction or of any license or temporary license that has been the subject of disciplinary action in any jurisdiction;

12. Has been convicted or found guilty, regardless of the manner of adjudication, in Virginia or any other jurisdiction of the United States of a misdemeanor involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt;

13. Fails to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or

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# Regulations

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found guilty regardless of adjudication of convictions as stated in subdivision 12 of this section;

14. Allows, as responsible management of a spa or school, a person who has not obtained a license or a temporary permit to practice unless the person is duly enrolled as a registered apprentice;

15. Allows, as responsible management of a school, a person who has not obtained an instructor certificate to practice as an esthetics or a master esthetics instructor;

16. Fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with sanitary requirements provided for in this chapter or any local, state, or federal law or regulation governing the standards of health and sanitation for the practices of esthetics or master esthetics or the operation of esthetics spas; or

17. Fails to comply with all procedures established by the board and the testing service with regard to conduct at any board examination.

V.A.R. Doc. No. R22-6910; Filed September 20, 2021, 3:54 p.m.

## BOARD FOR BRANCH PILOTS

### Final Regulation

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

**Title of Regulation:** 18VAC45-20. Board for Branch Pilots Regulations (amending 18VAC45-20-5, 18VAC45-20-40).

**Statutory Authority:** § 54.1-902 of the Code of Virginia.

**Effective Date:** December 1, 2021.

**Agency Contact:** Kathleen R. Nobsch, Executive Director, Board for Branch Pilots, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email branchpilots@dpor.virginia.gov.

#### Summary:

*Pursuant to Chapters 500 and 501 of the 2021 Acts of Assembly, Special Session I, the amendments conform regulations concerning qualifications for licensure and standards of conduct to the requirements of § 19.2-389.3 of the Code of Virginia and remove requirements for reporting by applicants or licensees of misdemeanor marijuana convictions.*

#### 18VAC45-20-5. Definitions.

The words and terms used in this chapter have the following meanings unless the context requires a different meaning:

"Attempting to perform" means any time when a licensee has accepted an assignment to perform any of the duties of his office or job.

"Chemical test," except when applied to testing for the presence of alcohol, means any scientifically recognized test and analyses of an individual's breath, blood, urine, saliva, bodily fluids, hair or tissues for evidence of controlled substances listed in Schedules I— through V of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) or marijuana. The words "chemical test" as used in this chapter in connection with the testing for the presence of alcohol refers to a scientifically recognized test involving saliva or breath.

"Illegal drugs" includes (i) any controlled substance as that term is defined in the Drug Control Act at § 54.1-3401 of the Code of Virginia listed in Schedule I (§ 54.1-3446 of the Code of Virginia); or (ii) those controlled substances illegally acquired listed from Schedules II— through V (§§ 54.1-3448, 54.1-3450, 54.1-3452, and 54.1-3454 of the Code of Virginia, respectively); ~~or (iii) marijuana.~~ It is the intent of these regulations that in the event the contents of Schedules I— through V of the Drug Control Act are changed, that these regulations incorporate such changes at the time those controlled substances are made a part of the Drug Control Act in Virginia.

"Medical review officer" or "MRO" means a Virginia licensed physician with a current valid certification from the American College of Occupational and Environmental Medicine or the American Association of Medical Review Officers whose duties, authorities and responsibilities are delineated by these organizations.

"On duty" means the period of time the licensee is available to receive orders for an assignment.

#### 18VAC45-20-40. Grounds for denial of licensure, denial of renewal, or discipline.

The board shall have the authority to deny initial licensure, deny an extension of license, or deny renewal as well as to discipline existing licensees, whether limited or not, for the following reasons:

1. ~~(i) a.~~ a. Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, illegal drugs, or any alcohol-~~or drug~~-related offense there being no appeal pending, therefrom or the time for appeal having elapsed.

~~(ii) b.~~ b. Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of any felony or a misdemeanor resulting from an arrest for any ~~alcohol-~~ alcohol-related or non-marijuana drug-related

offense, there being no appeal pending therefrom or the time for appeal having elapsed.

Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence of the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction;

2. Failing to inform the board in writing within seven calendar days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor involving moral turpitude, illegal drugs, or any ~~alcohol or drug related~~ alcohol-related offense;

3. Failing to report to the board in writing any reports of the National Transportation Safety Board involving the licensee, or the results of any disciplinary action taken by the United States Coast Guard against the licensee within seven calendar days of that report or action;

4. Refusing or in any other way failing to carry out an order from the pilot officers for reasons other than the public's health, safety, or welfare;

5. Negligence or misconduct in the performance of duties;

6. Violating or cooperating with others in violating any provision of Chapter 9 (§ 54.1-900 et seq.) of the Title 54.1 of the Code of Virginia or any regulation of the board;

7. Failing to, as soon as possible under the circumstances, report to the pilot officers his finishing time and other required information relating to the particulars of the ship;

8. Failing to file immediately with the president or vice president of the board with a copy to the board administrator a complete written account of any violation of the statutes of Virginia or of the United States relating to pilotage or failing to report in writing to the president or vice president of the board with a copy to the board administrator an account of all collisions, groundings, or other maritime mishaps of any description that may occur during the discharge of the pilot's duties. This report shall be received no later than seven days after such an incident;

9. Failing to report to the board any physical or mental condition which may affect his ability to perform the duties of a pilot. Such reports shall be provided within seven calendar days of the onset of the condition;

10. Refusing to comply with the board's requirement for a chemical test. Such test is required immediately and no later than 12 hours after involvement in a collision, grounding, or other incident resulting in personal injury, death, environmental hazard, or property damage in excess of \$100,000. Refusing to comply with this requirement may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;

11. Refusing to comply with any board requirement for chemical tests in any instance in which the board has cause to believe a test is necessary to protect the public health, safety, or welfare. Refusing to comply with this requirement may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;

12. Failing to send proof of any test required by subdivision 10 or 11 of this section to the president or vice president of the board with a copy to the board administrator within 48 hours of the administration of the test;

13. A positive finding as a result of, or on, any substance abuse or chemical test as a result of which the board believes there is a threat to the public health, safety, or welfare. Such a finding may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;

14. Evidence of impaired performance in any instance in which the board believes there is a threat to the public health, safety, or welfare. Such a finding may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;

15. Performing or attempting to perform any of the duties of his office or job while under the influence of illegal drugs;

16. Performing or attempting to perform any of the duties of his office or job while under the influence of alcohol or any medication (controlled substance or otherwise) to the extent that he was unfit for the performance of the duties of his office or job; and

17. Failing to comply with any of the provisions of 18VAC45-20-50.

V.A.R. Doc. No. R22-5014; Filed September 21, 2021, 12:32 p.m.

**CEMETERY BOARD**

**Final Regulation**

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

Title of Regulation: **18VAC47-20. Cemetery Board Rules and Regulations (amending 18VAC47-20-30, 18VAC47-20-40, 18VAC47-20-60).**

Statutory Authority: §§ 54.1-201 and 54.1-2313 of the Code of Virginia.

Effective Date: December 1, 2021.

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# Regulations

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

Summary:

*Pursuant to Chapters 500 and 501 of the 2021 Acts of Assembly, Special Session I, the amendments conform regulations concerning qualifications for licensure and standards of conduct to the requirements of § 19.2-389.3 of the Code of Virginia and remove requirements for reporting by applicants or licensees of misdemeanor marijuana convictions.*

**18VAC47-20-30. Qualifications for cemetery company license.**

A. Every person applying for a cemetery company license shall meet all of the requirements outlined in §§ 54.1-2311 and 54.1-2314 of the Code of Virginia as well as the additional qualifications of this section.

B. Each person applying for a cemetery company license and the principals of that firm shall disclose, at the time the application is submitted, any current or previous cemeteries managed in Virginia or in any other jurisdictions and any disciplinary actions taken against those cemeteries or the individuals managing them. This includes, ~~but is not limited to,~~ any monetary penalties, fines or disciplinary actions taken by any federal, state or local regulatory agencies.

C. In accordance with § 54.1-2314 of the Code of Virginia, each applicant shall disclose the following information about the cemetery company and any of the principals of the company:

1. A conviction in any jurisdiction of any felony or any crime of moral turpitude, there being no appeal pending therefrom or the time for appeal having elapsed.
2. ~~A conviction in any jurisdiction of any~~ All misdemeanor convictions involving moral turpitude within five years of the date the application is submitted.

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 approval of a cemetery application in accordance with § 54.1-204 of the Code of Virginia.

**18VAC47-20-40. Qualifications for registration of sales personnel.**

A. Cemetery company sales personnel shall submit an application on a form prescribed by the board and shall meet the requirements set forth in § 54.1-2314 of the Code of Virginia, as well as the additional qualifications of this section.

B. Every applicant to the board for registration as sales personnel shall provide his name, address, the license number

of the cemetery company he will be employed by or affiliated with, and the address of each cemetery for which he will act as sales personnel.

C. Each applicant for registration as sales personnel shall disclose, at the time the application is submitted, any current or previous cemetery sales ~~licenses/registrations~~ licenses or registrations from Virginia or in any other jurisdictions, and any disciplinary actions taken against those ~~licenses/registrations~~ licenses or registrations. This includes, ~~but is not limited to,~~ any monetary penalties, fines, or disciplinary actions taken by any federal, state, or local regulatory agencies.

D. Each applicant for registration as sales personnel shall disclose, at the time the application is submitted, the following information:

1. A conviction in any jurisdiction of any felony or any crime of moral turpitude, there being no appeal pending therefrom or the time for appeal having elapsed.
2. ~~A conviction in any jurisdiction of any~~ All misdemeanor convictions involving moral turpitude within five years of the date the application is submitted.

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 refuse registration of a sales personnel application in accordance with § 54.1-2314 of the Code of Virginia.

**18VAC47-20-60. Qualifications of trustees.**

A. The trustee of a perpetual care trust fund or a preneed trust fund, other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, must meet the requirements of this section and shall be governed by § 54.1-2318 of the Code of Virginia.

B. The trustee applicant shall be at least 18 years old and have a minimum of five years of experience either as an individual trustee or as an agent for a firm responsible for the management of a trust.

C. Each trustee or trust firm, or both, shall provide information for the 10 years prior to the submission of the application on any outstanding judgments, outstanding tax obligations, ~~and/or~~ or defaults on any bonds directly related to the management of the trust. If the trustee firm or its parent or predecessor organization has, during the previous 10 years, been adjudicated a bankrupt or has any proceeding for the relief of debtors, such fact or facts shall be stated.

D. Each trust firm and principals of the firm shall disclose, at the time the application is submitted, any current or previous trusts managed in Virginia or in other jurisdictions, and any disciplinary actions taken against these trusts, the trust



company, or the individuals managing the trusts. This includes, ~~but is not limited to,~~ any monetary penalties, fines, or disciplinary actions taken by any federal, state, or local regulatory agencies.

E. The trustee must meet the bonding requirements set forth in §§ 54.1-2317 and 54.1-2326 of the Code of Virginia as applicable.

F. In accordance with §§ 54.1-2317 and 54.1-2326 of the Code of Virginia, each trustee shall disclose the following information about the trust firm or principals of the firm:

1. A conviction in any jurisdiction of any felony;
2. ~~A conviction in any jurisdiction of any~~ All misdemeanor convictions involving moral turpitude within five years of the date the application is submitted.

