



VIRGINIA

REGISTER OF REGULATIONS

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Virginia Code Commission

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

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THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, and notices of public hearings on regulations.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposed regulation in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety, and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar of Regulations no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*.

If the Governor finds that the final regulation contains changes made after publication of the proposed regulation that have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in

which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

A regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

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

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **34:8 VA.R. 763-832 December 11, 2017**, refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **Marcus B. Simon**, Vice Chair; **Ward L. Armstrong**; **Nicole Cheuk**; **Joanne Frye**; **Leslie L. Lilley**; **Jennifer L. McClellan**; **Christopher R. Nolen**; **Don L. Scott, Jr.**; **Charles S. Sharp**; **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.

PUBLICATION SCHEDULE AND DEADLINES

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

January 2022 through January 2023

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
39:7	November 2, 2022	November 21, 2022
39:8	November 14, 2022 (Monday)	December 5, 2022
39:9	November 30, 2022	December 19, 2022
39:10	December 14, 2022	January 2, 2023
39:11	December 27, 2022 (Tuesday)	January 16, 2023

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Agency Decision

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

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

Name of Petitioner: Cody Bishop.

Nature of Petitioner's Request: To amend regulations to authorize pharmacy technicians to administer all vaccinations under the supervision of a pharmacist.

Agency Decision: Request denied.

Statement of Reason for Decision: The board has determined that the requested amendment will necessitate a change in § 54.1-3408 of the Code of Virginia, which currently allows prescribers to authorize pharmacists and nurses to administer adult vaccines under a protocol. There is no mention of authorization for pharmacy technicians. The workgroup established pursuant to legislation passed in the 2020 Session of the General Assembly to consider additional duties for pharmacy technicians has recommended such a change in the law. Accordingly, the board does not have authority to initiate rulemaking based on the petition until there is an amendment to the Code of Virginia.

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

VA.R. Doc. No. PFR22-05; Filed December 10, 2021, 1:00 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Elections conducted a periodic review and a small business impact review of **1VAC20-10, Public Participation Guidelines**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated December 1, 2021, to support this decision.

The Department of Elections has determined that this regulation is necessary to ensure the agency's stakeholders are aware of the requirements for publicly participating in the regulatory process. The regulation is clearly written and easily understandable. The department recommends that this regulation stay in effect without change. The regulation is mandated by statute. The department has determined this regulation is effective as currently written and does not burden small businesses. There are no known overlaps or conflicts with federal or state law.

Contact Information: Ashley Coles, Agency Regulatory Coordinator, Department of Elections, Washington Building, 1100 Bank Street, First Floor, Richmond, VA 23219, FAX (804) 371-0194, or email ashley.coles@elections.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Elections conducted a periodic review and a small business impact review of **1VAC20-40, Voter Registration**, and determined that this regulation should be amended. The final regulatory action to amend 1VAC20-40, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Ashley Coles, Agency Regulatory Coordinator, Department of Elections, Washington Building, 1100 Bank Street, First Floor, Richmond, VA 23219, FAX (804) 371-0194, or email ashley.coles@elections.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Elections conducted a periodic review and a small business impact review of **1VAC20-45, Absent Military and Overseas Voters**, and determined that this regulation should be amended. The final regulatory action to amend 1VAC20-45, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Ashley Coles, Agency Regulatory Coordinator, Department of Elections, Washington Building, 1100 Bank Street, First Floor, Richmond, VA 23219, FAX (804) 371-0194, or email ashley.coles@elections.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Elections conducted a periodic review and a small business impact review of **1VAC20-70, Absentee Voting**, and determined that this regulation should be amended. The final regulatory action to amend 1VAC20-70, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Ashley Coles, Agency Regulatory Coordinator, Department of Elections, Washington Building, 1100 Bank Street, First Floor, Richmond, VA 23219, FAX (804) 371-0194, or email ashley.coles@elections.virginia.gov.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

FORENSIC SCIENCE BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Forensic Science Board conducted a periodic review and a small business impact review of **6VAC40-50, Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material**, and determined that this regulation should be amended.

The Notice of Intended Regulatory Action to amend 6VAC40-50, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Amy Jenkins, Department Counsel, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-6848, or email amy.jenkins@dfs.virginia.gov.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board conducted a periodic review and a small business impact review of **24VAC30-120, Rules and Regulations Controlling Outdoor Advertising and Directional and Other Signs and Notices**, and determined that this regulation should be retained as is.

Periodic Reviews and Small Business Impact Reviews

The department is publishing its report of findings dated August 24, 2021, to support this decision.

23 USC § 131(a) states that "The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty." The regulation is written to be consistent with and comply with the federal requirements and is necessary for the protection of public health, safety, and welfare. The regulation is clearly written and easily understandable. The board recommends retaining the regulation as is.

The regulation is necessary to enforce restrictions and requirements on outdoor advertising along or in sight of federal-aid highways in compliance with federal law. The board has received no complaints concerning the regulation. The regulation is not complex and is consistent with federal and state law. The regulation was last amended in 2004, and the most recent periodic review of the regulation was in 2001.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board conducted a periodic review and a small business impact review of **24VAC30-200, Vegetation Control Regulations on State Rights-of-Way**, and determined that this regulation should be amended.

The fast-track rulemaking action to amend 24VAC30-200, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, 11th Floor, Richmond, VA 23219, telephone (804) 786-1830, or email joanne.maxwell@vdot.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board conducted a periodic review and a small business impact review of **24VAC30-451, Airport Access Fund Policy**, and determined that this regulation should be repealed. The department is publishing its report of findings dated August 26, 2021, to support this decision.

New or expanding airports and funding for airport access are recognized as valuable tools in economic development for localities. The regulation is clearly written and easily understandable. The Airport Access Program Guide can serve the same purposes as the regulation if posted on the Virginia Regulatory Town Hall as a guidance document. Therefore, the board recommends repeal of the regulation.

With the adoption of the Airport Access Program Guide as a guidance document, there is no continued need for the regulation. The board has received no complaints concerning the regulation. The regulation is not complex and does not conflict with federal or state law. The regulation was last amended in 2012 and has not been subject to a prior periodic review.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Commonwealth Transportation Board conducted a periodic review and a small business impact review of **24VAC30-551, Integrated Directional Signing Program (IDSP) Participation Criteria**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated August 26, 2021, to support this decision.

The Integrated Directional Signing Program (IDSP) contributes to the public health, safety, and welfare by facilitating motorist awareness and accessibility to historical, cultural, or commercial attractions. The IDSP consolidates four specific highway signing programs:

- Specific Travel Services (Logo) Signs: guide motorists to specific gas, food, lodging, camping, and attraction locations along Virginia's interstates and limited-access highways.
- Tourist-Oriented Directional Signs (TODS): program for signs used along roads that do not have limited access, such as most primary and secondary highways, to guide motorists to businesses, services, recreation, and other facilities nearby.
- Supplemental Guide Signs: guide motorists traveling from outside the immediate area to specific cultural, recreational, historical, governmental, educational, military, and other sites of interest on limited access, primary, or secondary roadways.
- General Motorist Services Logo Signs: use standard symbols or general terms to let motorists know that services such as hospitals, public phones, gas, food, lodging, or camping are nearby.

In addition, the IDSP incorporates special programs signing criteria for the following programs:

Periodic Reviews and Small Business Impact Reviews

- Civil War Trails;
- Birding and Wildlife Trails;
- Wayfinding Signs;
- Winery Signage Program;
- Virginia Waterways Signage; and
- State Scenic River Signs

Further, additional criteria and considerations for the integration of the Winery Signage Program are addressed in the IDSP.

The IDSP criteria address issues such as: requirements businesses and other program participants must meet for eligibility, new categories for specific programs, and fee structures. The regulation is clearly written and easily understandable.

The IDSP program contributes to the Commonwealth's economy, and the regulation provides clear guidance on the use of the IDSP program. The board recommends retaining the regulation as is. The Virginia Department of Transportation (VDOT) is working to study the participation criteria. At this time, the study is not complete, and no recommendations have yet been made. The board will consider such recommendations and take appropriate action with respect to the regulation upon receipt of the study findings.

VDOT has received some comments regarding those criteria. However, at this time, the study is not complete, and no recommendations have yet been made. The regulation is not complex, nor does it conflict with federal or state law. The regulation was adopted in 2006 and has not been amended nor has it been the subject of a periodic review.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF LOCAL AND REGIONAL JAILS

Withdrawal of Notice of Intended Regulatory Action

Title of Regulation: **6VAC15-40, Minimum Standards for Jails and Lockups (amending 6VAC15-40-370; adding 6VAC15-40-1047, 6VAC15-40-1305).**

Statutory Authority: §§ 53.1-5 and 53.1-68 of the Code of Virginia.

Notice is hereby given that the State Board of Local and Regional Jails has WITHDRAWN the Notice of Intended Regulatory Action for **6VAC15-40, Minimum Standards for Jails and Lockups**, that was published in [29:21 VA.R. 2528 June 17, 2013](#). The notice was published under the regulatory authority of the Board of Corrections, but regulatory authority for 6VAC15-40 transferred pursuant to Chapter 759 of the 2020 Acts of Assembly to the State Board of Local and Regional Jails. The action noticed would have amended tuberculosis test requirements and certified compliance with 28 CFR Part 115. No follow-up action has been initiated since the notice was published in 2013, therefore the notice is withdrawn. A new periodic review has been initiated on 6VAC15-40, Minimum Standards for Jails and Lockups, and a new action will be initiated as necessary.

Agency Contact: Tracey Jenkins, Agency Regulatory Coordinator, Department of Corrections, 6900 Atmore Drive, P.O. Box 26963, Richmond, VA 23261-6963, telephone (804) 887-7898, FAX (804) 674-3071, or email tracey.jenkins@vadoc.virginia.gov.

VA.R. Doc. No. R13-3712; Filed December 2, 2021, 9:16 a.m.

FORENSIC SCIENCE BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Forensic Science Board intends to consider amending **6VAC40-50, Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material**. The purpose of the proposed action is to broaden the definition of marijuana field test that may be considered by the Department of Forensic Science (DFS) to include a combination of chemical tests or a mobile instrument and to establish the criteria and process by which DFS would approve mobile instruments for the identification of marijuana.

This NOIRA is the result of a periodic review and a small business impact review and serves as the report of findings of that review.

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

Statutory Authority: §§ 9.1-1110 and 19.2-188.1 of the Code of Virginia.

Public Comment Deadline: February 2, 2022.

Agency Contact: Amy Jenkins, Department Counsel, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857, or email amy.jenkins@dfs.virginia.gov.

VA.R. Doc. No. R21-6809; Filed December 3, 2021, 12:46 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Contractors intends to consider amending **18VAC50-22, Board for Contractors Regulations**. The purpose of the proposed action is to amend the prohibited acts, specifically, the provisions of 18VAC50-22-260 B 9, which currently require that the residential written contract contain a statement of the total cost, to allow cost-plus contracts as well as time and material contracts. The amended language would include specific hourly rate and percentage markups and caps on the total cost. This will align the contract requirements issued by the Board for Contractors with industry standards.

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

Statutory Authority: §§ 54.1-201 and 54.1-1146 of the Code of Virginia.

Public Comment Deadline: February 2, 2022.

Agency Contact: Marjorie King, Administrator, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, TDD (804) 527-4290, or email contractors@dpor.virginia.gov.

VA.R. Doc. No. R22-6909; Filed December 3, 2021, 1:30 p.m.

BOARD OF SOCIAL WORK

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Social Work intends to consider amending **18VAC140-20, Regulations Governing the Practice of Social Work**. The purpose of the proposed action is to amend licensure by endorsement to allow acceptance of a state examination rather than only the national examination, which is a current requirement for licensure in Virginia. A state examination would be acceptable only if

Notices of Intended Regulatory Action

another United States jurisdiction did not require the national examination at the time the social worker was initially licensed and if the examination was deemed to be a comparable level for the license being sought.

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

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

Public Comment Deadline: February 2, 2022.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. R22-7043; Filed December 2, 2021, 4:14 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Final Regulation

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

Title of Regulation: 1VAC20-40. Voter Registration (amending 1VAC20-40-40).

Statutory Authority: § 24.2-103 of the Code of Virginia.

Effective Date: December 21, 2021.

Agency Contact: Ashley Coles, Regulatory Coordinator, Department of Elections, Washington Building, 1100 Bank Street, 1st Floor, Richmond, VA 23219, telephone (804) 864-8933, or email ashley.coles@elections.virginia.gov.