Any plea of nolo contendere shall be considered a conviction for the purposes of this chapter. 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 approval of a trustee application in accordance with § 54.1-2317 or § 54.1-2326 of the Code of Virginia.

VA.R. Doc. No. R22-6945; Filed September 9, 2021, 11:55 a.m.

**BOARD OF DENTISTRY**

**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: **18VAC60-21. Regulations Governing the Practice of Dentistry.**

**18VAC60-25. Regulations Governing the Practice of Dental Hygiene.**

**18VAC60-30. Regulations Governing the Practice of Dental Assistants.**

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC60-21)

~~Instructions for a Faculty License to Teach Dentistry (rev. 8/2020)~~

[Instructions for a Faculty License to Teach Dentistry \(rev. 7/2021\)](#)

[Instructions for Registration for Volunteer Dental Practice \(rev. 8/2020\)](#)

~~Instructions for a Temporary Resident's License (rev. 8/2020)~~

~~Instructions for a Temporary Dental Permit (rev. 8/2020)~~

[Instructions for a Temporary Resident's License \(rev. 7/2021\)](#)

[Instructions for a Temporary Dental Permit \(rev. 7/2021\)](#)

[Application for a Permit to Administer Moderate Sedation \(rev. 8/2020\)](#)

[Instructions for a Permit to Administer Deep Sedation/General Anesthesia \(rev. 8/2020\)](#)

[Instructions for Reinstatement of a Permit to Administer Moderate Sedation or Deep Sedation/General Anesthesia \(rev. 8/2020\)](#)

[Instructions for Certification to Perform Cosmetic Procedures \(rev. 8/2020\)](#)

[Instructions for Reinstatement of Certification to Perform Cosmetic Procedures \(rev. 8/2020\)](#)

~~Instructions for Restricted Volunteer Dental License (rev. 8/2020)~~

[Instructions for Restricted Volunteer Dental License \(rev. 7/2021\)](#)

[Instructions for Oral and Maxillofacial Surgeon Registration of Practice \(rev. 8/2020\)](#)

[Instructions for Reinstatement of Oral and Maxillofacial Surgeon Registration of Practice \(rev. 8/2020\)](#)

[Instructions for Registration of a Mobile Dental Facility or Portable Dental Operation \(rev. 8/2020\)](#)

~~Instructions for Reactivation of Dental License (rev. 8/2020)~~

~~Instructions for Reinstatement of Dental License (rev. 8/2020)~~

~~Application Instructions for a Dental License (rev. 11/2020)~~

[Instructions for Reactivation of Dental License \(rev. 7/2021\)](#)

[Instructions for Reinstatement of Dental License \(rev. 7/2021\)](#)

[Application Instructions for a Dental License \(rev. 8/2021\)](#)

FORMS (18VAC60-25)

~~Application Instructions for Dental Hygienists (rev. 11/2020)~~

~~Instructions for Registration for Dental Hygiene Volunteer Practice (rev. 8/2020)~~

~~Instructions for Reactivation of Dental Hygienist License (rev. 8/2020)~~

~~Instructions for Reinstatement of Dental Hygiene License (rev. 8/2020)~~

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~~Instructions for Restricted Volunteer Dental Hygiene License (rev. 8/2020)~~

~~Instructions for a Faculty License to Teach Dental Hygiene (rev. 8/2020)~~

~~Instructions for a Temporary Dental Hygiene Permit (rev. 8/2020)~~

[Application Instructions for Dental Hygienists \(rev. 8/2021\)](#)

[Instructions for Registration for Dental Hygiene Volunteer Practice \(rev. 7/2021\)](#)

[Instructions for Reactivation of Dental Hygienist License \(rev. 7/2021\)](#)

[Instructions for Reinstatement of Dental Hygiene License \(rev. 7/2021\)](#)

[Instructions for Restricted Volunteer Dental Hygiene License \(rev. 7/2021\)](#)

[Instructions for a Faculty License to Teach Dental Hygiene \(rev. 7/2021\)](#)

[Instructions for a Temporary Dental Hygiene Permit \(rev. 7/2021\)](#)

[Continuing Education \(CE\) Credit Form for Volunteer Practice \(rev. 5/2019\)](#)

FORMS (18VAC60-30)

~~Instructions for Registration of Dental Assistant II (rev. 8/2020)~~

~~Instructions for Reactivation of Dental Assistant II Registration (rev. 8/2020)~~

~~Instructions for Reinstatement of Dental Assistant II Registration (rev. 8/2020)~~

[Instructions for Registration of Dental Assistant II \(rev. 7/2021\)](#)

[Instructions for Reactivation of Dental Assistant II Registration \(rev. 7/2021\)](#)

[Instructions for Reinstatement of Dental Assistant II Registration \(rev. 7/2021\)](#)

V.A.R. Doc. No. R22-6966; Filed September 20, 2021, 2:01 p.m.

## BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

### Final Regulation

**REGISTRAR'S NOTICE:** The Board for Hearing Aid Specialists and Opticians is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency

discretion is involved. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Titles of Regulations: 18VAC80-20. Hearing Aid Specialists Regulations (amending 18VAC80-20-30, 18VAC80-20-40, 18VAC80-20-270).**

**18VAC80-30. Opticians Regulations (amending 18VAC80-30-20, 18VAC80-30-160).**

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

**Effective Date:** December 1, 2021.

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

**Summary:**

*Pursuant to Chapters 550 and 551 of the 2021 Acts of Assembly, Special Session I, the amendments conform regulations concerning qualifications for licensure and standards of conduct to the requirements of § 19.2-389.3 of the Code of Virginia and remove requirements for reporting by applicants or licensees of misdemeanor marijuana convictions.*

**18VAC80-20-30. Basic qualifications for licensure.**

A. Every applicant for a license shall provide information on his application establishing that:

1. The applicant is at least 18 years of age.
2. The applicant has successfully completed high school or a high school equivalency course.
3. The applicant has training and experience that covers the following subjects as they pertain to hearing aid fitting and the sale of hearing aids, accessories, and services:
  - a. Basic physics of sound;
  - b. Basic maintenance and repair of hearing aids;
  - c. The anatomy and physiology of the ear;
  - d. Introduction to psychological aspects of hearing loss;
  - e. The function of hearing aids and amplification;
  - f. Visible disorders of the ear requiring medical referrals;
  - g. Practical tests utilized for selection or modification of hearing aids;
  - h. Pure tone audiometry, including air conduction, bone conduction, and related tests;
  - i. Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;
  - j. Masking when indicated;

- k. Recording and evaluating audiograms and speech audiometry to determine the proper selection and adaptation of hearing aids;
  - l. Taking earmold impressions;
  - m. Proper earmold selection;
  - n. Adequate instruction in proper hearing aid orientation;
  - o. Necessity of proper procedures in after-fitting checkup; and
  - p. Availability of social service resources and other special resources for the hearing impaired.
4. The applicant has provided one of the following as verification of completion of training and experience as described in subdivision 3 of this subsection:
- a. A statement on a form provided by the board signed by the licensed sponsor certifying that the requirements have been met; or
  - b. A certified true copy of a transcript of courses completed at an accredited college or university, or other notarized documentation of completion of the required experience and training.
5. The applicant has not been convicted or found guilty of any crime directly related to the practice of fitting or dealing in hearing aids, regardless of the manner of adjudication, in any jurisdiction of the United States. Except for misdemeanor marijuana convictions and misdemeanor convictions that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each applicant. The applicant review of prior convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.
6. The applicant is in good standing as a licensed hearing aid specialist in every jurisdiction where licensed. The applicant must disclose if he has had a license as a hearing aid specialist that was suspended, revoked, or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application for licensure, the applicant must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a hearing aid specialist. The applicant must also disclose whether he has been previously licensed in Virginia as a hearing aid specialist.
7. The applicant has disclosed his physical address. A post office box is not acceptable.

8. The nonresident applicant for a license has filed and maintained with the department an irrevocable consent for the department to serve as service agent for all actions filed in any court in Virginia.

9. The applicant has submitted the required application with the proper fee as referenced in 18VAC80-20-70 and signed, as part of the application, a statement that the applicant has read and understands Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and this chapter.

B. The board may make further inquiries and investigations with respect to the qualifications of the applicant or require a personal interview or both. The board may refuse initial licensure due to the applicant's failure to comply with entry requirements. 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, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

**18VAC80-20-40. Temporary permit.**

A. Any individual may apply for a temporary permit, which is to be used solely for the purpose of gaining the training and experience required to become a licensed hearing aid specialist in Virginia. The licensed sponsor shall be identified on the application for a temporary permit and the licensed sponsor shall comply strictly with the provisions of subdivisions B 1 and B 2 of this section.

1. A temporary permit shall be issued for a period of 12 months and may be extended once for not longer than six months. After a period of 18 months an extension is no longer possible and the former temporary permit holder shall sit for the examination in accordance with this section.

2. The board may, at its discretion, extend the temporary permit for a temporary permit holder who suffers serious personal illness or injury, or death in his immediate family, or obligation of military service or service in the Peace Corps, or for other good cause of similar magnitude approved by the board. Documentation of these circumstances must be received by the board no later than 12 months after the date of the expiration of the temporary permit or within six months of the completion of military or Peace Corps service, whichever is later.

B. Every applicant for a temporary permit shall provide information upon application establishing that:

- 1. The applicant for a temporary permit is at least 18 years of age.
- 2. The applicant for a temporary permit has successfully completed high school or a high school equivalency course.
- 3. The applicant has not been convicted or found guilty of any crime directly related to the practice of fitting or dealing in hearing aids, regardless of the manner of adjudication, in any jurisdiction of the United States. Except for

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misdemeanor marijuana convictions and misdemeanor convictions that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each applicant. Review of prior convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.

4. The applicant for a temporary permit is in good standing as a licensed hearing aid specialist in every jurisdiction where licensed. The applicant for a temporary permit must disclose if he has had a license as a hearing aid specialist that was suspended, revoked, or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application, the applicant for a temporary permit must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a hearing aid specialist. The applicant for a temporary permit must also disclose whether he has been licensed previously in Virginia as a hearing aid specialist.

5. The applicant for a temporary permit has disclosed his physical address. A post office box is not acceptable.

6. The applicant for a temporary permit has submitted the required application with the proper fee referenced in 18VAC80-20-70 and has signed, as part of the application, a statement that the applicant has read and understands Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and this chapter.