Summary:

The amendments remove a citation to a repealed section of the Code of Virginia.

1VAC20-40-40. Review of application.

A. ~~Except as provided in § 24.2-411.1 of the Code of Virginia,~~ **In the event** (i) an application to register to vote is not signed or is missing information required by law, or (ii) the general registrar cannot determine from the information provided on the application the location at which the applicant intended to register, the general registrar shall deny the application and process it in accordance with § 24.2-422 of the Code of Virginia.

B. If an application to register to vote contains all information required by law but contains other apparent discrepancies, the general registrar may promptly resolve the discrepancies through informal means. Informal means include ascertainment of information through the statewide, voter registration system, the Division of Motor Vehicles, and any form of communication with the applicant.

C. If an application to register to vote contains all information required by law, and if any of the situations in the subdivisions of this subsection apply, the general registrar shall not deny the application, but shall ask the applicant to provide additional information in support of the application. The general registrar shall request the information in writing on a form prescribed by the board and the applicant shall respond in writing. The

application shall not be accepted or denied while the registrar is awaiting the applicant's response. The general registrar shall act promptly to resolve the question of residency as soon as possible. In the event the applicant does not provide the requested information by the last day to register as established in § 24.2-416 of the Code of Virginia and the general registrar is unable to determine the applicant's residency through any other means, the general registrar shall deny the application in accordance with § 24.2-422 B of the Code of Virginia.

1. The applicant provides a mailing address in a different county, city, or state from his residential address. In this situation, the general registrar shall reconfirm the residential address and mailing address by asking the supplemental questions provided in 1VAC20-40-50 and mailing the questions to both the residential and mailing addresses;

2. The applicant provides a residential address that cannot receive mail, or from which mail sent by the registrar's office is returned. In this situation, the general registrar shall ask for an alternate mailing address;

3. The applicant provides an address that is temporary in nature. Temporary addresses shall include, ~~but not be limited to,~~ hotels, motels, motor homes, hospitals and other short term medical care facilities, houseboats, campgrounds or other facilities that have durational restrictions, such as a 30-day limitation, or any other transient address that would not be considered as a typical permanent residence address. Temporary addresses shall not include apartments or other facilities, such as dormitories, that provide for leases or other rental agreements of at least six months duration. The general registrar shall treat these addresses as permanent ones. In the event the applicant provides an address that is temporary in nature, the general registrar shall ask the supplemental questions provided in 1VAC20-40-50;

4. The applicant provides a residential address that is a commercial, industrial, or other building that is not normally used for residential purposes, or other nontraditional residential address; or

5. The application causes a conflict with another existing voter in the statewide, voter registration system, such as a duplication of the social security number with an existing voter.

VA.R. Doc. No. R22-7038; Filed December 6, 2021, 2:56 p.m.

Regulations

Final Regulation

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

Title of Regulation: **1VAC20-45. Absent Military and Overseas Voters (amending 1VAC20-45-40).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Effective Date: December 21, 2021.

Agency Contact: Ashley Coles, Regulatory Coordinator, Department of Elections, Washington Building, 1100 Bank Street, 1st Floor, Richmond, VA 23219, telephone (804) 864-8933, or email ashley.coles@elections.virginia.gov.

Summary:

The amendment adds "during a declared state of emergency related to a communicable disease of public health threat pursuant to § 24.2-707 of the Code of Virginia" as an exception to the requirement that an omitted signature of a witness on a Federal Write-In Absentee Ballot (FWAB) is material and therefore renders the FWAB invalid.

1VAC20-45-40. Material omissions from Federal Write-In Absentee Ballots.

A. Pursuant to the requirements of §§ 24.2-467, 24.2-702.1, and 24.2-706 of the Code of Virginia, a timely received write-in absentee ballot on a Federal Write-In Absentee Ballot (FWAB) (Form SF-186) should not be rendered invalid if it contains an error or omission not material to determining the eligibility of the applicant to vote in the election in which ~~he~~ the applicant offers to vote.

B. If the applicant is not registered, the FWAB may not be accepted as timely for registration unless the applicant has met the applicable registration deadline. Section 24.2-419 of the Code of Virginia extends the mail registration deadline for certain military applicants. All applications requesting mailed ballots are subject to the mail absentee application deadline in §§ 24.2-459 and 24.2-701 of the Code of Virginia.

C. The following omissions are always material and any FWAB containing such omissions should be rendered invalid if on the declaration/affirmation any of the following, or combination thereof, exists:

1. The applicant has omitted the signature of the voter or the notation of an assistant in the voter signature box that the voter is unable to sign;
2. The applicant has omitted the signature of the witness, except during a declared state of emergency related to a communicable disease of public health threat pursuant to § 24.2-707 of the Code of Virginia;
3. The applicant did not include the declaration/affirmation page; or

4. The applicant omitted from the declaration/affirmation information required by § 24.2-702.1 of the Code of Virginia needed to determine identity or eligibility including, ~~but not limited to~~, current military or overseas address.

D. The ballot should not be rendered invalid if on the FWAB any of the following, or combination thereof, exists:

1. The applicant has not listed the names specifically in the order of last, first, and middle name;
2. The applicant has listed a middle initial or maiden name, instead of the full middle name;
3. The applicant has omitted the street identifier, such as the term "road" or "street," when filling in the legal residence;
4. The applicant has omitted the county or city of registration if the county or city is clearly identifiable by the residence address information provided;
5. The applicant has omitted the zip code;
6. The applicant has omitted the date of the signature of the voter;
7. The applicant has omitted the address of the witness;
8. The applicant has omitted the date of signature of the witness;
9. The applicant did not seal the ballot within the security envelope so long as the outside envelope containing the ballot and the voter's declaration/affirmation page arrived sealed; or
10. The applicant has submitted a ballot containing offices or issues for which ~~he~~ the applicant is not eligible.

VA.R. Doc. No. R22-7037; Filed December 6, 2021, 4:34 p.m.

Final Regulation

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

Title of Regulation: **1VAC20-70. Absentee Voting (amending 1VAC20-70-20).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Effective Date: December 21, 2021.

Agency Contact: Ashley Coles, Regulatory Coordinator, Department of Elections, Washington Building, 1100 Bank Street, 1st Floor, Richmond, VA 23219, telephone (804) 864-8933, or email ashley.coles@elections.virginia.gov.

Summary:

The amendment adds "during a declared state of emergency related to a communicable disease of public health threat pursuant to § 24.2-707 of the Code of Virginia" as an

exception to the requirement that an omitted voter's witness signature on an Envelope B containing an absentee ballot is material and therefore renders the ballot invalid.

1VAC20-70-20. Material omissions from absentee ballots.

A. Pursuant to the requirements of § 24.2-706 of the Code of Virginia, a timely received absentee ballot contained in an Envelope B shall not be rendered invalid if it contains an error or omission not material to its proper processing.

B. The following omissions are always material and any Envelope B containing such omissions shall be rendered invalid if any of the following exists:

1. Except as provided in subdivisions C 2 and C 3 of this section, the voter did not include his full first name;
2. The voter did not provide his last name;
3. The voter omitted his generational suffix when one or more individuals with the same name are registered at the same address, and it is impossible to determine the identity of the voter;
4. The voter did not provide his house number and street name or his rural route address;
5. The voter did not provide either his city or zip code;
6. The voter did not sign Envelope B; or
7. The voter's witness did not sign Envelope B, except during a declared state of emergency related to a communicable disease of public health threat pursuant to § 24.2-707 of the Code of Virginia.

C. The ballot shall not be rendered invalid if on the Envelope B:

1. The voter included his full name in an order other than "last, first, middle";
2. The voter used his first initial instead of his first full name, so long as the voter provided his full middle name;
3. The voter provided a derivative of his legal name as his first or middle name (e.g., "Bob" instead of "Robert");
4. If the voter provided his first name and last name, the voter did not provide a middle name or a middle initial;
5. The voter did not provide his residential street identifier (Street, Drive, etc.);
6. The voter did not provide a zip code, so long as the voter provided his city;
7. The voter did not provide his city, so long as the voter provided his zip code;
8. The voter omitted the date, or provided an incorrect or incomplete date on which he signed Envelope B; or

9. The ballot is imperfectly sealed within Envelope B, provided that the outer envelope with Envelope B and the ballot arrived sealed.

10. The illegibility of a voter's or witness' signature on an Envelope B shall not be considered an omission or error.

D. For the purposes of this regulation, "city" may include the voter's locality, town, or any acceptable mailing name for the five-digit zip code of the voter's residence.

E. Whether an error or omission on an Envelope B not specifically addressed by this regulation is material and shall render the absentee ballot invalid shall be determined by a majority of the officers of the election present.

F. If a ballot is received by the general registrar's office by noon on the third day after the election pursuant to § 24.2-709 of the Code of Virginia but the return envelope has a missing or illegible postmark, the General Registrar shall refer to the Intelligent Mail barcode on the return envelope to determine whether the ballot was mailed on or before the date of the relevant election.

1. If there is evidence from the Intelligent Mail barcode that the ballot was mailed after the close of polls for the relevant election, the ballot shall be rendered invalid.

2. If there is no evidence from the Intelligent Mail barcode that the ballot was mailed after the close of polls for the relevant election, but the return envelope has an illegible postmark, the General Registrar shall refer to the date on which the oath on Envelope B was signed to determine whether the ballot was cast on or before the date of the relevant election.

3. If there is no evidence from the Intelligent Mail barcode that the ballot was mailed after the close of polls for the relevant election and if the return envelope has a missing postmark, the ballot shall be rendered invalid.

VA.R. Doc. No. R22-7036; Filed December 6, 2021, 4:56 p.m.



TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

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

Regulations

Title of Regulation: 4VAC20-1230. Pertaining to Restrictions on Shellfish (amending 4VAC20-1230-30, 4VAC20-1230-31, 4VAC20-1230-32).

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

Effective Date: January 1, 2022.

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

Summary:

The amendments extend the public health and warm water harvest restrictions for shellfish into the month of October.

4VAC20-1230-30. Public health and warm water harvest restrictions for shellfish.

A. ~~Beginning December 1, 2014, it~~ It shall be unlawful for any commission employee or representative to issue any shellfish license, shellfish permit, or oyster resource user fee to any person unless that person has successfully completed the Shellfish Harvest Safety Training Certification Course. ~~Beginning January 1, 2015, it~~ It shall be unlawful for any person to harvest or attempt to harvest shellfish unless that person has successfully completed the Shellfish Harvest Safety Training Certification Course. The Shellfish Harvest Safety Training Certification shall be valid from the date of issuance through the next five calendar years.

B. No provisions in this chapter shall apply to seed clams or seed oysters.

C. It shall be unlawful for any person to have any cat, dog, or other animal on board a vessel during the harvest of shellfish.

D. From May 1 through ~~September 30~~ October 31, any vessel used for the harvest of shellfish, from either public or private grounds, shall provide shading over the area that serves as storage for the shellfish when the shellfish are on board that vessel. All shellfish in the vessel shall be offloaded every day. Shading shall not be required for vessels transporting clam seed or seed oysters for replanting.

E. From May 1 through ~~September 30~~ October 31, all shellfish shall be shaded during land-based deliveries.

F. From June 1 through August 31, it shall be unlawful for any person to leave the dock or shore prior to one hour before sunrise to harvest or attempt to harvest shellfish from private grounds.

4VAC20-1230-31. Public health and warm water harvest restrictions for oysters.

A. From May 1 through ~~September 30~~ October 31, all land-based deliveries of oysters shall be made aboard trucks or other conveyances equipped with VDH-approved temperature controlled storage. Mechanically refrigerated containers for oysters shall be in operation during transport. Any operator of a truck who is delivering oysters; using a truck not owned by a

licensed shellfish buyer; shall possess a truck refrigeration certificate issued by the Virginia Department of Health, Division of Shellfish Sanitation. Upon receiving any oysters, licensed shellfish buyers shall immediately place any oysters received from any individual under temperature control.

B. From May 1 to ~~September 30~~ October 31, it shall be unlawful for any individual to harvest oysters from open areas of public or private ground after any monthly curfew harvest time described in (i) subdivisions 1 through 5 of this subsection or (ii) subsections C and D of this section. All oysters shall be placed into trucks or other conveyances equipped with VDH-approved temperature controlled storage; no later than the following designated curfew harvest times; by month:

1. May 1 through May 31, by 11 a.m.;
2. June 1 through June 30, by 10 a.m.;
3. July 1 through July 31, by 10 a.m.;
4. August 1 through August 31, by 10 a.m.; and
5. September 1 through ~~September 30~~ October 31, by 12 noon.

C. It shall be unlawful for any individual to harvest oysters from open areas of public or private ground, except as described in (i) subsection B or D of this section or (ii) subdivisions 1 through 3 of this subsection.

1. The individual has applied for and been granted a permit by the Virginia Marine Resources Commission to harvest oysters after the designated monthly curfew harvest times, as provided in subsection B of this section.

2. A Virginia Marine Resources Commission-approved global positioning system tracking device shall be on board the harvest vessel or with the individual and must be in continuous operation from the time that vessel or individual leaves the dock or shore until the vessel or individual returns to the dock or shore, and the oysters harvested are offloaded from that vessel or onto the dock or shore and placed into trucks or other conveyances equipped with VDH-approved temperature controlled storage.

3. The total time, from the time the vessel or individual leaves the dock or shore until the oysters are placed into trucks or other conveyances equipped with VDH-approved temperature controlled storage, shall not exceed the following amount of time; by month:

- a. Five hours during the months of May ~~and~~ September, and October;
- b. Three hours during the month of June; and
- c. Two hours during the months of July and August.

D. It shall be unlawful for any individual to harvest oysters from open areas of public or private ground, except as described in (i) subsection B or C of this section or (ii) subdivisions 1 through 3 of this subsection.

1. The individual has applied for and has been issued a Virginia Department of Health, Division of Shellfish Sanitation vessel approval certificate for mechanical refrigeration or icing in a storage container that is on board the vessel at all times during the harvest of oysters;
2. The individual has applied for and has been issued a Marine Resources Commission shellfish harvester icing permit; and
3. Oysters are placed in VDH-approved temperature controlled storage on board the vessel from the start of harvest and throughout the harvest period until the oysters are offloaded.

E. From May 1 through ~~September 30~~ October 31, it shall be unlawful for any individual to harvest oysters from open areas of public or private ground, as restricted-use shellstock, except as described in subdivisions 1 through 3 of this subsection.

1. The individual has been issued green restricted-use shellstock tags by a Virginia Department of Health, Division of Shellfish Sanitation-certified shucker packer and has tagged all oysters with restricted-use shellstock tags;
2. The individual does not possess on board the vessel any oysters designated for direct marketing or raw consumption; and
3. All oysters are harvested no later than 12 noon and are placed into trucks or other conveyances equipped with VDH-approved temperature controlled storage, no later than noon that same day.

F. From May 1 through ~~September 30~~ October 31, it shall be unlawful for any individual to harvest any amount of natural (wild) seed oysters that include oysters greater than 2-1/2 inches, without first obtaining a valid bulk seed permit from the Virginia Marine Resources Commission. Any individual who harvests any natural (wild) seed oysters that include oysters greater than 2-1/2 inches and is not in possession of a valid bulk seed permit issued by the Virginia Marine Resources Commission shall be in violation of this chapter.

G. It shall be unlawful for any individual to handle oysters; as part of a cage aquaculture operation for husbandry purposes; after the designated harvesting times described in subsection B of this section without first obtaining a valid cage oyster aquaculture husbandry permit from the Virginia Marine Resources Commission. Any individual who handles oysters in cage oyster aquaculture operations after the designated harvesting times described in subsection B of this section and does not possess a valid cage oyster aquaculture husbandry permit issued by the Virginia Marine Resources Commission shall be in violation of this chapter.

4VAC20-1230-32. Public health and warm water harvest restrictions for clams.

From May 1 through ~~September 30~~ October 31, all land-based deliveries of clams requiring more than 60 minutes after offloading is complete shall be made aboard trucks or other conveyances equipped with VDH-approved temperature controlled storage. Mechanically refrigerated containers for clams shall be in operation during transport. Any operator of a truck who is delivering clams using a truck not owned by a licensed shellfish buyer shall possess a truck refrigeration certificate issued by the Virginia Department of Health, Division of Shellfish Sanitation. Upon receiving any clams, licensed shellfish buyers shall immediately place any clams received from the individual under temperature control.

VA.R. Doc. No. R22-7042; Filed December 7, 2021, 2:41 p.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

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: 12VAC5-481. Virginia Radiation Protection Regulations.

Agency Contact: Asfaw Fenta, Director, Radioactive Materials Program, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8168, FAX (804) 864-8155, or email asfaw.fenta@vdh.virginia.gov.

FORMS (12VAC5-481)

Applications for a New Radioactive Material License

[Academic, Research and Development, and Other Licenses of Limited Scope, Revision 4 \(6/2018\)](#)

[Broad Scope, Revision 3 \(1/2016\)](#)

[Fixed Gauge Devices, Revision 4 \(6/2018\)](#)

[Industrial Radiography, Revision 4 \(6/2018\)](#)

[Irradiators – Part XII, Revision 2 \(6/2018\)](#)

~~[Medical Use, Revision 3 \(6/2018\)](#)~~

[Medical Use, Revision 4 \(1/2022\)](#)

[Portable Gauges, Revision 3 \(6/2018\)](#)

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[Radiopharmacy, Revision 2 \(6/2018\)](#)
[Sealed Sources, Revision 4 \(6/2018\)](#)
[Self-Shielded Irradiators, Revision 4 \(6/2018\)](#)
[Material in Well Logging, Tracer, and Field Flood Study, Revision 3 \(1/2016\)](#)
[XRF Devices, Revision 3 \(6/2018\)](#)
[Manufacturing and Distribution, Revision 3 \(6/2018\)](#)
Applications for Renewal of a Radioactive Material License
[Academic, Research and Development and Other Licenses of Limited Scope, Revision 4 \(6/2018\)](#)
[Broad Scope, Revision 3 \(1/2016\)](#)
[Fixed Gauge Devices, Revision 4 \(6/2018\)](#)
[Industrial Radiography, Revision 4 \(6/2018\)](#)
[Irradiators – Part XII, Revision 1 \(6/2018\)](#)
~~[Medical Use, Revision 3 \(6/2018\)](#)~~
[Medical Use, Revision 4 \(1/2022\)](#)
[Portable Gauges, Revision 5 \(6/2018\)](#)
[Radiopharmacy, Revision 2 \(6/2018\)](#)
[Sealed Sources, Revision 4 \(6/2018\)](#)
[Self-Shielded Irradiators, Revision 4 \(6/2018\)](#)
[Material in Well Logging, Tracer, and Field Flood Study, Revision 3 \(1/2016\)](#)
[XRF Devices, Revision 5 \(6/2018\)](#)
[Manufacturing and Distribution, Revision 3 \(6/2018\)](#)
Training, Experience, and Preceptor Attestations
~~[A: Radiation Safety Officer for Medical Use, Revision 0 \(7/2016\)](#)~~
~~[B: Auth User Written Directive R1\(7/16\)](#)~~
~~[C: Unsealed Radioactive Material Requiring Written Directive, Revision 2, \(6/2014\)](#)~~
~~[D: Authorized User for Manual Brachytherapy Sources, Revision 0 \(7/2016\)](#)~~
~~[E: Authorized User of Remote Afterloader, Teletherapy, or Gamma Stereotactic Radiosurgery Units, Revision 0 \(7/2016\)](#)~~
~~[F: Authorized Medical Physicist, Revision 0 \(7/2016\)](#)~~
~~[G: Authorized Nuclear Pharmacist, Revision 0 \(7/2016\)](#)~~
[A - Training Preceptor for Radiation Safety Officer and Assistant Radiation Safety Officer Revision 1 \(1/2022\)](#)

[B - Authorized User Written Directive Not Required Revision 1\(1/2022\)](#)
[C - Authorized User Unsealed Radioactive Material Requiring Written Directive Revision 3 \(1/2022\)](#)
[D - Authorized User-Manual Brachytherapy Revision 2 \(1/2022\)](#)
[E - Authorized User High Dose Remote Afterloader-Teletherapy-Gamma Knife Revision 1 \(1/2022\)](#)
[F - Authorized Medical Physicist or Ophthalmological Physicist Revision 1 \(1/2022\)](#)
[G - Authorized Nuclear Pharmacist Revision1 \(1/2022\)](#)

Other Forms

[Certificate of Disposition of Materials, Revision 0 \(7/2016\)](#)
[Certificate - Use of Depleted Uranium under General License, Revision 0 \(7/2016\)](#)
[Cumulative Occupational Exposure History, Revision 1 \(1/2015\)](#)
[Fingerprint Record, Federal Bureau of Investigation, FD-258, \(rev. 9/2013\)](#)
[Notice to Employees, RH-F-12 \(1/2011\)](#)
[Occupational Exposure Record per Monitoring Period, Revision 1 \(1/2015\)](#)
[Registration Certificate - In Vitro Testing with Radioactive Material under General License, Revision 0 \(7/2016\)](#)
[Reciprocity Privileges Checklist, Revision 0 \(7/2016\)](#)

VA.R. Doc. No. R22-7045; Filed December 8, 2021, 11:59 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (adding 12VAC30-50-610).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 2, 2022.

Effective Date: February 17, 2022.

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

Basis: Section 32.1-325 of the Code of Virginia authorizes the Board of Medical Assistance Services to administer and amend the State Plan for Medical Assistance and to promulgate regulations. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the State Plan for Medical Assistance and to promulgate regulations according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Purpose: The purpose of this regulation is to incorporate the Medicaid expansion Alternative Benefit Plan (ABP) approved by the Centers for Medicare and Medicaid Services (CMS) into the Virginia Administrative Code. This regulation is essential to protect the health, safety, and welfare of citizens in that it implements the General Assembly mandate to expand Medicaid coverage to new populations.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action is expected to be noncontroversial because it describes an alternative benefit plan that was approved by CMS and went into effect on January 1, 2019. As of October 18, 2019, over 331,000 individuals have enrolled in Medicaid expansion, and no formal or informal complaints or comments had been received about the alternative benefit plan from any Medicaid member, Medicaid provider, or member of the public.

Substance: The changes describe how the ABP was developed, the essential health benefits that were reviewed, how the ABP will use both managed care and fee-for-service delivery systems, and how the ABP interacts with the Health Insurance Premium Payment Program and cost sharing.

Issues: The primary advantage of this regulatory action for the public and the Commonwealth is that additional individuals will have access to comprehensive health insurance, which should help improve health measures and outcomes across the Commonwealth. There are no disadvantages to the agency or the public.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The director of the Department of Medical Assistance Services (DMAS), on behalf of the Board of Medical Assistance Services, proposes to promulgate a permanent regulation to replace an emergency regulation that went into effect on September 19, 2019. As with the emergency regulation, the permanent regulation would incorporate alternative benefit plan language that was included in the Virginia State Plan as a part of the Medicaid expansion implementation that became effective on January 1, 2019.

Background. The proposed regulation is part of the overall implementation process for Medicaid expansion in accordance with several legislative mandates: the 2018 Acts of Assembly, Chapter 2, Item 303.SS.4(a)(1); the 2019 Acts of Assembly,

Chapter 854, Item 303.SS.4(a)(1); the 2020 Acts of Assembly, Chapter 1289, Item 313.QQ.3(a)(1); and the 2021 Special Session 1 Acts of Assembly, Chapter 552, Item 313.QQ.3(a)(1). These mandates direct DMAS to "amend the State Plan for Medical Assistance under Title XIX of the Social Security Act, and any waivers thereof, to implement coverage for newly eligible individuals pursuant to 42 USC § 1396d(y)(1)[2010] of the Patient Protection and Affordable Care Act."

The State Plan Amendments have already been made and approved by the federal Centers for Medicare and Medicaid Services, and emergency regulations were subsequently adopted. This action permanently replaces a key element of the regulation that helped effectuate the expansion. More specifically, the regulatory provision being permanently adopted by this action involves the alternative benefit plan (ABP) that is available to individuals who are covered by Medicaid expansion. The Centers for Medicare and Medicaid Services (CMS) requires state Medicaid agencies to create an ABP for expansion populations. The main purpose of the requirement is to assure that Virginia's expansion population has access to comprehensive health insurance.

The proposed changes describe how the plan was developed; the essential health benefits that were reviewed; the benefits-related assurances Virginia makes to CMS; how the ABP will use both managed care and fee-for-service delivery systems; how the ABP interacts with the Health Insurance Premium Payment program and cost sharing; and the general assurances that Virginia makes to CMS.