C. The licensed hearing aid specialist who agrees to sponsor the applicant for a temporary permit shall certify on the application that as sponsor, he:

1. Assumes full responsibility for the competence and proper conduct of the temporary permit holder with regard to all acts performed pursuant to the acquisition of training and experience in the fitting or dealing of hearing aids;

2. Will not assign the temporary permit holder to carry out independent field work without on-site direct supervision by the sponsor until the temporary permit holder is adequately trained for such activity;

3. Will personally provide and make available documentation, upon request by the board or its representative, showing the number of hours that direct supervision has occurred throughout the period of the temporary permit; and

4. Will return the temporary permit to the department should the training program be discontinued for any reason.

D. The licensed sponsor shall provide training and shall ensure that the temporary permit holder under his supervision gains experience that covers the following subjects as they pertain to hearing aid fitting and the sale of hearing aids, accessories, and services:

1. Basic physics of sound;

2. Basic maintenance and repair of hearing aids;

3. The anatomy and physiology of the ear;

4. Introduction to psychological aspects of hearing loss;

5. The function of hearing aids and amplification;

6. Visible disorders of the ear requiring medical referrals;

7. Practical tests utilized for selection or modification of hearing aids;

8. Pure tone audiometry, including air conduction, bone conduction, and related tests;

9. Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;

10. Masking when indicated;

11. Recording and evaluating audiograms and speech audiometry to determine the proper selection and adaptation of hearing aids;

12. Taking earmold impressions;

13. Proper earmold selection;

14. Adequate instruction in proper hearing aid orientation;

15. Necessity of proper procedures in after-fitting checkup; and

16. Availability of social service resources and other special resources for the hearing impaired.

E. The board may make further inquiries and investigations with respect to the qualifications of the applicant for a temporary permit or require a personal interview, or both.

F. All correspondence from the board to the temporary permit holder not otherwise exempt from disclosure, shall be addressed to both the temporary permit holder and the licensed sponsor and shall be sent to the business address of the licensed sponsor.

## **18VAC80-20-270. Grounds for discipline.**

The board may, in considering the totality of the circumstances, fine any temporary permit holder or licensee, and suspend, place on probation, or revoke, or refuse to renew any temporary permit or license or deny any application issued under the provisions of Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and this chapter. Disciplinary procedures are governed by the Administrative Process Act,

Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia. In exercising its disciplinary function, the board will consider the totality of the circumstances of each case. Any licensee is subject to board discipline for any of the following:

1. Improper conduct, including ~~but not limited to~~:
  - a. Obtaining, renewing, or attempting to obtain a license by false or fraudulent representation;
  - b. Obtaining any fee or making any sale by fraud or misrepresentation;
  - c. Employing to fit or sell hearing aids a person who does not hold a valid license or a temporary permit, or whose license or temporary permit is suspended;
  - d. Using, causing, or promoting the use of any misleading, deceptive, or untruthful advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, whether disseminated orally or published;
  - e. Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type;
  - f. Representing that the service or advice of a person licensed to practice medicine or audiology will be used in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true, or using the words "physician," "audiologist," "clinic," "hearing service," "hearing center," or similar description of the services and products provided when such use is not accurate;
  - g. Directly or indirectly giving or offering to give favors, paid referrals, or anything of value to any person who in his professional capacity uses his position to influence third parties to purchase products offered for sale by a hearing aid specialist; or
  - h. Failing to provide expedient, reliable, or dependable services when requested by a client or client's guardian.
2. Failure to include on the purchase agreement a statement regarding home solicitation when required by federal and state law.
3. Incompetence or negligence, as those terms are generally understood in the profession, in fitting or selling hearing aids.
4. Failure to provide required or appropriate training resulting in incompetence or negligence, as those terms are generally understood in the profession, by a temporary permit holder under the licensee's sponsorship.
5. Violating or cooperating with others in violating any provisions of Chapters 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), and 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia or this chapter.

6. The licensee, temporary permit holder, or applicant has been convicted or found guilty of any crime directly related to the practice of fitting or dealing in hearing aids, regardless of the manner of adjudication, in any jurisdiction of the United States. Except for misdemeanor marijuana convictions and misdemeanor convictions that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each applicant. Review of prior convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any pleas of nolo contendere shall be considered a conviction for the purpose of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence of the law of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.

**18VAC80-30-20. Qualifications of applicant.**

An applicant for a license shall furnish satisfactory evidence on an application provided by the board establishing that:

1. The applicant is at least 18 years of age unless emancipated under the provisions of § 16.1-333 of the Code of Virginia;
2. The applicant is a graduate of an accredited high school, has completed the equivalent of grammar school and a four-year high school course, or is a holder of a certificate of general educational development;
3. The applicant is in good standing as a licensed optician in every jurisdiction where licensed;
4. The applicant has not been convicted in any jurisdiction of a misdemeanor or felony involving sexual offense, ~~drug distribution~~ or physical injury, or any felony involving drug distribution or that directly relates to the profession of opticianry. The board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of opticianry. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. The licensee shall provide a certified copy of a final order, decree, or case decision by a court or regulatory agency with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the licensee to the board within 10 days after all appeal rights have expired;
5. The applicant has successfully completed one of the following education requirements:
  - a. A board-approved two-year course in a school of opticianry, including the study of topics essential to qualify for practicing as an optician; or

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b. A two-year apprenticeship with a minimum of one school year of related instruction or home study while registered in the apprenticeship program in accordance with the standards established by the state Department of Labor and Industry, Division of Registered Apprenticeship, and approved by the board;

6. The applicant has disclosed his current mailing address;

7. The nonresident applicant for a license has filed and maintained with the department an irrevocable consent for the director of the department to serve as service agent for all actions filed in any court in the Commonwealth; and

8. The applicant shall certify, as part of the application, that the applicant has read and understands Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board.

## 18VAC80-30-160. Grounds for disciplinary action.

A. The board is empowered to revoke, suspend, or refuse to grant or renew a license and is empowered to impose a fine up to the statutory limit, as authorized under § 54.1-202 of the Code of Virginia, per violation on a licensee for any of the following reasons:

1. Using nonprescribed controlled substances as defined in § 54.1-3401 of the Code of Virginia or alcohol at the work place during working hours;

2. Displaying professional incompetence or negligence, including ~~but not limited to~~ failure to comply with this part in the performance of opticianry;

3. Presenting false or fraudulent information on an application certifying possession of the qualifications required under 18VAC80-30-20;

4. Violating or inducing others to violate any provisions of Chapter 1, 2, 3, or 15 of Title 54.1 of the Code of Virginia, or of any other statute applicable to the practice of the profession herein regulated, or of any provisions of this chapter;

5. Publishing or causing to be published any advertisement related to opticianry that is false, deceptive, or misleading;

6. Having been convicted in any jurisdiction of a misdemeanor or felony involving sexual offense, ~~drug distribution~~ or physical injury, or of any felony involving drug distribution or that directly relates to the profession of opticianry. The board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of opticianry. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The licensee shall provide a certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision, and such copy shall be

admissible as prima facie evidence of such conviction. This record shall be forwarded by the licensee to the board within 10 days after all appeal rights have expired;

7. Having been disciplined by another jurisdiction in the practice of opticianry. Documentary evidence of such discipline shall be submitted by the licensee to the board within 10 days after all appeal rights have expired; or

8. Allowing any person to engage in the practice of opticianry, except an optician apprentice or student enrolled in a course in a school of opticianry under the direct supervision of a licensed optician.

B. A finding of improper or dishonest conduct in the practice of the profession by a court of competent jurisdiction shall be cause for disciplinary action.

VA.R. Doc. No. R22-6911; Filed September 20, 2021, 3:53 p.m.

## BOARD OF NURSING

### Final Regulation

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

**Title of Regulation:** 18VAC90-19. Regulations Governing the Practice of Nursing (amending 18VAC90-19-230; repealing 18VAC90-19-210, 18VAC90-19-220).

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

**Effective Date:** November 10, 2021.

**Agency Contact:** Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

#### Summary:

*Chapter 157 of the 2021 Acts of the Assembly, Special Session I, repeals Board of Nursing authorization for registration of clinical nurse specialists. Therefore, the amendments repeal or amend all sections referencing clinical nurse specialists in 18VAC90-19 to conform with statute.*

#### Part IV

#### Clinical Nurse Specialists Disciplinary and Delegation Provisions

#### 18VAC90-19-210. ~~Clinical nurse specialist registration.~~ (Repealed.)

~~A. Initial registration. An applicant for initial registration as a clinical nurse specialist shall:~~

1. Be currently licensed as a registered nurse in Virginia or hold a current multistate licensure privilege as a registered nurse;
2. Submit evidence of current national clinical nurse specialist certification, including core certification or a certification that has been retired, as required by § 54.1-3018.1 of the Code of Virginia or have an exception available from March 1, 1990, to July 1, 1990; and
3. Submit the required application and fee.

**B. Renewal of registration.**

1. Registration as a clinical nurse specialist shall be renewed biennially at the same time the registered nurse license is renewed. If registered as a clinical nurse specialist with a multistate licensure privilege to practice in Virginia as a registered nurse, a licensee born in an even-numbered year shall renew his license by the last day of the birth month in even-numbered years and a licensee born in an odd-numbered year shall renew his license by the last day of the birth month in odd-numbered years.
2. The clinical nurse specialist shall complete the renewal form and submit it with the required fee. An attestation of current national certification as a clinical nurse specialist, including core certification or a certification that has been retired, is required unless registered in accordance with an exception.
3. Registration as a clinical nurse specialist shall lapse if the registered nurse license is not renewed or the multistate licensure privilege is lapsed or registration as a clinical nurse specialist is not renewed and may be reinstated within one renewal period upon:
  - a. Reinstatement of RN license or multistate licensure privilege, if lapsed;
  - b. Payment of current renewal fees and late renewal fees; and
  - c. Submission of evidence of continued national certification as a clinical nurse specialist, including core certification or a certification that has been retired, unless registered in accordance with an exception.

**C. Reinstatement of registration.**

1. A clinical nurse specialist whose registration has lapsed for more than one renewal period may be reinstated by submission of:
  - a. A reinstatement application and reinstatement fee;
  - b. Evidence of a current RN license or multistate privilege; and
  - c. Evidence of current national certification as a clinical nurse specialist, including core certification or a certification that has been retired, unless registered in accordance with an exception.

2. A clinical nurse specialist whose registration has been suspended or revoked by the board may apply for reinstatement by:
  - a. Filing a reinstatement application;
  - b. Fulfilling requirements specified in subdivision 1 c of this subsection; and
  - c. Paying the fee for reinstatement after suspension or revocation.

The board may request additional evidence that the clinical nurse specialist is prepared to resume practice in a competent manner. A clinical nurse specialist whose registration has been revoked may not apply for reinstatement sooner than three years from entry of the order of revocation.

**18VAC90-19-220. Clinical nurse specialist practice. (Repealed.)**

- A. The practice of a clinical nurse specialist shall be consistent with the education and experience required for clinical nurse specialist certification.
- B. The clinical nurse specialist shall provide those advanced nursing services that are consistent with the standards of specialist practice as established by a national certifying organization for clinical nurse specialists and in accordance with the provisions of Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia.
- C. Advanced practice as a clinical nurse specialist shall include performance as an expert clinician to:
  1. Provide direct care and counsel to individuals and groups;
  2. Plan, evaluate, and direct care given by others; and
  3. Improve care by consultation, collaboration, teaching, and the conduct of research.

Part V  
**Disciplinary and Delegation Provisions of Nursing Tasks and Procedures**

**18VAC90-19-230. Disciplinary provisions.**

- A. The board has the authority to deny, revoke, or suspend a license or multistate licensure privilege issued, or to otherwise discipline a licensee or holder of a multistate licensure privilege upon proof that the licensee or holder of a multistate licensure privilege has violated any of the provisions of § 54.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:
  1. Fraud or deceit in procuring or maintaining a license means, but shall not be limited to:
    - a. Filing false credentials;
    - b. Falsely representing facts on an application for initial license, reinstatement, or renewal of a license; or

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c. Giving or receiving assistance in the taking of the licensing examination.

## 2. Unprofessional conduct means, but shall not be limited to:

a. Performing acts beyond the limits of the practice of professional or practical nursing as defined in Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia, or as provided by §§ 54.1-2901 and 54.1-2957 of the Code of Virginia;

b. Assuming duties and responsibilities within the practice of nursing without adequate training or when competency has not been maintained;

c. Obtaining supplies, equipment, or drugs for personal or other unauthorized use;

d. Employing or assigning unqualified persons to perform functions that require a licensed practitioner of nursing;

e. Falsifying or otherwise altering patient, employer, student, or educational program records, including falsely representing facts on a job application or other employment-related documents;

f. Abusing, neglecting, or abandoning patients or clients;

~~g. Practice of a clinical nurse specialist beyond that defined in 18VAC90-19-220 and § 54.1-3000 of the Code of Virginia;~~

~~h. Representing oneself as or performing acts constituting the practice of a clinical nurse specialist unless so registered by the board;~~

~~i. Delegating nursing tasks to an unlicensed person in violation of the provisions of Part VI (18VAC90-19-240 et seq.) of this chapter part;~~

~~j. h. Giving to or accepting from a patient or client property or money for any reason other than fee for service or a nominal token of appreciation;~~

~~k. i. Obtaining money or property of a patient or client by fraud, misrepresentation, or duress;~~

~~l. j. Entering into a relationship with a patient or client that constitutes a professional boundary violation in which the nurse uses his professional position to take advantage of the vulnerability of a patient, a client, or his family, to include actions that result in personal gain at the expense of the patient or client, or a nontherapeutic personal involvement or sexual conduct with a patient or client;~~

~~m. k. Violating state laws relating to the privacy of patient information, including § 32.1-127.1:03 the Code of Virginia;~~

~~n. l. Providing false information to staff or board members in the course of an investigation or proceeding;~~

~~o. m. Failing to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia or elder abuse or neglect as required in § 63.2-1606 of the Code of Virginia; or~~

~~p. n. Violating any provision of this chapter.~~

~~B. Any sanction imposed on the registered nurse license of a clinical nurse specialist shall have the same effect on the clinical nurse specialist registration.~~

## Part VI

### Delegation of Nursing Tasks and Procedures

VA.R. Doc. No. R22-6891; Filed September 10, 2021, 10:56 a.m.

## Final Regulation

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

**Titles of Regulations: 18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-10, 18VAC90-30-70, 18VAC90-30-86, 18VAC90-30-120, 18VAC90-30-123; adding 18VAC90-30-87, 18VAC90-30-125).**

**18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (amending 18VAC90-40-10, 18VAC90-40-90).**

**Statutory Authority:** §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

**Effective Date:** November 10, 2021.

**Agency Contact:** Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

### Summary:

*Pursuant to Chapters 1, 157, and 396 of the 2021 Acts of Assembly, Special Session I, the amendments (i) reduce the requirement for years in clinical practice to two years for autonomous practice of nurse practitioners without practice agreements, with an expiration of July 1, 2022; (ii) establish the licensure and practice of clinical nurse specialists (CNSs) as nurse practitioners under the joint Boards of Nursing and Medicine, the requirement for a practice agreement, and the prescriptive authority for CNSs who qualify; and (iii) reduce the requirement for years in clinical practice by certified nurse midwives to be able to practice autonomously to 1,000 hours under a practice agreement with either a consulting physician or another certified nurse midwife who has at least two years of experience.*

### 18VAC90-30-10. Definitions.

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



"Approved program" means a nurse practitioner education program that is accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools, American College of Nurse Midwives, Commission on Collegiate Nursing Education, or the National League for Nursing Accrediting Commission or is offered by a school of nursing or jointly offered by a school of medicine and a school of nursing that grant a graduate degree in nursing and that hold a national accreditation acceptable to the boards.

"Autonomous practice" means practice in a category in which a nurse practitioner is certified and licensed without a written or electronic practice agreement with a patient care team physician in accordance with 18VAC90-30-86.

"Boards" means the Virginia Board of Nursing and the Virginia Board of Medicine.

"Certified nurse midwife" means an advanced practice registered nurse who is certified in the specialty of nurse midwifery and who is jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner pursuant to § 54.1-2957 of the Code of Virginia.

"Certified registered nurse anesthetist" means an advanced practice registered nurse who is certified in the specialty of nurse anesthesia, who is jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner pursuant to § 54.1-2957 of the Code of Virginia, and who practices under the supervision of a doctor of medicine, osteopathy, podiatry, or dentistry but is not subject to the practice agreement requirement described in § 54.1-2957.

"Clinical nurse specialist" means an advanced practice registered nurse who is certified in the specialty of clinical nurse specialist and who is jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner pursuant to § 54.1-2957 of the Code of Virginia.

"Collaboration" means the communication and decision-making process among members of a patient care team related to the treatment and care of a patient and includes (i) communication of data and information about the treatment and care of a patient, including exchange of clinical observations and assessments, and (ii) development of an appropriate plan of care, including decisions regarding the health care provided, accessing and assessment of appropriate additional resources or expertise, and arrangement of appropriate referrals, testing, or studies.

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"Consultation" means the communicating of data and information, exchanging of clinical observations and assessments, accessing and assessing of additional resources and expertise, problem solving, and arranging for referrals, testing, or studies.

"Licensed nurse practitioner" means an advanced practice registered nurse who has met the requirements for licensure as stated in Part II (18VAC90-30-60 et seq.) of this chapter.

"National certifying body" means a national organization that is accredited by an accrediting agency recognized by the U.S. Department of Education or deemed acceptable by the National Council of State Boards of Nursing and has as one of its purposes the certification of nurse anesthetists, nurse midwives, or nurse practitioners, referred to in this chapter as professional certification, and whose certification of such persons by examination is accepted by the committee.

"Patient care team physician" means a person who holds an active, unrestricted license issued by the Virginia Board of Medicine to practice medicine or osteopathic medicine.

"Practice agreement" means a written or electronic statement, jointly developed by the collaborating patient care team physician and the licensed nurse practitioner that describes the procedures to be followed and the acts appropriate to the specialty practice area to be performed by the licensed nurse practitioner in the care and management of patients. The practice agreement also describes the prescriptive authority of the nurse practitioner, if applicable. For a nurse practitioner licensed in the category of certified nurse midwife, the practice agreement is a statement jointly developed with the consulting physician or a certified nurse midwife with at least two years of clinical experience. For a nurse practitioner licensed in the category of clinical nurse specialist, the practice agreement shall be between the nurse practitioner and a consulting physician.

## **18VAC90-30-70. Categories of licensed nurse practitioners.**

A. The boards shall license nurse practitioners consistent with their specialty education and certification in the following categories (a two-digit suffix appears on licenses to designate category):

1. Adult/geriatric acute care nurse practitioner (01);
2. Family nurse practitioner (02);
3. Pediatric/primary care nurse practitioner (03);
4. Adult/geriatric primary care nurse practitioner (07);
5. Certified registered nurse anesthetist (08);
6. Certified nurse midwife (09);
7. Neonatal nurse practitioner (13);
8. Women's health nurse practitioner (14);
9. Psychiatric nurse/mental health practitioner (17); ~~and~~
10. Pediatric/acute care nurse practitioner (18); and
11. Clinical nurse specialist (19).

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B. Other categories of licensed nurse practitioners shall be licensed if the Committee of the Joint Boards of Nursing and Medicine determines that the category meets the requirements of this chapter.

C. Nurse practitioners licensed prior to January 15, 2016, may:

1. Retain the specialty category in which they were initially licensed; or
2. If the specialty category has been subsequently deleted and if qualified by certification, be issued a license in a specialty category listed in subsection A of this section that is consistent with such certification.

**18VAC90-30-86. Autonomous practice for nurse practitioners other than nurse midwives ~~or~~, certified registered nurse anesthetists, or clinical nurse specialists.**

A. A nurse practitioner with a current, unrestricted license, other than someone licensed in the category of certified nurse midwife ~~or~~, certified registered nurse anesthetist, or clinical nurse specialist, may qualify for autonomous practice by completion of the equivalent of ~~five two~~ years of full-time clinical experience as a nurse practitioner until July 1, 2022. Thereafter, the requirement shall be the equivalent of five years of full-time clinical experience to qualify for autonomous practice.

1. ~~Five years of full-time~~ Full-time clinical experience shall be defined as 1,800 hours per year ~~for a total of 9,000 hours~~.
2. Clinical experience shall be defined as the postgraduate delivery of health care directly to patients pursuant to a practice agreement with a patient care team physician.

B. Qualification for authorization for autonomous practice shall be determined upon submission of a fee as specified in 18VAC90-30-50 and an attestation acceptable to the boards. The attestation shall be signed by the nurse practitioner and the nurse practitioner's patient care team physician stating that:

1. The patient care team physician served as a patient care team physician on a patient care team with the nurse practitioner pursuant to a practice agreement meeting the requirements of this chapter and §§ 54.1-2957 and 54.1-2957.01 of the Code of Virginia;
2. While a party to such practice agreement, the patient care team physician routinely practiced with a patient population and in a practice area included within the category, as specified in 18VAC90-30-70, for which the nurse practitioner was certified and licensed; and
3. The period of time and hours of practice during which the patient care team physician practiced with the nurse practitioner under such a practice agreement.

C. The nurse practitioner may submit attestations from more than one patient care team physician with whom the nurse

practitioner practiced during the equivalent of five years of practice, but all attestations shall be submitted to the boards at the same time.

D. If a nurse practitioner is licensed and certified in more than one category as specified in 18VAC90-30-70, a separate fee and attestation that meets the requirements of subsection B of this section shall be submitted for each category. If the hours of practice are applicable to the patient population and in practice areas included within each of the categories of licensure and certification, those hours may be counted toward a second attestation.

E. In the event a patient care team physician has died, become disabled, retired, or relocated to another state, or in the event of any other circumstance that inhibits the ability of the nurse practitioner from obtaining an attestation as specified in subsection B of this section, the nurse practitioner may submit other evidence of meeting the qualifications for autonomous practice along with an attestation signed by the nurse practitioner. Other evidence may include employment records, military service, Medicare or Medicaid reimbursement records, or other similar records that verify full-time clinical practice in the role of a nurse practitioner in the category for which the nurse practitioner is licensed and certified. The burden shall be on the nurse practitioner to provide sufficient evidence to support the nurse practitioner's inability to obtain an attestation from a patient care team physician.

F. A nurse practitioner to whom a license is issued by endorsement may engage in autonomous practice if such application includes an attestation acceptable to the boards that the nurse practitioner has completed the equivalent of five years of full-time clinical experience as specified in subsection A of this section and in accordance with the laws of the state in which the nurse practitioner was previously licensed.

G. A nurse practitioner authorized to practice autonomously shall:

1. Only practice within the scope of the nurse practitioner's clinical and professional training and limits of the nurse practitioner's knowledge and experience and consistent with the applicable standards of care;
2. Consult and collaborate with other health care providers based on the clinical conditions of the patient to whom health care is provided; and
3. Establish a plan for referral of complex medical cases and emergencies to physicians or other appropriate health care providers.