Estimated Benefits and Costs. According to DMAS, the primary effect of the proposed changes would be consistency between the Medicaid State Plan and the Virginia Administrative Code (VAC). It has long been a practice to amend the regulation to mirror the changes that were previously made to the Medicaid State Plan. In that sense, this regulatory action is a housekeeping measure. Under the General Assembly's multiple directives stated, the expansion of Medicaid coverage to indigent adults that meets the federal ABP requirements addressed in this regulation has already been in effect for more than two years.

Although permanently amending the VAC to reflect what has already been implemented will not create any immediate economic impact, the practice still has value. The legislation has addressed important aspects of expansion in a piecemeal fashion. And though the State Plan stitched these directives together, its purpose is to provide a basis for federal authority. In contrast, the VAC is the basis for the state authority. To the extent that the proposed ABP amendments help serve as a source for information regarding the ABP, the proposal should benefit Medicaid providers, recipients, and the public in general.

Businesses and Other Entities Affected. The proposed amendments should benefit Medicaid providers, recipients, and the public in general in terms of providing a permanent

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source for the rules governing the ABP for the expansion population. No adverse economic impact¹ on any entity is indicated.

Small Businesses² Affected. The proposed amendments do not adversely affect small businesses.

Localities³ Affected.⁴ The proposed amendments do not introduce costs for local governments.

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

Effects on the Use and Value of Private Property. No effects on the use and value of private property or real estate development costs is expected.

¹Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

²Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

³"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁴§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

This regulatory action adds the alternative benefit plan (ABP), which is available to individuals who are covered by Medicaid expansion, to the Virginia State Plan for Medical Assistance in order to implement Medicaid expansion. The Centers for Medicare and Medicaid Services (CMS) requires state Medicaid agencies to create an ABP for expansion populations. The changes included in this regulatory action have already been reviewed and approved by CMS.

Part X
Alternative Benefit Plan

12VAC30-50-610. Alternative benefit plan: Medicaid expansion.

A. The Commonwealth provides alternative benefits to the adult group (defined in § 1902(a)(10)(A)(i)(VIII) of the Social Security Act) under the coverage option under § 1937 of the Social Security Act (42 USC § 301 et seq.) approved by the Secretary of Health and Human Services. Enrollment is mandatory for individuals in the adult group, and the alternative benefit package shall be available statewide.

B. In developing the benefit package for the alternative benefit plan, the Commonwealth reviewed:

1. Benefits in its approved State Plan as a "benchmark benefit package";

2. The largest plan by enrollment of the three largest small-group insurance products in the small-group market as the "base benchmark plan"; and

3. Essential health benefits.

C. Alternative benefit plan services.

1. The alternative benefit plan includes all Medicaid State Plan services, including essential health benefits.

2. The essential health benefits included in the alternative benefit plan are ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services; and chronic disease management. Pediatric services, including oral and vision care, are essential health benefits that are not covered for adults.

D. The Commonwealth will use both managed care and fee-for-service delivery systems for the alternative benefit plan.

1. The managed care delivery system is the same as the CMS-approved § 1915(b) managed care waivers. The fee-for-service delivery system is the traditional, state-managed system.

2. For each benefit provided under an alternative benefit plan that is not provided through managed care, the Commonwealth will use the payment methodology in its approved State Plan (i.e., 12VAC30-70, 12VAC30-80, and 12VAC30-90).

E. Individuals who have cost-effective group health plans described in § 1906 of the Social Security Act or qualified employer-sponsored plans described in § 1906A of the Social Security Act may request to receive coverage through the Health Insurance Premium Payment program.

F. Any cost sharing described in Attachment 4.18-A of the State Plan (12VAC30-20-150) applies to the alternative benefit plan.

VA.R. Doc. No. R19-5693; Filed December 2, 2021, 3:36 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Final Regulation

Title of Regulation: 18VAC60-21. Regulations Governing the Practice of Dentistry (adding 18VAC60-21-107).

Statutory Authority: §§ 54.1-2400 and 54.1-3408.02 of the Code of Virginia.

Effective Date: February 2, 2022.

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

Summary:

Pursuant to Chapter 664 of the 2019 Acts of Assembly, the amendment adds a section to (i) reiterate the requirement effective July 1, 2020, that a prescription for a controlled substance that contains an opioid must be issued as an electronic prescription unless the prescriber qualifies for an exemption set out in the law and (ii) provide for a one-year waiver from the requirement if the practitioner can demonstrate economic hardship technological limitations or other exceptional circumstances beyond the practitioner's control.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

18VAC60-21-107. Waiver for electronic prescribing.

A. Beginning July 1, 2020, a prescription for a controlled substance that contains an opioid shall be issued as an electronic prescription consistent with § 54.1-3408.02 of the Code of Virginia, unless the prescription qualifies for an exemption as set forth in subsection C of § 54.1-3408.02.

B. Upon written request, the board may grant a one-time waiver of the requirement of subsection A of this section for a period not to exceed one year, due to demonstrated economic hardship, technological limitations that are not reasonably within the control of the prescriber, or other exceptional circumstances demonstrated by the prescriber.

VA.R. Doc. No. R20-6114; Filed December 2, 2021, 4:07 p.m.

Proposed Regulation

Titles of Regulations: 18VAC60-21. Regulations Governing the Practice of Dentistry (adding 18VAC60-21-175).

18VAC60-30. Regulations Governing the Practice of Dental Assistants (adding 18VAC60-30-85).

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

Public Hearing Information:

February 18, 2022 - 9 a.m. - Department of Health Professions, Perimeter Building, 9960 Mayland Drive, 2nd Floor, Board Room 4, Henrico, VA 23233

Public Comment Deadline: March 4, 2022.

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

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system. Specific authority for regulation of the profession of dental assisting is found in § 54.1-2729.01 of the Code of Virginia.

Purpose: The purpose of the action is to address concerns about breaches in infection control techniques that endanger the health and safety of the public. In several other states, there have been egregious cases of infection with long-term consequences for patients who were exposed to pathogens during the course of dental treatment. While the board is not aware of such reports in Virginia, it did review several disciplinary cases within the past few years in which dentists were disciplined for a lack of infection control in sterilization of instruments and other risky practices. Since dental assistants are not regulated by the board, the dentist is accountable for infection control practice, but often the dental assistant is responsible for infection control processes and procedures. The purpose of a regulatory action is to ensure some consistency in training and a level of competency that protects dental patients. The goal of the proposed action is to ensure dental assistants are properly trained in practices that mitigate the chances of infections in dental practices.

Substance: 18VAC60-30-85 requires that a dental assistant complete annual training in infection control standards as recommended by the Centers for Disease Control and Prevention (CDC) through the Occupational Safety and Health Administration (OSHA). A newly employed assistant must receive training within 60 days of hire. 18VAC60-21-175 requires a dentist to be responsible for assuring that dental assistants complete annual training in infection control and that newly employed assistants receive training within 60 days of hire. Dentists are required to maintain documentation of training for three years.

Issues: The primary advantage to the public is a standardized expectation of training in infection control for patient safety throughout the Commonwealth, at all dental offices. There are no disadvantages for the public. Dentists are already expected to adhere to OSHA and CDC guidelines for infection control. There are no advantages or disadvantages to the agency or the Commonwealth.

Regulations

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As the result of a 2019 petition for rulemaking,¹ the Board of Dentistry (Board) is proposing to add an infection control training requirement for Dental Assistant Is and Dental Assistant IIs to the regulation.

Background. According to the Department of Health Professions (DHP), it is expected that dental assistants follow common sense infection control practices. Currently, a guidance document² lists "Follow the applicable CDC infection control guidelines and recommendations" under Practitioner Responsibility, but the regulation is silent about any required training that dental assistants must complete in infection control. The Board proposes to require dental assistants to complete annual training in infection control standards and also require dentists to assure that the training is completed.

Estimated Benefits and Costs. DHP believes that training of dental assistants in infection control is already occurring in most dental offices. However, DHP is aware of four or five cases where infection control standards were not followed. The details of the proposed annual training are not specified in the proposed text, only that it be "required by the Occupational Safety and Health Administration and as recommended by the Centers for Disease Control" (CDC). DHP states that free online training videos are available from CDC on infection control which would satisfy the proposed training requirement. Since most dental offices likely train dental assistants on common sense infection control measures already, the main benefit of the proposed action is to emphasize and clarify that dental assistants complete annual training. As a result, the proposed changes would also be beneficial to the extent they reduce infections in dental practices.

Businesses and Other Entities Affected. The proposed regulation applies to 7,516 dentists, hundreds of dental assistant Is,³ and 40 dental assistant IIs. No adverse economic impact⁴ on dentists or dental assistants is expected, as they are already supposed to follow common sense infection control measures.

Small Businesses⁵ Affected. The proposed amendments do not appear to adversely affect small businesses.

Localities⁶ Affected.⁷ The proposed amendments do not introduce costs for local governments or particularly affect any locality.

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

Effects on the Use and Value of Private Property. No impact of the use and value of private property or real estate development costs is expected.

³Dental Assistant Is are not directly regulated by the Board. Therefore, DHP lacks an exact count.

⁴Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

⁵Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

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

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

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

Summary:

In response to a petition for rulemaking, the proposed amendments require (i) a dental assistant to complete annual training in infection control standards as recommended by the Centers for Disease Control and Prevention through the Occupational Safety and Health Administration; (ii) newly employed assistants receive training within 60 days of hire; and (iii) dentists ensure that such training take place and maintain documentation of training for three years.

18VAC60-21-175. Training in infection control.

A. A dentist shall be responsible for assuring that dental assistants complete annual training in infection control standards required by the Occupational Safety and Health Administration and as recommended by the Centers for Disease Control and Prevention. Newly employed dental assistants shall receive training as soon as possible but no later than 60 days from employment.

B. Documentation records shall show the dates of completion of initial and annual training, including the date of employment for new dental assistants. All documentation of training in infection control shall be maintained by the dentist for three years.

Part II

Practice of Dental Assistants II

18VAC60-30-85. Training in infection control.

Dental assistants shall complete annual training in infection control standards required by the Occupational Safety and Health Administration and as recommended by the Centers for Disease Control and Prevention. Newly employed dental assistants shall complete training as soon as possible but no later than 60 days from employment.

VA.R. Doc. No. R20-15; Filed December 7, 2021, 2:32 p.m.

¹ <https://townhall.virginia.gov/L/viewpetition.cfm?petitionid=313>

² https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\223\GDoc_DHP_4171_v9.pdf

**BOARD OF FUNERAL DIRECTORS AND
EMBALMERS**

Proposed Regulation

Titles of Regulations: 18VAC65-20. Regulations Governing the Practice of Funeral Services (amending 18VAC65-20-140, 18VAC65-20-151, 18VAC65-20-154, 18VAC65-20-235, 18VAC65-20-350, 18VAC65-20-500, 18VAC65-20-630; adding 18VAC65-20-231, 18VAC65-20-232).

18VAC65-30. Regulations for Preneed Funeral Planning (amending 18VAC65-30-10, 18VAC65-30-50).

18VAC65-40. Regulations for the Funeral Service Internship Program (amending 18VAC65-40-10, 18VAC65-40-40, 18VAC65-40-90, 18VAC65-40-110, 18VAC65-40-130, 18VAC65-40-180, 18VAC65-40-220, 18VAC65-40-250, 18VAC65-40-280, 18VAC65-40-320, 18VAC65-40-340, 18VAC65-40-640; adding 18VAC65-40-185).

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

Public Hearing Information:

January 28, 2022 - 9:05 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Suite 201, Board Room 4, Henrico, Virginia.

Public Comment Deadline: March 4, 2022.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4479, FAX (804) 527-4471, or email fanbd@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Funeral Directors and Embalmers the authority to promulgate regulations to administer the regulatory system. The specific statutory authority for this action is Chapter 943 of the 2020 Acts of Assembly.

Purpose: The purpose of the regulatory action is to establish requirements for education, examination, and experience that will ensure licensed funeral directors and licensed embalmers have adequate training and knowledge to perform their duties with competency in order to protect public health, safety, and welfare in the handling of human remains, conducting funeral services, and arranging finances for funerals and disposition of the deceased.

Substance: Amendments include the following: (i) applicants will be required to obtain an associate's degree in an accredited mortuary science program or complete at least 60 hours of coursework with at least 30 hours from a funeral directing program approved by the board; (ii) coursework in embalming will not be required for the funeral director license, and coursework in funeral directing and preneed financing will not be required for the embalmer license; (iii) all funeral interns will be required to complete 2,000 hours of supervised experience in the area of funeral practice for which they are

seeking licensure; and (iv) necessary adjustments to insert the three types of licenses and scopes of practice, as applicable, throughout the three chapters are proposed as amendments.

Issues: The advantage to the public will be the potential for more individuals to come into the profession to ensure a supply of funeral directors and embalmers to serve the needs of citizens in the future. The recent workforce survey showed that over 47% of the current licensees are older than 55 years of age, and growth in the profession has been very modest. There are no disadvantages; licensees will be adequately educated and trained to perform the duties without their scope of practice. There are no advantages or disadvantages to this agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 943 of the 2020 Acts of Assembly (legislation),¹ emergency regulations became effective on January 5, 2021, that established licensure requirements for funeral directors and embalmers. The Board of Funeral Directors and Embalmers (Board) also reduced the minimum required number of hours of training in internships from 3,000 to 2,000.

The emergency regulations will expire on July 4, 2022. The Board proposes to replace the emergency regulations with permanent regulations. The proposed permanent regulations are not word-for-word identical to the emergency regulations but are identical in terms of how requirements have been applied.

Background. Since 1973 the Board has only issued a funeral service license, which covers both funeral directing and embalming and has not issued separate licenses for funeral directing and for embalming. Prior to 1973, the Board issued either a funeral director or an embalmer license, and the Board has continued to allow persons who obtained those licenses in or prior to 1973 to renew their licenses.

The current (pre-emergency) regulations do not specify the education, examination, and experience required to be licensed as a funeral director or an embalmer. Prompted by Chapter 943, the proposed permanent regulations (and the emergency regulations) specify the required education, examination, and experience required to be licensed as either a funeral director or an embalmer.

Funeral Services. Code of Virginia § 54.1-2813 specifies that:

"To be licensed for the practice of funeral service, a person shall (i) be at least 18 years of age; (ii) hold a high school diploma or its equivalent; (iii) have completed a funeral service internship prescribed by the Board in regulation; (iv) have graduated from a school of mortuary science or funeral service approved by the Board; and (v) have passed the examination for licensure."

Both the current (pre-emergency) 18VAC65-20 Regulations Governing the Practice of Funeral Services and the proposed

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regulation further specify that the applicant for a funeral service license pay the \$325 application fee, pass the National Board Examination² of the International Conference of Funeral Service Examining Boards (ICFSEB), and pass the Virginia State Board Examination.³

There are no proposed changes to 18VAC65-30 Regulations for Preneed Funeral Planning that directly affect funeral service licensure.

The current (pre-emergency) 18VAC65-40 Regulations for the Funeral Service Internship Program requires that the funeral service internship consist of at least 3,000 hours of training. The proposed regulation reduces that requirement to 2,000 hours.

Funeral Directors and Embalmers. The Code of Virginia does not specify requirements to be licensed as either a funeral director or an embalmer. The Board proposes to specify in 18VAC65-20 Regulations Governing the Practice of Funeral Services the requirements for initial licensure as either a funeral director or as an embalmer that are comparable to the requirements for initial funeral service licensure, but more focused on the individual sub-discipline. A comparison of the requirements is shown in the following table:

	Funeral Director	Embalmer	Funeral Service
Minimum age and High School	Be at least 18, high school diploma or equivalent.	Be at least 18, high school diploma or equivalent.	Be at least 18, high school diploma or equivalent.
Internship	Complete funeral service or funeral directing internship.	Complete funeral service or embalming internship.	Complete funeral service internship.
Post-Secondary Education	Graduate from accredited ⁴ school of mortuary science or funeral service or complete associate's degree or equivalent, which consists of at least 60 credit hours of coursework, with at least 30 hours from funeral directing program approved by Board.	Graduate from accredited school of mortuary science or funeral service or complete embalming program approved by Board.	Graduate from funeral service program offered by accredited school of mortuary science or funeral service.

Pathology	Complete coursework in the area of pathology approved by the Board.	Programs already include pathology as required course.	Programs already include pathology as required course.
App. Fee	Pay \$325 fee.	Pay \$325 fee.	Pay \$325 fee.
National Exam	Pass National Board Exam in Arts or State Board Exam in Arts of the ICFSEB.	Pass National Board Exam in Sciences or State Board Exam in Sciences of the ICFSEB.	Pass National Board Exam of the ICFSEB.
State Exam	Pass Virginia State Board Examination on laws, rules, and regulations for funeral practice.	Pass Virginia State Board Exam on laws, rules, and regulations for funeral practice.	Pass Virginia State Board Exam on laws, rules, and regulations for funeral practice.

Preneed funeral planning (including preneed funeral contracting)⁵ is part of the job of funeral directing, but not embalming. The Board proposes to amend 18VAC65-30 Regulations for Preneed Funeral Planning to reflect that the preneed funeral planning requirements apply to funeral directing licensees as well as funeral service licensees.

The current (pre-emergency) 18VAC65-40 Regulations for the Funeral Service Internship Program states that "A funeral service intern shall receive training in all areas of funeral service." The Board proposes to add that:

"D. A funeral directing intern shall receive training in all areas of funeral directing, including assisting in at least 25 funerals, 25 arrangement conferences, as well as visitations and financing of funeral services.

E. An embalming intern shall receive training in all aspects of embalming practice, including assisting in at least 25 embalmings, as well as treatment, restorative art, safety and sanitation, and organ, tissue, or anatomical donation."

As is the case for the funeral service internship, the funeral directing and embalming internships would consist of at least 2,000 hours of training under the proposed regulation.

Estimated Benefits and Costs. The proposed reduction of required internship hours from 3,000 to 2,000 is substantial. If one were to intern 40 hours a week, the proposal reduces interning time from 75 weeks to 50 weeks (or about 1.5 years to 1 year). Thus, individuals could enter the profession fully licensed about six months earlier. Since there are no reductions

in required degrees and coursework, and National Board and Virginia State Board examinations must still be passed, it seems likely that public safety would not be substantively affected, while those seeking licensure would benefit by the ability to start working and earning as a fully licensed professional sooner.

According to the Department of Health Professions, the Board proposed the educational and professional requirements so that there would be parity across the three license types. The intention is that the amount of time and fees necessary to gain each type of licensure would be similar. The prompting of the legislation to establish the required education, examination, and experience required to be licensed as a funeral director or an embalmer came from individuals and groups who object to⁶ or just prefer not to participate in the practice of embalming. The proposed license in funeral directing would allow such individuals to avoid spending time training on a craft that they object to, or at least would not use in practice. In this respect, the creation of the requirements for the funeral directing license is beneficial, and more individuals may choose to enter the industry. Additionally, there may be individuals who only wish to work in embalming and whose time is not well spent training on the funeral directing portion of funeral services. The proposal to have separate requirements for embalming licensure is beneficial for these individuals as well.

In the five months that the emergency regulations have been in effect, there have been nine applications for the funeral directing internship, five applications for the funeral director license, one application for the embalming internship, and no applications for the embalming license. So the legislation and proposed regulations appear to be impactful. During the same five months, there were 44 funeral service internship applications and 30 funeral service license applications.⁷

Businesses and Other Entities Affected. The proposed amendments affect the two accredited schools of mortuary science or funeral service in the Commonwealth.⁸ There have not been any specific funeral director or embalming programs approved thus far. Any such programs would be at accredited schools of mortuary science or funeral service, whether in Virginia or out-of-state. The proposed amendments also potentially affect the 420 funeral establishments in the Commonwealth.⁹ The proposal does not produce any costs.

Small Businesses¹⁰ Affected. The proposed amendments do not appear to adversely affect small businesses.

Localities¹¹ Affected.¹² The proposal to establish the requirements of licensure for funeral directors separate from the requirements of funeral service licensure may particularly affect localities that have a disproportionately large portion of their population that object to embalming.¹³ The requirements of funeral service licensure include embalming, while the requirements of licensure for funeral directors does not. The proposed amendments do not introduce costs for local governments.

Projected Impact on Employment. The proposals to reduce the required time in an internship by 1,000 hours, and to create, essentially in practice, two more focused separate licenses, may moderately increase the number of individuals entering and becoming employed in the industry.

Effects on the Use and Value of Private Property. The potential moderate increase in the number of individuals seeking licensure in the industry may make it easier for funeral establishments to find qualified employees. This may moderately reduce their costs and commensurately increase their value. The proposal does not affect real estate development costs.

¹See <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0943>

²The National Board Examination is on the competent practice of the profession.

³The Virginia State Board Examination is on the laws, rules, and regulations for funeral practice.

⁴In this document accredited means accredited by the American Board of Funeral Service Education.

⁵§ 54.1-2800 of the Code of Virginia defines "preneed funeral planning" as "the making of arrangements prior to death for (i) the providing of funeral services or (ii) the sale of funeral supplies," and "preneed funeral contract" as "any agreement where payment is made by the consumer prior to the receipt of services or supplies contracted for, which evidences arrangements prior to death for (i) the providing of funeral services or (ii) the sale of funeral supplies."

⁶Muslim, Baha'i, and orthodox Jewish faiths consider embalming to be a desecration of the body and prohibit it. See <https://funerals.org/what-you-should-know-about-embalming/>

⁷Data source: Department of Health Professions

⁸The two accredited schools of mortuary science or funeral service in the Commonwealth are at John Tyler Community College in Chester and Tidewater Community College in Virginia Beach.

⁹Data source: Department of Health Professions website. See <https://www.dhp.virginia.gov/about/stats/2021Q3/04CurrentLicenseCountQ3FY2021.pdf>

¹⁰Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

¹¹"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹²§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

¹³Muslim, Baha'i, and orthodox Jewish faiths consider embalming to be a desecration of the body and prohibit it.

Agency's Response to Economic Impact Analysis: The Board of Funeral Directors and Embalmers concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapter 943 of the 2020 Acts of Assembly, the proposed amendments establish education, examination, and experience for licensure as a funeral director or an embalmer, including that (i) applicants will be required to obtain an associate's degree in an accredited mortuary

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science program or complete a program approved by the Board of Funeral Directors and Embalmers specific to the licensure category sought (that is, funeral director or embalmer), and (ii) all funeral interns will be required to complete 2,000 hours of supervised experience in the area of funeral practice for which they are seeking licensure. Amendments also insert the three types of licenses and scopes of practice throughout board regulations.

18VAC65-20-140. Reinstatement of expired license or registration.

A. The board may consider reinstatement of an expired license or registration that has not been renewed within one year of expiration for up to three years following expiration. An application request for reinstatement shall be submitted to the board and shall include payment of the reinstatement fee prescribed in 18VAC65-20-70.

B. If the Virginia license of a funeral service ~~provider licensee~~, a funeral director ~~and, or an~~ embalmer is lapsed three years or less and the applicant is seeking reinstatement, ~~he the~~ applicant shall provide evidence of having completing the number of continuing competency hours required for the period in which the license has been lapsed.

C. When a license is not reinstated within three years of its expiration date, an applicant shall reapply for licensure and pass the state examination.

18VAC65-20-151. Continued competency requirements for renewal of an active license.

A. Funeral service licensees, funeral directors, or ~~funeral~~ embalmers shall be required to have completed a minimum of five hours per year of continuing education offered by a board-approved sponsor for licensure renewal in courses that emphasize the ethics, standards of practice, preneed contracts, and funding, or federal or state laws and regulations governing the profession of funeral service.

1. One hour per year shall cover compliance with laws and regulations governing the profession, and at least one hour per year shall cover preneed funeral arrangements. The one-hour requirement on compliance with laws and regulations may be met once every two years by attendance at a meeting of the board or at a committee of the board or an informal conference or formal hearing.

2. One hour of the five hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for one hour of providing such volunteer services, as documented by the health department or free clinic. For the purposes of continuing education credit for volunteer

service, an approved sponsor shall be a local health department or free clinic.

B. Courses must be directly related to the scope of practice of funeral service. Courses for which the principal purpose is to promote, sell, or offer goods, products, or services to funeral homes are not acceptable for the purpose of credit toward renewal.

C. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

D. The board may grant an exemption for all or part of the continuing education requirements for one renewal cycle due to circumstances determined by the board to be beyond the control of the licensee.