**18VAC90-30-87. Autonomous practice for nurse practitioners licensed as certified nurse midwives.**

A. A certified nurse midwife who has completed 1,000 hours of practice as a certified nurse midwife may practice without a practice agreement upon receipt by the certified nurse midwife of an attestation from a certified nurse midwife who has

practiced for at least two years prior to entering into the practice agreement or the licensed physician with whom the certified nurse midwife has entered into a practice agreement stating (i) that such certified nurse midwife or licensed physician has provided consultation to the certified nurse midwife pursuant to a practice agreement meeting the requirements of § 54.1-2957 H of the Code of Virginia, and (ii) the period of time for which such certified nurse midwife or licensed physician practiced in collaboration and consultation with the certified nurse midwife pursuant to the practice agreement.

B. A certified nurse midwife authorized to practice without a practice agreement shall consult and collaborate with and refer patients to such other health care providers as may be appropriate for the care of the patient.

**18VAC90-30-120. Practice of licensed nurse practitioners other than certified registered nurse anesthetists or certified nurse midwives, or clinical nurse specialists.**

A. A nurse practitioner licensed in a category other than certified registered nurse anesthetist or certified nurse midwife, or clinical nurse specialist shall be authorized to render care in collaboration and consultation with a licensed patient care team physician as part of a patient care team or if determined by the boards to qualify in accordance with 18VAC90-30-86, authorized to practice autonomously without a practice agreement with a patient care team physician.

B. The practice shall be based on specialty education preparation as an advanced practice registered nurse in accordance with standards of the applicable certifying organization, as identified in 18VAC90-30-90.

C. All nurse practitioners licensed in any category other than certified registered nurse anesthetist or certified nurse midwife, or clinical nurse specialist shall practice in accordance with a written or electronic practice agreement as defined in 18VAC90-30-10 or in accordance with 18VAC90-30-86.

D. The written or electronic practice agreement shall include provisions for:

1. The periodic review of patient charts or electronic patient records by a patient care team physician and may include provisions for visits to the site where health care is delivered in the manner and at the frequency determined by the patient care team;
2. Appropriate physician input in complex clinical cases and patient emergencies and for referrals; and
3. The nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits, and endorsements provided it is:
  - a. In accordance with the specialty license of the nurse practitioner and within the scope of practice of the patient care team physician;

- b. Permitted by § 54.1-2957.02 or applicable sections of the Code of Virginia; and
- c. Not in conflict with federal law or regulation.

E. The practice agreement shall be maintained by the nurse practitioner and provided to the boards upon request. For nurse practitioners providing care to patients within a hospital or health care system, the practice agreement may be included as part of documents delineating the nurse practitioner's clinical privileges or the electronic or written delineation of duties and responsibilities; however, the nurse practitioner shall be responsible for providing a copy to the boards upon request.

**18VAC90-30-123. Practice of nurse practitioners licensed as certified nurse midwives.**

A. A nurse practitioner licensed in the category of certified nurse midwife who has practiced fewer than 1,000 hours shall practice in consultation with a licensed physician in accordance with a practice agreement between the nurse practitioner and the physician or with a certified nurse midwife who has practiced for at least two years prior to entering into the practice agreement. Such practice agreement shall address the availability of the physician or the certified nurse midwife for routine and urgent consultation on patient care.

B. The practice agreement shall be maintained by the nurse midwife and provided to the boards upon request. For nurse midwives providing care to patients within a hospital or health care system, the practice agreement may be included as part of documents delineating the nurse midwife's clinical privileges or the electronic or written delineation of duties and responsibilities; however, the nurse midwife shall be responsible for providing a copy to the boards upon request.

C. A nurse practitioner licensed in the category of a certified nurse midwife shall practice in accordance with the Standards for the Practice of Midwifery (Revised 2011) defined by the American College of Nurse-Midwives.

**18VAC90-30-125. Practice of nurse practitioners licensed as clinical nurse specialists.**

A. Nurse practitioners licensed in the category of clinical nurse specialist shall practice in consultation with a licensed physician in accordance with a practice agreement between the nurse practitioner and the licensed physician.

B. Such practice agreement shall address the availability of the physician for routine and urgent consultation on patient care. Evidence of a practice agreement shall be maintained by a nurse practitioner and provided to the boards upon request.

C. The practice of clinical nurse specialists shall be consistent with the standards of care for the profession and with applicable laws and regulations.

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# Regulations

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## 18VAC90-40-10. Definitions.

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

"Acute pain" means pain that occurs within the normal course of a disease or condition or as the result of surgery for which controlled substances containing an opioid may be prescribed for no more than three months.

"Boards" means the Virginia Board of Medicine and the Virginia Board of Nursing.

"Certified nurse midwife" means an advanced practice registered nurse who is certified in the specialty of nurse midwifery and who is jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner pursuant to § 54.1-2957 of the Code of Virginia.

"Chronic pain" means nonmalignant pain that goes beyond the normal course of a disease or condition for which controlled substances containing an opioid may be prescribed for a period greater than three months.

"Clinical nurse specialist" means an advanced practice registered nurse who is certified in the specialty of clinical nurse specialist and who is jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner pursuant to § 54.1-2957 of the Code of Virginia.

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"FDA" means the U.S. Food and Drug Administration.

"MME" means morphine milligram equivalent.

"Nonprofit health care clinics or programs" means a clinic organized in whole or in part for the delivery of health care services without charge or when a reasonable minimum fee is charged only to cover administrative costs.

"Nurse practitioner" means an advanced practice registered nurse who has met the requirements for licensure as a nurse practitioner as stated in 18VAC90-30.

"Practice agreement" means a written or electronic agreement jointly developed by the patient care team physician and the nurse practitioner for the practice of the nurse practitioner that also describes the prescriptive authority of the nurse practitioner, if applicable. For a nurse practitioner licensed in the category of certified nurse midwife, the practice agreement is a statement jointly developed with the consulting physician or a certified nurse midwife with at least two years of clinical experience. For a nurse practitioner licensed in the category of clinical nurse specialist, the practice agreement shall be between the nurse practitioner and a consulting physician.

"Prescription Monitoring Program" means the electronic system within the Department of Health Professions that monitors the dispensing of certain controlled substances.

"SAMHSA" means the federal Substance Abuse and Mental Health Services Administration.

## 18VAC90-40-90. Practice agreement.

A. With the exceptions listed in subsection E of this section, a nurse practitioner with prescriptive authority may prescribe only within the scope of the written or electronic practice agreement with a patient care team physician.

B. At any time there are changes in the patient care team physician, authorization to prescribe, or scope of practice, the nurse practitioner shall revise the practice agreement and maintain the revised agreement.

C. The practice agreement shall contain the following:

1. A description of the prescriptive authority of the nurse practitioner within the scope allowed by law and the practice of the nurse practitioner.

2. An authorization for categories of drugs and devices within the requirements of § 54.1-2957.01 of the Code of Virginia.

3. The signature of the patient care team physician who is practicing with the nurse practitioner or a clear statement of the name of the patient care team physician who has entered into the practice agreement.

D. In accordance with § 54.1-2957.01 of the Code of Virginia, a physician shall not serve as a patient care team physician to more than six nurse practitioners with prescriptive authority at any one time.

E. Exceptions.

1. A nurse practitioner licensed in the category of certified nurse midwife and holding a license for prescriptive authority may prescribe in accordance with a written or electronic practice agreement with a consulting physician ~~or may prescribe Schedule VI controlled substances without the requirement for inclusion of such prescriptive authority in a practice agreement~~ or with a certified nurse midwife who has practiced for at least two years prior to entering into a practice agreement. A nurse practitioner in the category of certified nurse midwife who has qualified for autonomous practice as set forth in 18VAC90-30-87 may prescribe without a practice agreement.

2. A nurse practitioner licensed in the category of a clinical nurse specialist and holding authorization for prescriptive authority may prescribe in accordance with a written or electronic practice agreement with a consulting physician or may prescribe Schedule VI controlled substances without the requirement for inclusion of such prescriptive authority in a practice agreement.

3. A nurse practitioner who is licensed in a category other than certified nurse midwife ~~or~~ certified registered nurse anesthetist, or clinical nurse specialist, and who has met the qualifications for autonomous practice as set forth in

18VAC90-30-86 may prescribe without a practice agreement with a patient care team physician.

VA.R. Doc. No. R22-6896; Filed September 10, 2021, 12:30 p.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.

**Title of Regulation:** 18VAC110-60. Regulations Governing Pharmaceutical Processors.

**Agency Contact:** Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC110-60)

[Application for Registration as a Patient for Cannabis Oil \(rev. 3/2021\)](#)

[Application for Registration as a Parent/Guardian for Cannabis Oil \(rev. 3/2021\)](#)

[Application for Registration as a Registered Agent for Cannabis Oil \(rev. 3/2021\)](#)

[How to Register with the Board as a Patient, Parent or Legal Guardian \(rev. 7/2020\)](#)

~~[Application for a Pharmaceutical Processor Permit \(rev. 1/2021\)](#)~~

[Application for a Pharmaceutical Processor Permit \(rev. 9/2021\)](#)

[Practitioner Reporting Requirements \(eff. 6/2019\)](#)

[Registration of CBD or THC-A Oil Products \(eff. 6/2019\)](#)

[Pharmaceutical Processor & Dispensing Facility Inspection Report \(rev. 3/2021\)](#)

[Application for Registration as a Registered Agent \(eff. 12/2019\)](#)

[Request for Visitor Approval \(eff. 5/2020\)](#)

VA.R. Doc. No. R22-6967; Filed September 20, 2021, 2:02 p.m.

**DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

**Final Regulation**

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

**Title of Regulation:** 18VAC120-40. Virginia Professional Boxing and Wrestling Events Regulations (amending 18VAC120-40-70, 18VAC120-40-140, 18VAC120-40-430).

**Statutory Authority:** § 54.1-831 of the Code of Virginia.

**Effective Date:** December 1, 2021.

**Agency Contact:** Kathleen R. Nosbisch, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email boxing@dpor.virginia.gov.

**Summary:**

*Pursuant to Chapters 550 and 551 of the 2021 Acts of Assembly, Special Session I, the amendments conform regulations concerning qualifications for licensure and standards of conduct to the requirements of § 19.2-389.3 of the Code of Virginia and remove requirements for reporting by applicants or licensees of misdemeanor marijuana convictions.*

**18VAC120-40-70. Application requirements.**

A. Applicants shall apply on forms supplied by the department or its contractor.

B. Individual applicants shall be at least 18 years of age.

C. The applicant shall disclose the following information about himself, in the case of an individual, or about the firm and every member of the responsible management of the firm, in the case of a firm:

1. Any guilty finding by the department, or by a court of any competent jurisdiction, of any material misrepresentation while engaged in boxing, martial arts, wrestling, or other athletic activities, or any conviction, guilty plea, or finding of guilty, regardless of adjudication or deferred adjudication, of any felony or non-marijuana misdemeanor;

2. Any disciplinary action taken by the department or another jurisdiction in connection with the applicant's participation in or promotion of professional athletic contests or activities including, ~~but not limited to,~~ monetary

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# Regulations

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penalty, fine, suspension, revocation, or surrender of a license in connection with a disciplinary action; and

3. Any currently or previously held boxing, martial arts, or wrestling licenses issued by this Commonwealth or any other jurisdiction.