E. A licensee shall be exempt from the continuing education requirements for the first renewal following the date of initial licensure by examination in Virginia.

18VAC65-20-154. Inactive license.

A. A funeral service licensee, a funeral director, or an embalmer who holds a current, unrestricted license in Virginia shall, upon a request for inactive status on the renewal application and submission of the required renewal fee, be issued an inactive license.

1. An inactive licensee shall not be entitled to perform any act requiring a license to practice funeral service, funeral directing, or embalming in Virginia.

2. The holder of an inactive license shall not be required to meet continuing education requirements, except as may be required for reactivation in subsection B of this section.

B. A funeral service licensee, a funeral director, or an embalmer who holds an inactive license may reactivate his license by:

1. Paying the difference between the renewal fee for an inactive license and that of an active license for the year in which the license is being reactivated; and

2. Providing proof of completion of the number of continuing competency hours required for the period in which the license has been inactive, not to exceed three years.

18VAC65-20-231. Requirements for a funeral director license by examination.

A. To qualify for licensure as a funeral director, a person shall:

1. Be at least 18 years of age and hold a high school diploma or its equivalent;

2. Have completed a funeral service or funeral directing internship as prescribed by the board in regulation;

3. Have graduated from a school of mortuary science or funeral service accredited by the American Board of Funeral Service Education, Incorporated or have completed an associate's degree or its equivalent, which consists of at least 60 credit hours of coursework, of which at least 30 hours shall be from a funeral directing program approved by the board;

4. Have successfully completed coursework in the area of pathology as approved by the board;

5. Have passed the National Board Examination in Arts or State Board Examination in Arts of the International Conference of Funeral Service Examining Boards; and

6. Have passed the Virginia State Board Examination on the laws, rules, and regulations for funeral practice.

B. Applicants shall submit school transcripts and National Board Examination or State Board Examination scores as part of an application package, including the required fee and any additional documentation as may be required to determine eligibility.

C. The board, in its discretion, may license an individual convicted of a felony if such individual has successfully fulfilled all conditions of sentencing, been pardoned, or has had his civil rights restored. The board may refuse to license an individual who has a criminal or disciplinary proceeding pending against him in any jurisdiction in the United States.

18VAC65-20-232. Requirements for an embalmer license by examination.

A. To qualify for licensure as an embalmer, a person shall:

1. Be at least 18 years of age and hold a high school diploma or its equivalent;

2. Have completed a funeral service or an embalming internship as prescribed by the board in regulation;

3. Have graduated from a school of mortuary science or funeral service accredited by the American Board of Funeral Service Education, Incorporated or have completed an embalming program approved by the board;

4. Have passed the National Board Examination in Sciences or State Board Examination in Sciences of the International Conference of Funeral Service Examining Boards; and

5. Have passed the Virginia State Board Examination on the laws, rules, and regulations for funeral practice.

B. Applicants shall submit school transcripts and National Board Examination or State Board Examination scores as part of an application package, including the required fee and any additional documentation as may be required to determine eligibility.

C. The board, in its discretion, may license an individual convicted of a felony if such individual has successfully fulfilled all conditions of sentencing, been pardoned, or has had his civil rights restored. The board may refuse to license an individual who has a criminal or disciplinary proceeding pending against him in any jurisdiction in the United States.

18VAC65-20-235. Approval of educational programs.

All applicants for ~~funeral service~~ licensure as a funeral service licensee are required to have graduated from a funeral service program offered by a school of mortuary science or funeral service accredited by the American Board of Funeral Service Education, Incorporated.

18VAC65-20-350. Requirements for licensure by reciprocity or endorsement.

A. Licenses for the practice of funeral service, funeral directing, embalming, or ~~its~~ an equivalent license issued by other states, territories, or the District of Columbia may be recognized by the board and the holder of such license ~~or~~ licenses may be granted a license to practice funeral service, funeral directing, or embalming within the Commonwealth.

Licenses may be granted to applicants by the board on a case-by-case basis if the applicant holds a valid license for the practice of funeral service, funeral directing, embalming, or ~~its~~ an equivalent license in another state, territory, or the District of Columbia and possesses credentials ~~which~~ that are substantially similar to or more stringent than required by the Commonwealth for initial licensure at the time the applicant was initially licensed.

B. An applicant for licensure by reciprocity or endorsement shall pass the Virginia State Board Examination.

18VAC65-20-500. Disciplinary action.

In accordance with the provisions of § 54.1-2806 of the Code of Virginia, the following practices are considered unprofessional conduct and may subject the licensee to disciplinary action by the board:

1. Breach of confidence. The unnecessary or unwarranted disclosure of confidences by the funeral licensee.

2. Unfair competition.

a. Interference by a funeral service licensee, funeral director, or registered surface transportation and removal service when another has been called to take charge of a dead human body and the caller or agent of the caller has the legal right to the body's disposition.

b. Consent by a funeral service licensee or funeral director to take charge of a body unless authorized by the person or his agent having the legal right to disposition.

3. False advertising.

a. No licensee or registrant shall make, publish, disseminate, circulate, or place before the public, or cause

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directly or indirectly to be made, an advertisement of any sort regarding services or anything so offered to the public that contains any promise, assertion, representation, or statement of fact which is untrue, deceptive, or misleading.

b. The following practices, both written and verbal, shall constitute false, deceptive, or misleading advertisement within the meaning of subdivision 4 of § 54.1-2806 of the Code of Virginia:

- (1) Advertising containing inaccurate statements; and
- (2) Advertisement which gives a false impression as to ability, care, and cost of conducting a funeral, or that creates an impression of things not likely to be true.

c. The following practices are among those that shall constitute an untrue, deceptive, and misleading representation or statement of fact:

- (1) Representing that funeral goods or services will delay the natural decomposition of human remains for a long term or indefinite time; and
- (2) Representing that funeral goods have protective features or will protect the body from gravesite substances over or beyond that offered by the written warranty of the manufacturer.

4. Inappropriate handling and storage of dead human bodies, consistent with § 54.1-2811.1 of the Code of Virginia and regulations of the board. Transportation and removal vehicles shall be of such nature as to eliminate exposure of the deceased to the public during transportation. During the transporting of a human body, consideration shall be taken to avoid unnecessary delays or stops during travel.

5. Failure to furnish price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies.

6. Conducting the practice of funeral services, funeral directing, or embalming in such a manner as to constitute a danger to the health, safety, and well-being of the staff or the public.

7. Inability to practice with skill or safety because of physical, mental, or emotional illness, or substance abuse.

8. Failure to register as a supervisor for ~~a funeral service~~ an intern or failure to provide reports to the board as required by the Code of Virginia and 18VAC65-40-320.

9. Failure to comply with applicable federal and state laws and regulations, including requirements for continuing education.

10. Inappropriate sexual contact between a supervisor and a funeral service intern if the sexual contact is a result of the exploitation of trust, knowledge, or influence derived from the professional relationship or if the contact has had or is

likely to have an adverse effect on the practice of funeral services or on intern training.

11. Conducting activities or performing services that are outside the scope of a licensee's practice or for which the licensee is not trained and individually competent.

18VAC65-20-630. Disclosures.

Funeral ~~providers~~ licensees shall make all required disclosures and provide accurate information from price lists pursuant to the rules of the Federal Trade Commission. Price lists shall comply with requirements of the FTC and shall contain the information included in:

APPENDIX I - General Price List;

APPENDIX II - Casket Price List, Outer Burial Container Price List; and

APPENDIX III - Itemized Statement of Funeral Goods and Services Selected.

18VAC65-30-10. Definitions.

In addition to those defined in § 54.1-2800 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Appointee" means the individual selected by the contract beneficiary to arrange a preneed funeral plan on behalf of the contract beneficiary.

"Cash advance item" means any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the behalf of the contract buyer. Cash advance items may include cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians or singers, nurses, obituary notices, gratuities, and death certificates.

"Consideration," "contract price," or "funds" means money, property, or any other thing of value provided to be compensation to a contract seller or contract provider for the funeral services and funeral goods to be performed or furnished under a preneed funeral contract. Consideration does not include late payment penalties and payments required to be made to a governmental agency at the time the contract is entered into.

"Contract" means a written, preneed funeral contract and all documents pertinent to the terms of the contract under which for consideration paid to a contract seller or a contract provider by or on behalf of a contract buyer prior to the death of the contract beneficiary, a person promises to furnish, make available, or provide funeral services or funeral goods after the death of a contract beneficiary.

"Contract beneficiary" means the individual for whom the funeral services and supplies are being arranged.

"Contract buyer" means the purchaser of the preneed contract.

"Contract provider" means the funeral establishment designated by the contract buyer and contracting with the contract buyer to provide for funeral services and supplies in the preneed funeral contract.

"Contract seller" means the funeral service licensee or funeral director who makes the preneed arrangements with the contract buyer for the funeral service and who makes the financial arrangements for the service and the goods and supplies to be provided.

"Designee" means the individual designated to make arrangements for burial or final disposition of the remains pursuant to § 54.1-2825 of the Code of Virginia.

"Funding source" means the trust agreement, insurance policy, annuity, personal property, or real estate used to fund the preneed plan.

"Funeral supplies and services" means the items of merchandise sold or offered for sale or lease to consumers that will be used in connection with a funeral or an alternative to a funeral or final disposition of human remains including caskets, combination units, and catafalques. Funeral goods does not mean land or interests in land, crypts, lawn crypts, mausoleum crypts, or niches that are sold by a cemetery that complies with Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 of the Code of Virginia. In addition, "funeral supplies and services" does not mean cemetery burial vaults or other outside containers, markers, monuments, urns, and merchandise items used for the purpose of memorializing a decedent and placed on or in proximity to a place of interment or entombment of a casket, catafalque, or vault or to a place of inurnment that are sold by a cemetery operating in accordance with Chapter 23.1 of Title 54.1 of the Code of Virginia.

"Guaranteed contract price" means (i) the amount paid by the contract buyer on a preneed funeral contract, and income derived from that amount, or (ii) the amount paid by a contract buyer for a life insurance policy or annuity as the funding source and its increasing death benefit. These amounts shall be accepted as payment in full for the preselected funeral goods and services.

"Income" means the amount of gain received in a period of time from investment of consideration paid for a preneed contract.

"Nonguaranteed contract price" means the costs of items on a preneed funeral contract that are not fixed for the specified funeral goods or funeral services selected and nonguaranteed costs may increase from the date of the contract to the death of the contract beneficiary and the family or estate will be responsible for paying at the time of need for the services and

supplies that were nonguaranteed. Cash advance items are not guaranteed.

18VAC65-30-50. Solicitation.

A. In accordance with provisions of § 54.1-2806 of the Code of Virginia, a licensee shall not initiate any preneed solicitation using in-person communication by the licensee or his agents, assistants, or employees.

B. After a request to discuss preneed planning is initiated by the contract buyer or interested consumer, any contact and in-person communication shall take place only with a funeral service licensee or a licensed funeral director. Funeral service interns shall not engage in preneed planning or sales.

18VAC65-40-10. Definitions.

In addition to words and terms defined in § 54.1-2800 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Direct supervision" means that a person licensed for the practice of funeral service professional, funeral directing, or embalming is present and on the premises of the facility.

"Supervisor" means a licensed employee at the training site who has been approved by the board to provide supervision for the funeral intern.

"Training site" means the licensed funeral establishment, facility, or institution that has agreed to serve as a location for a funeral service internship and has been approved by the board.

18VAC65-40-40. Fees.

A. The following fees shall be paid as applicable for registration:

1. Funeral service, <u>funeral directing, or embalming</u> intern registration	\$150
2. Funeral service, <u>funeral directing, or embalming</u> intern renewal	\$125
3. Late fee for renewal up to one year after expiration	\$45
4. Duplicate copy of intern registration	\$25
5. Handling fee for returned check or dishonored credit card or debit card	\$50
6. Registration of supervisor	\$35
7. Change of supervisor	\$35
8. Reinstatement fee	\$195

B. Fees shall be made payable to the Treasurer of Virginia and shall not be refundable once submitted.

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18VAC65-40-90. Renewal of registration.

A. The funeral service, funeral directing, or embalming intern registration shall expire on March 31 of each calendar year and may be renewed by submission of the renewal notice and prescribed fee.

B. A person who fails to renew a registration by the expiration date shall be deemed to have an invalid registration. No credit will be allowed for an internship period served under an expired registration.