Any plea of nolo contendere shall be considered a conviction for the purposes of this subsection. A certified copy of a final order, decree, or case decision by a court or regulatory agency with the lawful authority to issue such order, decree, or case decision shall be admissible as prima facie evidence of such conviction or discipline. Subject to the provisions of § 54.1-204 of the Code of Virginia, the department may deny an application for a license if, in its judgment, the actions disclosed in subdivisions 1 and 2 of this subsection would render the applicant unfit or unsuited to engage in boxing, wrestling, or other athletic activities.

D. Each individual applicant shall disclose his physical address and each firm applying for licensure shall disclose the physical addresses of the firm and the firm's responsible management. A post office box shall not be accepted in lieu of a physical address.

E. The fee established by 18VAC120-40-50 A shall accompany the application and shall not be refunded.

F. The receipt of an application and the deposit of fees in no way indicate approval by the department.

## **18VAC120-40-140. Requirements for approval to act as an event official.**

A. To qualify to act on the department's behalf as an event official, a person must:

1. Be at least 18 years of age;
2. Not have been convicted or found guilty, regardless of adjudication, of any felony or ~~other crime~~ non-marijuana misdemeanor involving lying, cheating, or stealing ~~or involving~~ illegal drugs; or other acts involving the sport of boxing or martial arts. Any plea of nolo contendere shall be considered a conviction for the purposes of this chapter. The record of conviction, authenticated in such form as to be admissible as evidence under the laws of the jurisdiction where convicted, shall be admissible as prima facie evidence of such conviction; and
3. Submit verifications from three persons of his proficiency as an event inspector, locker room inspector, referee, judge, or timekeeper, whichever is appropriate. Evidence of approval by the department, its contractor, or another jurisdiction with a regulatory program substantially equivalent to this chapter, may be submitted in lieu of the verifications from three persons.

B. In addition to requirements set forth in subsection A of this section, each referee or judge shall submit the following certification:

"I understand that I am not entitled to receive any compensation in connection with a boxing or martial arts match until I provide the department a statement of all consideration, including reimbursement for expenses that will be received from any source for participation in the match."

## **18VAC120-40-430. Grounds for disciplinary action by the department.**

A. The department shall have the authority to discipline a licensee through a fine, license suspension, or license revocation for the same reason it may deny licensure or renewal, and for the following reasons, as may be appropriate:

1. Violating or inducing another person to violate any provisions of the federal Professional Boxing Safety Act of 1996 (15 USC § 6301 et seq.), Chapters 1, 2, 3 or 8.1 of Title 54.1 of the Code of Virginia or of this chapter.
2. Using misrepresentation or fraud to obtain or attempt to obtain a license or event license.
3. Having a medical condition which makes participation in events a health hazard.
4. Altering a license issued by the department.
5. Having been convicted in any jurisdiction of any felony or of any non-marijuana misdemeanor involving lying, cheating, or stealing; or of any non-marijuana misdemeanor for acts carried out while engaged in boxing, wrestling, or other athletic activities. Any plea of nolo contendere shall be considered a conviction for the purposes of this subsection. A certified copy of a final order, decree, or case decision by a court or regulatory agency with the lawful authority to issue such order, decree, or case decision shall be admissible as prima facie evidence of such conviction or discipline.
6. Having been the subject of disciplinary action taken by Virginia or another jurisdiction in connection with the participation in or promotion of professional athletic contests or activities, including ~~but not limited to~~, monetary penalties, fines, suspension, revocation, or surrender of a license in connection with a disciplinary action.
7. Failing or refusing to appear when directed by the department or its contractor for the purposes of weighing or conducting a medical examination.
8. Failing to furnish a valid reason or a doctor's certificate to explain any failure to appear at an event in which an applicant or licensee agreed to participate by signing a contract.
9. Using unsportsmanlike conduct or other inappropriate behavior inconsistent with generally accepted methods of competition.

10. ~~Failure~~ Failing to meet financial obligations that results in collection proceedings against the bond required by this chapter and § 54.1-833 A of the Code of Virginia.

11. ~~Use of~~ Using profane or abusive language, during the event, including at the weigh-in and prefight meeting.

12. Threatening or inflicting bodily harm upon an official or members of the audience during an event.

13. Making allegations of illegal or improper conduct against officials that the licensee knows or should have known to be false.

14. ~~Use of any~~ Using alcohol, controlled substances, or stimulants in any part of the body prior to or during an event or being found to be under the influence of alcohol, controlled substances, or stimulants during an event.

15. ~~Failure~~ Failing to submit to a urinalysis or chemical test before or after an event upon request of the department or its designee.

16. ~~Failure~~ Failing to fulfill contracts for participation in an event.

17. Wearing facial cosmetics or jewelry of any kind, including any type of body piercing by any participants during a contest, except that wrestlers may wear cosmetics or jewelry unless the event official determines there is a safety risk.

18. ~~Failure by any participant~~ Failing to secure hair with soft, nonabrasive materials during a contest, when deemed appropriate by the department or its contractor.

19. Allowing a license, certificate, or registration to be used by another.

B. The department shall conduct disciplinary procedures in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

V.A.R. Doc. No. R22-6969; Filed September 22, 2021, 9:56 a.m.

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# GUIDANCE DOCUMENTS

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## PUBLIC COMMENT OPPORTUNITY

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

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

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

Title of Document: [Virginia Cooperative Gypsy Moth Suppression Program, 2022 Guidelines for Participation Aerial Treatments.](#)

Public Comment Deadline: November 10, 2021.

Effective Date: November 11, 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 (804) 786-3515, or email [david.gianino@vdacs.virginia.gov](mailto:david.gianino@vdacs.virginia.gov).

### BOARD OF DENTISTRY

Titles of Documents: [Death or Retirement of a Dentist or Selling or Closing of a Dental Practice.](#)

[Educational Requirements for Dental Assistants II.](#)

[Guidance for Dental Practices.](#)

Public Comment Deadline: November 10, 2021.

Effective Date: November 11, 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](mailto:elaine.yeatts@dhp.virginia.gov).

### DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Document: [Housing Innovation Partnerships Grants.](#)

Public Comment Deadline: November 10, 2021.

Effective Date: November 11, 2021.

Agency Contact: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA

23219, telephone (804) 786-6761, or email [kyle.flanders@dhcd.virginia.gov](mailto:kyle.flanders@dhcd.virginia.gov).

### DEPARTMENT OF MOTOR VEHICLES

Title of Document: [Obtaining a Virginia Driver Privilege Card.](#)

Public Comment Deadline: November 10, 2021.

Effective Date: November 11, 2021.

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

### DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

Title of Document: [Freight Rail Grant Funding and Procedures.](#)

Public Comment Deadline: November 10, 2021.

Effective Date: November 11, 2021.

Agency Contact: Andrew Wright, Senior Legislative and Policy Specialist, Department of Rail and Public Transportation, 600 East Main Street, Suite 2102, Richmond, VA 23219, telephone (804) 241-0301, or email [andrew.wright@drpt.virginia.gov](mailto:andrew.wright@drpt.virginia.gov).

### STATE BOARD OF SOCIAL SERVICES

Titles of Documents: [Supplemental Nutrition Assistance Program Manual - Volume V.](#)

[Temporary Assistance for Needy Families Manual.](#)

Public Comment Deadline: November 10, 2021.

Effective Date: November 11, 2021.

Agency Contact: Nikki Clarke Callaghan, Legislation, Regulations and Guidance Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7943, or email [nikki.clarke@dss.virginia.gov](mailto:nikki.clarke@dss.virginia.gov).



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# GENERAL NOTICES

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## STATE CORPORATION COMMISSION

### BUREAU OF INSURANCE

AT RICHMOND, SEPTEMBER 9, 2021

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2021-00110

Ex Parte: In the matter of the  
Implementation of the Commonwealth Health  
Reinsurance Program

#### ORDER FOR NOTICE, COMMENT AND HEARING

During the 2021 Special Session I, the Virginia General Assembly enacted Chapter 480 (HB 2332) of the 2021 Virginia Acts of Assembly. This bill requires the State Corporation Commission ("Commission"), upon approval of a State Innovation Waiver request ("1332 waiver" or "waiver") submitted pursuant to § 1332 of The Patient Protection and Affordable Care Act, 124 Stat. 119, to establish the Commonwealth Health Reinsurance Program ("Program") beginning January 1, 2023.<sup>1</sup> This Order notices the instant proceeding, provides an opportunity for public comment on the 1332 waiver application, as well as schedules a hearing, as required under federal law prior to submission of the waiver application.

Pursuant to HB 2332, the Program will be funded through state general funds and federal pass-through funding provided under the waiver, and will reimburse carriers in the individual health insurance market for a proportion of the claims of covered individuals with high annual costs. The Program is intended to increase affordability of health insurance coverage in the individual market with a goal of decreasing premiums.

HB 2332 sets out the framework for the Program, including carrier eligibility, the basis for determining medical expenditures, and the process by which benefits will be applied for and paid. The bill also requires the Virginia Secretary of Health and Human Resources ("Secretary") to convene a work group of relevant stakeholders ("Work Group") to consider initiatives, including a state-based subsidy program, to increase affordability of health plans to individuals and to increase enrollment in the Virginia Health Benefit Exchange. The provisions of the bill, other than the requirement that the Commission apply for the 1332 waiver, will become effective 30 days after notice of approval of the waiver request.

Under the guidance of the Secretary, the Virginia HB 2332 Work Group held six meetings during the summer of 2021 and received presentations from experts on the 1332 waiver program, other states' health care affordability initiatives, and Virginia's uninsured population. The Work Group recommended that the waiver application include only the

Program and not any additional cost savings programs, such as premium subsidies.

Section 38.2-6606 A of the Code of Virginia ("Code") requires the Commission to submit a 1332 waiver application to the U.S. Secretary of Health and Human Services by January 1, 2022 and make a draft waiver application available for public review and comment by October 1, 2021.<sup>2</sup> Prior to submitting the waiver application, federal rules<sup>3</sup> require that the Commission provide for a public notice and comment period sufficient to ensure a meaningful level of public input for a section 1332 waiver. Federal rules further require the public notice and comment period to include a separate process for meaningful consultation with all federally recognized Indian tribes<sup>4</sup> within a state's borders. Finally, the Commission is required to conduct public hearings that provide for the opportunity to learn about and comment on the contents of the waiver application.

NOW THE COMMISSION, upon consideration of this matter, notes that the waiver application process requires its prompt review and receipt of input from the public and interested persons, as well as comment from the federally recognized Indian tribes located in Virginia, before the waiver application is submitted. Therefore, the Commission is establishing this schedule in advance of the due date of the waiver application to receive timely input on this matter.

In inviting public comment and setting the hearings, the Commission takes judicial notice of the ongoing public health issues related to the spread of the coronavirus, or COVID-19. The Commission has taken certain actions, and may take additional actions going forward, that could impact procedures in this matter. The Commission has requested, and received approval for, modification to the federal requirements for in-person public hearing to allow these hearings to be held virtually because of the ongoing COVID-19 Public Health Emergency.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. INS-2021-00110 for purposes of receiving input from the public and interested persons in this matter.