C. The funeral service, funeral directing, or embalming intern is responsible for notifying the board within 14 days of any changes in name, address, employment, or supervisor. Any notices shall be validly given when mailed to the address on record with the board.

18VAC65-40-110. Reinstatement of expired registration.

A. A funeral service, a funeral directing, or an embalming intern whose registration has expired may be reinstated within one year following expiration by payment of the current renewal fee and the late renewal fee.

B. A funeral service, a funeral directing, or an embalming intern whose registration has been expired for more than one year shall apply for reinstatement by submission of an application and payment of a reinstatement fee. The board may consider reinstatement of an expired registration for up to three years following expiration.

C. When a registration is not reinstated within three years of its expiration date, a new application for registration shall be filed and a new internship begun.

18VAC65-40-130. Funeral service, funeral directing, or embalming internship.

A. ~~The~~ An internship for funeral service, funeral directing, or embalming shall consist of at least ~~3,000~~ 2,000 hours of training to be completed within no less than 12 months and no more than 48 months. For good cause shown, the board may grant an extension of time for completion of an internship.

B. The ~~funeral service~~ intern shall be assigned a work schedule of not less than 20 hours nor more than 60 hours per week in order to receive credit for such training. For good cause shown, the board may waive the limitation on an intern's work schedule.

C. A funeral service intern shall receive training in all areas of funeral service.

D. A funeral directing intern shall receive training in all areas of funeral directing, including assisting in at least 25 funerals, 25 arrangement conferences, as well as visitations and financing of funeral services.

E. An embalming intern shall receive training in all aspects of embalming practice, including assisting in at least 25

embalmings, as well as treatment, restorative art, safety and sanitation, and organ, tissue, or anatomical donation.

F. An intern registration shall expire upon issuance by the board of a license to practice as a funeral service licensee, a funeral director, or an embalmer. When an internship has been completed for licensure as a funeral director or as an embalmer, the approval of an additional internship to meet the requirements for licensure as a funeral service licensee may be approved by the board in accordance with § 54.1-2817 of the Code of Virginia and the regulations of the board. Any additional internship granted shall be limited in duration to the time required for completion of hours and cases required for licensure. An internship may not be used to expand the scope of practice of a licensee.

G. An intern shall be identified to the public as a funeral service intern, a funeral directing intern, or an embalming intern in a title used, name tag worn, and any correspondence or communication in which the intern's name is used.

18VAC65-40-180. Intern application package for funeral service licensure.

A. Any person who meets the qualifications of § 54.1-2817 of the Code of Virginia may seek registration with the board as a funeral service intern by submission of an application package, which shall include documentation of the qualifications and signatures of any supervising licensees.

B. Applicants shall submit school transcripts as part of an application package, including the required fee and any additional documentation as may be required to determine eligibility.

18VAC65-40-185. Intern application for funeral directing or embalming licensure.

A. An applicant who attests to holding a high school diploma or its equivalent may seek registration with the board as a funeral directing or an embalming intern by submission of an application package, which shall include documentation of the qualifications and signatures of any supervising licensees.

B. Applicants shall submit school transcripts as part of an application package, including the required fee and any additional documentation as may be required to determine eligibility.

C. The board, in its discretion, may approve an application to be a funeral directing or an embalming intern for an individual convicted of a felony, if the applicant has successfully fulfilled all conditions of sentencing, been pardoned, or has had civil rights restored. The board shall not, however, approve an application to be an intern for any person convicted of embezzlement or of violating subsection B of § 18.2-126 of the Code of Virginia. The board, in its discretion, may refuse to approve an application to be a funeral directing or an embalming intern for an individual who has a criminal or

disciplinary proceeding pending against him in any jurisdiction in the United States.

18VAC65-40-220. Qualifications of training site.

A. The board shall approve only an establishment or two combined establishments to serve as the training site or sites that:

1. Have a full and unrestricted Virginia license;
2. Have complied in all respects with the provisions of the regulations of the Board of Funeral Directors and Embalmers; and
3. ~~Have~~ For a funeral service internship, have 50 or more funerals and 50 or more bodies for embalming over a 12-month period for each person to be trained. This total must be maintained throughout the period of training. If the establishment does not meet the required number of funerals or embalming, the funeral service intern may seek approval for an additional training site; or
4. For a funeral directing internship, have 50 or more funerals over a 12-month period for each person to be trained. This total must be maintained throughout the period of training. If the establishment does not meet the required number of funerals, the funeral directing intern may seek approval for an additional training site; or
5. For an embalming internship, have 50 or more bodies for embalming over a 12-month period for each person to be trained. This total must be maintained throughout the period of training. If the establishment does not meet the required number of embalming, the embalming intern may seek approval for an additional training site.

B. The board may grant approval for a ~~resident trainee funeral service or an embalming intern~~ to receive all or a portion of the embalming training at a facility of state or federal government or an accredited educational institution.

18VAC65-40-250. Requirements for supervision.

A. Training shall be conducted under the direct supervision of a licensee ~~or licensees~~ approved by the board. Credit shall only be allowed for training under direct supervision.

B. The board shall approve only funeral service licensees, licensed funeral directors, or licensed embalmers to give funeral training who have a full and unrestricted Virginia funeral license, have at least two consecutive years in practice and are employed full time in or under contract with the establishment, facility, or institution where training occurs.

C. A supervisor licensed as an embalmer or a funeral director shall provide supervision only in the areas of funeral practice for which he is licensed.

D. Failure to register as a supervisor may subject the licensee to disciplinary action by the board.

E. If a supervisor is unable or unwilling to continue providing supervision, the ~~funeral service~~ intern shall obtain a new supervisor. Credit for training shall resume when a new supervisor is approved by the board and the intern has paid the prescribed fee for the change of supervisor.

F. No more than a combined total of two funeral service, funeral directing, or embalming interns shall be concurrently registered under any one person licensed for the practice of funeral service, funeral directing, or embalming. Each supervisor for a registered funeral directing intern or a registered embalming intern must be actively employed by or under contract with a funeral establishment.

18VAC65-40-280. Supervisor application package.

A. A licensee seeking approval by the board as a supervisor shall submit a completed application and any additional documentation as may be required to determine eligibility.

B. The application for supervision of a funeral service, a funeral directing, or an embalming intern shall be signed by the establishment manager and by the persons who will be providing supervision for embalming ~~and, for funeral directing, or for the~~ funeral services.

18VAC65-40-320. Reports to the board.

A. The intern, the supervisor or supervisors, and the establishment shall submit a written report to the board at the end of every 1,000 hours of training. The report shall:

1. Specify the period of time in which the 1,000 hours has been completed and verify that the intern has actually served in the required capacity during the preceding period; and
2. Be received in the board office no later than 14 days following the end of the completion of 1,000 hours. ~~Late reports may result in additional time being added to the internship.~~

B. If the internship is terminated or interrupted prior to completion of 1,000 hours or if the intern is changing supervisors or training sites, the intern and the supervisor shall submit a partial report to the board with a written explanation of the cause of program termination or interruption or of the change in training or supervision.

1. The partial report shall provide the amount of time served and the dates since the last reporting period. Credit for partial reports shall be given for the number of hours of training completed.
2. Partial reports shall be received in the board office no later than 14 days after the interruption or termination of the internship or after the change in supervisors or training sites. ~~Credit may be deducted for late reports.~~

C. An intern shall not receive credit for training hours on a new 1,000-hour report until the previous 1,000-hour report has been approved by the board.

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D. Credit shall not be allowed for any period of internship that has been completed more than three years prior to application for license or more than five years prior to examination for license. If all requirements for licensure are not completed within five years of initial application, the board may deny an additional internship. A funeral directing or an embalming intern may continue to practice for up to 90 days from the completion of internship hours or until the intern has taken and received the results of all examinations required by the board. However, the board may waive such limitation for any person in the armed service of the United States when application for the waiver is made in writing within six months of leaving service or if the board determines that enforcement of the limitation will create an unreasonable hardship.

Part III

Internship: Funeral Supervisors' Responsibilities

18VAC65-40-340. Supervisors' responsibilities.

A. The supervisor shall provide the intern with all applicable laws and regulations or sections of regulations relating to the funeral industry.

B. The supervisor shall provide the intern with copies of and instruction in the use of all forms and price lists employed by the funeral establishment.

C. The supervisor shall provide the funeral service or funeral directing intern with instruction in all aspects of funeral services and shall allow the intern under direct supervision to conduct all necessary arrangements for a minimum of 25 funerals.

D. The embalming supervisor shall provide instruction on all necessary precautions, embalming functions, and reporting forms and shall allow the funeral service or embalming intern under direct supervision to perform a minimum of 25 embalmings.

E. The supervisor shall provide the funeral service or funeral directing intern with instruction in making preneed funeral arrangements and instruction on the laws and regulations pertaining to preneed funeral contracts and disclosures.

F. The supervisor shall provide the funeral service or funeral directing intern instruction on cremation and on the laws and regulations pertaining to cremation.

G. If a training site does not offer preneed funeral planning or cremation services, the supervisor shall arrange for such training at another licensed funeral establishment that does.

18VAC65-40-640. Disciplinary action.

The board may refuse to issue or renew a license, registration, or approval to any applicant; and may suspend for a stated period of time or indefinitely, or revoke any license, registration, or approval, or reprimand any person, or place his license or registration on probation with such terms and conditions and for such time as it may designate or impose a

monetary penalty for failure to comply with the laws and regulations of the Board of Funeral Directors and Embalmers.

VA.R. Doc. No. R21-6539; Filed December 2, 2021, 8:38 p.m.

DEPARTMENT OF HEALTH PROFESSIONS

Final Regulation

REGISTRAR'S NOTICE: The Department of Health Professions is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 18 of the Code of Virginia, which exempts regulations for the implementation of the Health Practitioners' Monitoring Program, Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 of the Code of Virginia.

Title of Regulation: **18VAC76-10. Regulations Governing the Health Practitioners' Monitoring Program for the Department of Health Professions (amending 18VAC76-10-40, 18VAC76-10-65).**

Statutory Authority: § 54.1-2516 of the Code of Virginia.

Effective Date: February 2, 2022.

Agency Contact: Christina Buissert, Program Coordinator, Health Practitioners' Monitoring Program, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4649, FAX (804) 527-4434, or email christina.buissert@dhp.virginia.gov.

Summary:

The amendments (i) reorder regulatory text to reflect the progression of actions relating to eligibility for a stay of discipline and (ii) add authority for the chairperson of the Health Practitioners' Monitoring Program Committee to act on behalf of the committee to authorize an urgent dismissal of a participant outside of a scheduled meeting.

18VAC76-10-40. Eligibility for stayed disciplinary action.

A. The committee or its designee shall consult with the board liaison for the purpose of determining whether disciplinary action shall be stayed. If found ineligible for stayed disciplinary action by the relevant board or the committee, the practitioner may remain eligible for participation in the program. If an applicant for the program is not eligible for a stay and evidence of a violation has been reported to the committee, the committee shall make a report of the violation to the department. ~~If found ineligible for stayed disciplinary action by the relevant board or the committee, the practitioner may remain eligible for participation in the program.~~

B. Prior to making a decision on stayed disciplinary action, the committee or its designee shall review any applicable notices or orders and shall consult with the relevant board on any pending investigations. The relevant board shall have final authority in the granting of a stay of disciplinary action.

C. Disciplinary action may be initiated by the appropriate health regulatory board upon receipt of investigative information leading to a determination of probable cause that

impairment constitutes a danger to patients or clients or upon a determination that the decision for stayed disciplinary action is not consistent with provisions for a stay pursuant to § 54.1-2516 C of the Code of Virginia.

18VAC76-10-65. Authority of the chairperson of the committee.

A. The chairperson may act on behalf of the committee when a scheduled meeting is canceled due to failure to convene a quorum.

B. The chairperson may act on behalf of the committee to authorize an urgent dismissal action outside of a scheduled meeting.

VA.R. Doc. No. R22-7002; Filed December 10, 2021, 1:44 p.m.

Fast-Track Regulation

Title of Regulation: **18VAC76-20. Regulations Governing the Prescription Monitoring Program (amending 18VAC76-20-40).**

Statutory Authority: § 54.1-2520 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 2, 2022.

Effective Date: February 17, 2022.

Agency Contact: Ralph Orr, Program Manager, Prescription Monitoring Program, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4523, FAX (804) 527-4470, or email ralph.orr@dhp.virginia.gov.