(2) The Bureau of Insurance ("Bureau") will establish a webpage on the Commission's website at: [scc.virginia.gov/pages/Reinsurance-Waiver](http://scc.virginia.gov/pages/Reinsurance-Waiver) to inform the public and interested persons about the Program. The draft 1332 waiver application will be posted on the website on or before October 1, 2021.

(3) The Commission's Division of Information Resources is directed to post this Order on the Commission's website. On or before November 1, 2021, any interested person may file written comments on the waiver application by following the instructions found on the Commission's website: [scc.virginia.gov/casecomments/Submit-Public-Comments](http://scc.virginia.gov/casecomments/Submit-Public-Comments).

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## General Notices

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Those unable, as a practical matter, to file comments electronically may file such comments by U.S. mail to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All comments shall refer to Case No. INS-2021-00110.

(4) The Commission's Division of Information Resources shall forward a copy of this Order to the Register of Regulations for publication in the Virginia Register of Regulations.

(5) The Division of Information Resources shall cause a notice for comment and public hearing to be published in classified advertising on one occasion by October 1, 2021 in newspapers of general circulation throughout the Commonwealth.

(6) The Bureau shall consult with the Secretary of the Commonwealth for assistance in contacting representatives from the seven federally recognized Indian tribes within Virginia's borders. The Bureau also shall provide information on the Program and the waiver application to the Indian tribes, extend an opportunity to meet with them, and request that the Indian tribes provide comment, either collectively or individually, regarding the waiver application.

(7) Due to the ongoing public health emergency related to the spread of the coronavirus, or COVID-19, the Commission hereby schedules telephonic hearings for the receipt of public comment from interested persons on the Program, as follows:

a. Two public hearings will be conducted to receive oral comments from the public and interested persons regarding the Program under consideration in this matter. As provided by § 12.1-31 of the Code, the Office of Hearing Examiners is directed to conduct these public hearings on behalf of the Commission.

b. These hearings shall occur on Thursday, October 14, 2021 at 10:00 am and on Thursday, October 14, 2021 at 7:00 pm.

c. The Bureau is directed to provide an overview of the Program at the beginning of each public hearing so that participants have an opportunity to learn about and comment on the contents of waiver application.

d. To promote fairness for all persons offering comments, each person will be allotted up to five minutes to provide their comments. This time may be adjusted by the Hearing Examiner as necessary.

e. On or before October 12, 2021, any person desiring to offer comments in this matter shall provide to the Commission (a) their name, and (b) the telephone number that they wish the Commission to call during the hearing to receive their comments. This information may be provided to the Commission in three ways: (i) by filling out a form on the Commission's website at [scc.virginia.gov/pages/Webcasting](http://scc.virginia.gov/pages/Webcasting); (ii) by completing and emailing the PDF version of this form to

[SCCInfo@scc.virginia.gov](mailto:SCCInfo@scc.virginia.gov); or (iii) by calling (804) 371-9141.

f. After the Bureau presentations at 10:00 a.m. and 7:00 p.m. on October 14, 2021, the Commission will telephone sequentially each person who has signed up to speak as provided above.

g. Each public hearing will be webcast at [scc.virginia.gov/pages/Webcasting](http://scc.virginia.gov/pages/Webcasting).

A COPY hereof shall be sent electronically by the Clerk of the Commission to the following members of the Virginia HB 2332 Work Group: Chris Pyle, [chris.pvle@deltadentalva.com](mailto:chris.pvle@deltadentalva.com); Chris Renkar, [cjrenkar@mdependentbenefits.net](mailto:cjrenkar@mdependentbenefits.net); Christopher E. West, [Christopher.E.West@kp.org](mailto:Christopher.E.West@kp.org); Clark Barrineau, [cbarrineau@msv.org](mailto:cbarrineau@msv.org); Corey Pleasants, [corey.pleasants@governor.virginia.gov](mailto:corey.pleasants@governor.virginia.gov); Craig Connors, [cconnors@vhha.com](mailto:cconnors@vhha.com); Daniel Carey, [Daniel.carey@governor.virginia.gov](mailto:Daniel.carey@governor.virginia.gov); David DeBiasi, [ddebiasi@aarp.org](mailto:ddebiasi@aarp.org); Deepak Medala, [deepak@enroll-virginia.com](mailto:deepak@enroll-virginia.com); Jeon Ward, [DeJWard@house.virginia.gov](mailto:DeJWard@house.virginia.gov); Mark Sickles, [DeIMSickles@house.virginia.gov](mailto:DeIMSickles@house.virginia.gov); Don Harris, [don@marksickles.com](mailto:don@marksickles.com); Douglas Gray, [dgrav@vahp.org](mailto:dgrav@vahp.org); Erik Rison, [E.rison@vachamber.com](mailto:E.rison@vachamber.com); Freddy Mejia, [freddv@thecommonwealthinstitute.org](mailto:freddv@thecommonwealthinstitute.org); Holly Mortlock, [holly.mortlock@governor.virginia.gov](mailto:holly.mortlock@governor.virginia.gov); Jeffrey Palmore, [ipalmore@reedsmith.com](mailto:ipalmore@reedsmith.com); Julie Dime, [idime@vhlia.com](mailto:idime@vhlia.com); Kathie Naylor, [knaylor@integrumadvisors.com](mailto:knaylor@integrumadvisors.com); Kenn Penn, [kpenn@chambersolutions.com](mailto:kpenn@chambersolutions.com); Kristin Burhop, [k.burhop@vachamber.com](mailto:k.burhop@vachamber.com); Kristin Collins, [Kristin.collins@tax.Virginia.gov](mailto:Kristin.collins@tax.Virginia.gov); Lauryn Walker, [laurvn.walker@dmas.virginia.gov](mailto:laurvn.walker@dmas.virginia.gov); Lindsay Berry, [Lindsay.berry@anthem.com](mailto:Lindsay.berry@anthem.com); Martin Johnson, [miohnson@virginiarealtors.org](mailto:miohnson@virginiarealtors.org); Matthew Huntley, [matthew.huntley@tax.virginia.gov](mailto:matthew.huntley@tax.virginia.gov); Melissa Assalone, [Melissa.assalone@governor.virginia.gov](mailto:Melissa.assalone@governor.virginia.gov); Meredith Lee, [Meredith.lee@dmas.virginia.gov](mailto:Meredith.lee@dmas.virginia.gov); Mike Tweedy, [mtweedy@sfc.virginia.gov](mailto:mtweedy@sfc.virginia.gov); Nicole Riley, [Nicole.rilev@nfib.org](mailto:Nicole.rilev@nfib.org); Sabrina Corlette, [sc732@georgetown.edu](mailto:sc732@georgetown.edu); Sara Cariano, [sara@vnlc.org](mailto:sara@vnlc.org); George Barker, [district39@senate.virginia.gov](mailto:district39@senate.virginia.gov); Susan Massart, [smassart@hac.virginia.gov](mailto:smassart@hac.virginia.gov); Tim Jost, [jostt@wlu.edu](mailto:jostt@wlu.edu). A copy also shall be sent to the Commission's Office of General Counsel and Bureau of Insurance Life & Health Division.

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<sup>1</sup>Code of Virginia § 38.2-6606 A.

<sup>2</sup>Code of Virginia § 38.2-6606 B.

<sup>3</sup>31 CFR § 33.112 and 45 CFR § 155.1312. 2.

<sup>4</sup>The federally recognized tribes in Virginia include the following: Chickahominy, Eastern Chickahominy, Rappahannock, Upper Mattaponi, Monacan, Nansemond, and Pamunkey.

**Contact Information:** Kenneth J. Schrad, Director, Information Resources, State Corporation Commission, P.O. Box 1197,

Richmond, VA 23218, telephone (804) 371-9858, or email [ken.schrad@scc.virginia.gov](mailto:ken.schrad@scc.virginia.gov).

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### **Intent to Amend the Virginia State Plan for Medical Assistance Pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13)) - Behavioral Health Enhancement Part 2**

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 from the contact listed at the end of the 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 the contact listed at the end of the notice, 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 Items 313 YYY (2), (3), and (4) of Chapter 552 of the 2021 Acts of Assembly, Special Session I, DMAS will be making the following changes:

Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80)

The state plan is being revised to implement programmatic changes and reimbursement rates for the following services: multisystemic therapy, functional family therapy, crisis intervention services, crisis stabilization services, and behavioral therapy.

The expected increase in annual aggregate expenditures is \$11,283,993 in state general funds and \$15,450,043 in federal 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.

### **Intent to Amend the Virginia State Plan for Medical Assistance Pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13)) - School Services**

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)).

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 the contact listed at the end of the notice, 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 AAAAAA of Chapter 552 of the 2021 Acts of Assembly, Special Session I, DMAS will be making the following changes:

Methods and Standards for Establishing Payment Rates-Other Types of Care (12VAC30-80)

Item 313 AAAAAA requires DMAS to "allow payment of medical assistance services delivered to Medicaid-eligible students when such services qualify for reimbursement by the Virginia Medicaid program and may be provided by school divisions, regardless of whether the student receiving care has an individualized education program or whether the health care service is included in a student's individualized education program."

The expected increase in aggregate annual expenditures is \$571,250 in federal funds and \$7,450 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.

## STATE WATER CONTROL BOARD

### **Amendment of Water Quality Management Planning Regulation**

Notice of action: The State Water Control Board is considering the amendment of the regulation on water quality management planning in accordance with the Public Participation Procedures for Water Quality Management Planning. A

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## General Notices

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regulation is a general rule governing people's rights or conduct that is upheld by a state agency.

Purpose of notice: The board is seeking comments through the Department of Environmental Quality (DEQ) on the proposed amendment. The purpose of the amendment to the state's Water Quality Management Planning Regulation (9VAC25-720) is to adopt 16 new total maximum daily load (TMDL) wasteload allocations.

Public comment period: October 11, 2021, through November 10, 2021.

Description of proposed action: DEQ staff will propose amendments of the state's Water Quality Management Planning Regulation for the Potomac-Shenandoah River Basin (8VAC25-720-50 A), Roanoke River Basin (8VAC25-720-80 A), and the York River Basin (9VAC25-720-120 A). Statutory authority for promulgating these amendments can be found in § 62.1-44.15 of the Code of Virginia.

Staff intends to recommend that (i) the board approve the three TMDL reports as the plans for the pollutant reductions necessary for attainment of water quality goals in the impaired segments, (ii) the board authorize inclusion of the three TMDL reports in the appropriate Water Quality Management Plans, and (iii) the board adopt 16 new TMDL wasteload allocations (WLAs) as part of the state's Water Quality Management Planning Regulation in accordance with § 2.2-4006 A 14 and B of the Code of Virginia.

The TMDL reports were developed in accordance with federal regulations (40 CFR 130.7) and are exempt from the provisions of Article 2 (§ 2.2-4006 et seq.) of the Virginia Administrative Process Act. The reports were subject to the TMDL public participation process contained in DEQ's Public Participation Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDL.

As of July 1, 2014, TMDL WLAs can receive State Water Control Board approval prior to EPA approval due to amendments outlined in § 2.2-4006 A 14 of the Code of Virginia. The TMDL reports in this public notice have been reviewed by EPA for required TMDL elements, however, remain in draft form awaiting State Water Control Board approval. The draft reports can be found at <https://www.deq.virginia.gov/water/water-quality/tmdl-development/draft-tmdls>.

Affected waterbodies and localities for the 16 new TMDL wasteload allocations:

Potomac-Shenandoah River Basin (9VAC25-720-50 A)

- "PCB Total Maximum Daily Load Development for Lewis Creek, Staunton, Virginia"

- The Lewis Creek TMDL, located in the City of Staunton, proposes PCB reductions for the Lewis Creek watershed and provides a new PCB wasteload allocation of 3,040 mg/yr

Roanoke River Basin (9VAC25-720-80 A)

- Benthic TMDL Development for the Lynch Creek and Reed Creek Watersheds Located in Campbell and Pittsylvania Counties

- The Lynch Creek and Reed Creek TMDL, located in Campbell and Pittsylvania Counties, proposes sediment reductions for the Lynch Creek watershed and provides a new sediment wasteload allocation of 8,069 lb/yr.

- The Lynch Creek and Reed Creek TMDL, located in Campbell and Pittsylvania Counties, proposes sediment reductions for the Reed Creek watershed and provides a new sediment wasteload allocation of 22,250 lb/yr.

York River Basin (9VAC25-720-120 A)

- Bacteria Total Maximum Daily Load (TMDL) Development for the Mattaponi River and Tributaries Located in Caroline, Essex, King William, and King and Queen Counties, Virginia

- The Mattaponi River and Tributaries TMDL, located in Caroline, Essex, King William, and King and Queen Counties, proposes e. coli reductions for the Aylett Creek watershed and provides a new e. coli wasteload allocation of 2.42E 11 counts/year.

- The Mattaponi River and Tributaries TMDL, located in Caroline, Essex, King William, and King and Queen Counties, proposes e. coli reductions for the Courthouse Creek watershed and provides a new e. coli wasteload allocation of 1.41E 11 counts/year.

- The Mattaponi River and Tributaries TMDL, located in Caroline, Essex, King William, and King and Queen Counties, proposes e. coli reductions for the Dickey's Swamp watershed and provides a new e. coli wasteload allocation of 2.22E 11 counts/year.

- The Mattaponi River and Tributaries TMDL, located in Caroline, Essex, King William, and King and Queen Counties, proposes e. coli reductions for the Dogwood Fork watershed and provides a new e. coli wasteload allocation of 1.79E 10 counts/year.

- The Mattaponi River and Tributaries TMDL, located in Caroline, Essex, King William, and King and Queen Counties, proposes e. coli reductions for the Dorrell Creek watershed and provides a new e. coli wasteload allocation of 5.75E 10 counts/year.

- The Mattaponi River and Tributaries TMDL, located in Caroline, Essex, King William, and King and Queen counties, proposes E. coli reductions for the Garnetts Creek

watershed and provides a new E. coli waste load allocation of 8.72E 10 counts/year.

- The Mattaponi River and Tributaries TMDL, located in Caroline, Essex, King William, and King and Queen counties, proposes E. coli reductions for the Gravel Run watershed and provides a new E. coli waste load allocation of 1.10E 11 counts/year.

- The Mattaponi River and Tributaries TMDL, located in Caroline, Essex, King William, and King and Queen counties, proposes E. coli reductions for the Herring Creek watershed and provides a new E. coli waste load allocation of 6.30E 11 counts/year.

- The Mattaponi River and Tributaries TMDL, located in Caroline, Essex, King William, and King and Queen counties, proposes E. coli reductions for the Market Swamp watershed and provides a new E. coli waste load allocation of 1.10E 11 counts/year.

- The Mattaponi River and Tributaries TMDL, located in Caroline, Essex, King William, and King and Queen counties, proposes E. coli reductions for the Mattaponi River (non-tidal) watershed and provides a new E. coli waste load allocation of 1.00E 12 counts/year.

- The Mattaponi River and Tributaries TMDL, located in Caroline, Essex, King William, and King and Queen counties, proposes E. coli reductions for the Mattaponi River (tidal) watershed and provides a new E. coli waste load allocation of 1.87E 11 counts/year.

- The Mattaponi River and Tributaries TMDL, located in Caroline, Essex, King William, and King and Queen counties, proposes E. coli reductions for the XDN-Garnetts Creek, UT watershed and provides a new E. coli waste load allocation of 2.65E 10 counts/year.

- The Mattaponi River and Tributaries TMDL, located in Caroline, Essex, King William, and King and Queen counties, proposes E. coli reductions for the XJG-Dickeys Swamp, UT watershed and provides a new E. coli waste load allocation of 2.01E 10 counts/year.

**How to comment:** DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

**How a decision is made:** After comments have been considered, the board will make the final decision. Citizens who submit statements during the comment period may address the board members during the board meeting at which a final decision is made on the proposal.

**To review documents:** The TMDL reports are available on the DEQ website at <https://www.deq.virginia.gov/water/water-quality/tmdl-development/draft-tmdls> and by contacting the

DEQ representative listed for any report. The electronic copies are in PDF or Word format and may be read online or downloaded.

**Contact Information:** Justin Williams, Director, Office of Watersheds and Local Government Assistance Programs, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4185, FAX (804) 698-4178, or email [justin.williams@deq.virginia.gov](mailto:justin.williams@deq.virginia.gov).

## **Community Meeting and Public Comment Period for Total Maximum Daily Load for Moores and Mill Creeks**

Public meeting: Tuesday, October 19, 2021, from 5:30 p.m. to 7 p.m.

Bank Barn, McCormick Farm/Shenandoah Valley Agriculture Research and Extension Center (128 Cyrus McCormick Cir, Raphine, Virginia)

Note: In the event of inclement weather, the meeting will be held on October 20, 2021, at the same time and location.

Purpose of notice: The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of total maximum daily loads (TMDLs), for Moores and Mill Creeks in Rockbridge County, Virginia. These streams are listed on the § 303(d) TMDL Priority List and Report as impaired due to violations of the state's general (benthic) water quality.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the State Water Control Law requires DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) Priority List and Report.

Description of study: Moores Creek is located in northern Rockbridge County, with its headwaters just below the Augusta-Rockbridge County line. The impaired segment begins at the headwaters in Raphine and continues nine miles south to the confluence with South River. Mill Creek is located in Rockbridge County above the City of Lexington. The impaired segment is 9.14 miles in length. It begins at the headwaters of the stream south of Fairfield and continues to the confluence with the Maury River above Lexington.

Moores and Mill Creeks have been placed on Virginia's impaired waters list for failing to support the benthic water quality standard. This standard is intended to protect the aquatic life designated use, which states that all of the Commonwealth's waterways will support a diverse and abundant population of aquatic life. This study will include a benthic stressor analysis to determine the most likely pollutants responsible for the impairments, and it will report on the sources of these pollutants and recommend reductions to meet a total maximum daily load (TMDL) for the impaired streams. A TMDL is the total amount of a pollutant a water body can

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contain and still meet water quality standards. To restore water quality in Moores and Mill Creeks, pollutant levels will need to be reduced to the TMDL amount. A component of a TMDL is the wasteload allocation (WLA); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Code of Virginia for any future adoption of the TMDL WLAs.

An advisory committee to assist in development of this TMDL will be established. Persons interested in assisting should notify the DEQ contact person listed at the end of this notice by the end of the comment period and provide their name, address, phone number, email address, and the organization they are representing (if any). Notification of the composition of the panel will be sent to all applicants.

How to comment and participate: All meetings in support of TMDL development are open to the public, and all interested parties are welcome. Written comments will be accepted from October 20, 2021, through November 18, 2021, and should include the name, address, and telephone number of the person submitting the comments. For more information or to submit written comments, please contact Nesha McRae.

**Contact Information:** Nesha McRae, TMDL Coordinator, Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7850, FAX (804) 698-4178, or email [nesha.mcrae@deq.virginia.gov](mailto:nesha.mcrae@deq.virginia.gov).

### **Proposed Enforcement Action for 6801 Wooldridge Road - Moseley LP**

An enforcement action has been proposed for 6801 Wooldridge Road-Moseley LP for the Lower Magnolia Green development in Chesterfield County, Virginia. The State Water Control Board proposes to issue a consent order to address noncompliance with State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at <https://www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders>. Comments will be accepted by the contact person from October 11, 2021, through November 10, 2021.

**Contact Information:** Kristen Sadtler, Water Enforcement Manager, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4149, FAX (804) 698-4178, or email [kristen.sadtler@deq.virginia.gov](mailto:kristen.sadtler@deq.virginia.gov).

### **Proposed Enforcement Action for the Town of Mount Jackson**

An enforcement action has been proposed for the Town of Mount Jackson for violations at the Mount Jackson sewage treatment plant in Shenandoah County, Virginia. The State Water Control Board proposes to issue a consent order with penalty and injunctive relief to the Town of Mount Jackson to

address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). The staff contact will accept comments by email, fax, or postal mail from October 11, 2021, to November 10, 2021.

**Contact Information:** Eric Millard, Enforcement Specialist, Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, FAX (804) 698-4178, or email [eric.millard@deq.virginia.gov](mailto:eric.millard@deq.virginia.gov).

### **Proposed Enforcement Action for Pilot Travel Centers LLC**

An enforcement action has been proposed for Pilot Travel Centers LLC for violations of the State Water Control Law and regulations at the Flying J #749 facility located in Ruther Glen, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Flying J #749 facility. A description of the proposed action is available at the Department of Environmental Quality office listed or online at <https://www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders>. The staff contact will accept comments by email or postal mail from October 12, 2021, through November 11, 2021.

**Contact Information:** Benjamin Holland, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email [benjamin.holland@deq.virginia.gov](mailto:benjamin.holland@deq.virginia.gov).

### **Proposed Enforcement Action Z and I 1 Inc.**

An enforcement action has been proposed for Z and I 1 Inc. for violations of the State Water Control Law and regulations and applicable Virginia Pollutant Discharge Elimination System Permit at the Z and I 1 Inc. carwashing machine located in Falls Church, Virginia. The State Water Control Board proposes to issue a consent order to resolve the subject violations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at <https://www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders>. The staff contact listed will accept comments by email or postal mail from October 12, 2021, through November 11, 2021.

**Contact Information:** Jim Datko, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email [james.datko@deq.virginia.gov](mailto:james.datko@deq.virginia.gov).

**VIRGINIA CODE COMMISSION**

**Notice to State Agencies**

**Contact Information:** *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* [varegs@dls.virginia.gov](mailto: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.

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# ERRATA

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## STATE BOARD OF HEALTH

Title of Regulation: **12VAC5-481. Virginia Radiation Protection Regulations.**

Publication: 37:25 VA.R. 3795-3877 August 2, 2021.

Correction to Final Regulation:

Page 3875, 12VAC5-481-2850 A, line 5, after "dosimeter" strike "processor"

VA.R. Doc. No. R21-6434; Filed September 16, 2021, 10:48 a.m.

## DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Title of Regulation: **22VAC30-100. Adult Protective Services.**

Publication: 37:19 VA.R. 2898-2907 May 20, 2021.

Correction to Final Regulation:

Page 2903, column 2, 22VAC30-100-40 F 1 b, line 2, after "pursuant to" change "§ 63.3-1605" to "§ 63.2-1605"

VA.R. Doc. No. R18-5270, Filed September 28, 10:25 a.m.