Basis: Regulations governing the Prescription Monitoring Program (PMP) are promulgated under the statutory mandate in § 54.1-2520 of the Code of Virginia. Section 54.1-2521 of the Code of Virginia provides reporting requirements for the program. Authority for the Director of the Department of Health Professions to establish the PMP is found in § 54.1-2505 of the Code of Virginia.

Purpose: The purpose of the regulatory change is to update the regulation to allow for newer standards for reporting for the Prescription Monitoring Program (PMP) without placing additional burdens on dispensers by specifying the most current version that is the 2019 Version 4b of the American Society of Automation in Pharmacy (ASAP) Standard. The goal of this regulatory action is to simplify and facilitate reliable reporting by allowing dispensers more than one standard to use for reporting to the PMP and simplify the reporting process for dispensers located in Virginia or dispensing to Virginia residents by allowing each dispenser to choose either the older Version 4.2 or a different version. Reporting of certain data by dispensers to PMP is not only required by the Code of Virginia but essential to ensure the protection of the health, safety, and welfare of the citizens because the PMP is used to track excessive prescribing and

dispensing of covered drugs and to alert for possible diversion of such drugs into communities.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action is expected to be noncontroversial because the director is deleting an outdated standard and allowing more than one standard to be acceptable to dispensers. Provided the data elements specified in § 54.1-2521 of the Code of Virginia and the vendor utilized by the Department of Health Professions (DHP) recognizes the standard, then DHP will recognize it as an acceptable version.

Substance: Amendments delete language that requires that dispensers report according to a specific version of the ASAP standard.

Issues: The primary advantage to the public of the PMP is that prescribers and dispensers have access to information on a patient's prescription history, which ensures that prescribers and dispensers can provide safe courses of treatment that are individualized to a patient's particular needs. The regulatory action facilitates the ability of dispensers to share this information through their choice of reporting standard, thus facilitating receipt of this information prior to patients receiving prescriptions in the future. The regulatory change will primarily benefit dispensers that currently report under multiple standards. There are no disadvantages to the public. There are no advantages or disadvantages to this agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Health Professions (DHP) seeks to repeal discretionary language that requires dispensers of certain covered substances to use a specific version of a reporting standard when submitting data to the Prescription Monitoring Program (PMP).¹ DHP seeks to repeal this language because that specific version has since been superseded by newer versions of the standard. Further, DHP does not seek to add a reference to the newer version since the existing regulatory text already directs dispensers to use a specific file layout, which implicitly reflects the reporting standard. Dispensers using the older file layout will be able to continue to do so, thus, the regulatory change is intended to provide dispensers with greater flexibility.

Background. The PMP is a database containing information on dispensed controlled substances in Schedules II, III and IV; those in Schedule V for which a prescription is required; naloxone, all drugs of concern, and cannabidiol oil or THC-A oil dispensed by a pharmaceutical processor in Virginia.² As per 18VAC76-20-40 Standards for the manner and format of reports and a schedule for reporting, "Data shall be transmitted to the department or its agent within 24 hours of dispensing or the dispenser's next business day, whichever comes later, as provided in the Electronic Reporting Standard for Prescription Monitoring Programs, Version 4.2 (September 2011) of the American Society of Automation in Pharmacy (ASAP), which

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are hereby incorporated by reference into this chapter." DHP seeks to repeal the text citing the standard and incorporating the document by reference.

ASAP has released newer versions of the electronic reporting standard since 2011. Some dispensers report data to DHP under Version 4.2 and to other states' monitoring programs using these newer versions. The Virginia PMP vendor can currently accommodate reporting of data in ASAP reporting standard versions 4.2 and 4.2a.³ Subsection B of the section requires dispensers to transmit the data using a file layout provided by the director of the PMP, beginning no fewer than 90 days from notification by the director to dispensers required to report. The latest version of the Dispenser Guide, effective June 2020, contains the file layout for ASAP version 4.2a.⁴ However, dispensers would not be required to switch to the newer file layout. Thus, repealing the reference to version 4.2 and the document incorporated by reference would provide dispensers with the option of using either version of the reporting standard.

Estimated Benefits and Costs. DHP anticipates that dispensers who already use the file layout for ASAP 4.2a to report prescription data to other states monitoring programs will start using it for reports to the Virginia PMP as well. These dispensers would likely benefit from having consistent reporting requirements across different states to the extent that it reduces their overall cost of meeting reporting requirements. Pharmaceutical processors and dispensaries are the current most probable users of ASAP 4.2a because of their unique regulatory status. However, dispensers currently using the file layout corresponding to the ASAP 4.2 standards may continue to do so without facing any additional costs.

Businesses and Other Entities Affected. The proposed amendments primarily affect any individuals or entities that dispense a "covered substance" as defined in § 54.1-2519 of the Code of Virginia. DHP reports that there are 2,117 entities currently reporting prescription data to DHP.

Small Businesses⁵ Affected. The proposed amendments do not create any new costs and therefore would not adversely affect any small businesses. Pharmacies or dispensaries that are small businesses could benefit to the extent that the proposed amendment would allow them to standardize their prescription reporting across multiple states including Virginia.

Localities⁶ Affected.⁷ The proposed amendments do not introduce new costs for local governments and are unlikely to affect any locality in particular.

Projected Impact on Employment. The proposed amendments are unlikely to impact employment by dispensers of covered substances.

Effects on the Use and Value of Private Property. To the extent that the option to use ASAP 4.2a reporting standards allows some dispensers to reduce their overall reporting costs by streamlining their reporting process, the value of those entities may see a modest increase. Real estate development costs are not affected.

¹See § 54.1-2519 of the Code of Virginia for the definition of covered substances with respect to the PMP: <https://law.lis.virginia.gov/vacode/title54.1/chapter25.2/section54.1-2519/>.

²See <https://www.dhp.virginia.gov/PractitionerResources/PrescriptionMonitoringProgram/>.

³See Agency Background Document [https://townhall.virginia.gov/l/GetFile.cfm?File=59\5733\9276\AgencyState ment_DHP_9276_v2.pdf](https://townhall.virginia.gov/l/GetFile.cfm?File=59\5733\9276\AgencyState%20ment_DHP_9276_v2.pdf).

⁴See Appendix A of the Virginia PMP Dispenser's Guide: https://www.dhp.virginia.gov/media/dhpweb/docs/pmp/VA_Data_Submission_Dispenser_Guide_v_2.4.pdf

⁵Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

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

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

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

Summary:

The amendments delete a requirement that dispensers report according to a specific version of the American Society of Automation in Pharmacy standard and remove the standard as incorporated by reference into the regulation.

18VAC76-20-40. Standards for the manner and format of reports and a schedule for reporting.

A. Data shall be transmitted to the department or its agent within 24 hours of dispensing or the dispenser's next business day, whichever comes later, ~~as provided in the Electronic Reporting Standard for Prescription Monitoring Programs, Version 4.2 (September 2011) of the American Society of Automation in Pharmacy (ASAP), which are hereby incorporated by reference into this chapter.~~

B. Data shall be transmitted in a file layout provided by the department and shall be transmitted by a media acceptable to the vendor contracted by the director for the program. Such transmission shall begin on a date specified by the director, no less than 90 days from notification by the director to dispensers required to report.

C. Under extraordinary circumstances, an alternative means of reporting may be approved by the director.

D. Data not accepted by the vendor due to a substantial number of errors or omissions shall be corrected and resubmitted to the vendor within five business days of receiving notification that the submitted data had an unacceptable number of errors or problems.

E. Required data elements shall include those listed in subsection B of § 54.1-2521 of the Code of Virginia and the following:

1. The Drug Enforcement Administration (DEA) registration number of the dispenser;
2. The National Provider Identifier of the prescriber;
3. The total number of refills ordered;
4. Whether the prescription is a new prescription or a refill;
5. Whether the prescription is a partial fill;
6. The gender code;
7. The species code;
8. The Electronic Prescription Reference Number, and the Electronic Prescription Order Number if it is an electronic prescription; and
9. The date the prescription was written by the prescriber.

~~DOCUMENTS INCORPORATED BY REFERENCE~~

~~Implementation Guide ASAP Standard (Electronic Reporting Standard) for Prescription Monitoring Programs, Version 4, Release 2, September 2011, American Society for Automation in Pharmacy, 492 Norristown Road, Suite 160, Blue Bell, PA 19422 (<http://www.asapnet.org>)~~

VA.R. Doc. No. R22-6825; Filed December 2, 2021, 4:32 p.m.

BOARD OF MEDICINE

Final Regulation

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-10, 18VAC85-20-29).**

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

Effective Date: February 2, 2022.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Summary:

Pursuant to Chapters 41 and 721 of the 2020 Acts of Assembly, the amendments (i) define conversion therapy as it is defined in § 54.1-2409.5 of the Code of Virginia and (ii) specify that the standard of practice for nurse practitioners prohibits a nurse practitioner from engaging in conversion therapy with a person younger than 18 years of age.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

18VAC85-20-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2900 of the Code of Virginia:

Board

Healing arts

Practice of chiropractic

Practice of medicine or osteopathic medicine

Practice of podiatry

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

"Approved institution" means any accredited school or college of medicine, osteopathic medicine, podiatry, or chiropractic located in the United States, its territories, or Canada.

"Conversion therapy" means any practice or treatment as defined in § 54.1-2409.5 A of the Code of Virginia.

"Principal site" means the location in a foreign country where teaching and clinical facilities are located.

18VAC85-20-29. Practitioner responsibility.

A. A practitioner shall not:

1. Knowingly allow subordinates to jeopardize patient safety or provide patient care outside of the subordinate's scope of practice or area of responsibility. Practitioners shall delegate patient care only to subordinates who are properly trained and supervised;

2. Engage in an egregious pattern of disruptive behavior or an interaction in a health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient; ~~or~~

3. Exploit the practitioner and patient relationship for personal gain; or

4. Engage in conversion therapy with a person younger than 18 years of age.

B. Advocating for patient safety or improvement in patient care within a health care entity shall not constitute disruptive behavior provided the practitioner does not engage in behavior prohibited in subdivision A 2 of this section.

VA.R. Doc. No. R21-6216; Filed December 2, 2021, 4:09 p.m.

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BOARD OF NURSING

Final Regulation

Title of Regulation: 18VAC90-19. Regulations Governing the Practice of Nursing (amending 18VAC90-19-10, 18VAC90-19-230).

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

Effective Date: February 2, 2022.

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:

Pursuant to Chapters 41 and 721 of the 2020 Acts of Assembly, the amendments (i) define conversion therapy as it is defined in § 54.1-2409.5 of the Code of Virginia, and (ii) specify that the standard of practice for nurse practitioners prohibits a nurse practitioner from engaging in conversion therapy with a person younger than 18 years of age.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

18VAC90-19-10. Definitions.

In addition to words and terms defined in §§ 54.1-3000 and 54.1-3030 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Active practice" means activities performed, whether or not for compensation, for which an active license to practice nursing is required.

"Board" means the Board of Nursing.

"CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

"Contact hour" means 50 minutes of continuing education coursework or activity.

"Conversion therapy" means any practice or treatment as defined in § 54.1-2409.5 A of the Code of Virginia.

"National certifying organization" means an organization that has as one of its purposes the certification of a specialty in nursing based on an examination attesting to the knowledge of the nurse for practice in the specialty area.

"NCLEX" means the National Council Licensure Examination.

"NCSBN" means the National Council of State Boards of Nursing.

"Primary state of residence" means the state of a person's declared fixed, permanent, and principal home or domicile for legal purposes.

18VAC90-19-230. Disciplinary provisions.

The board has the authority to deny, revoke, or suspend a license or multistate licensure privilege issued, or to otherwise discipline a licensee or holder of a multistate licensure privilege upon proof that the licensee or holder of a multistate licensure privilege has violated any of the provisions of § 54.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:

1. Fraud or deceit in procuring or maintaining a license means, but shall not be limited to:
 - a. Filing false credentials;
 - b. Falsely representing facts on an application for initial license, reinstatement, or renewal of a license; or
 - c. Giving or receiving assistance in the taking of the licensing examination.
2. Unprofessional conduct means, but shall not be limited to:
 - a. Performing acts beyond the limits of the practice of professional or practical nursing as defined in Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia, or as provided by §§ 54.1-2901 and 54.1-2957 of the Code of Virginia;
 - b. Assuming duties and responsibilities within the practice of nursing without adequate training or when competency has not been maintained;
 - c. Obtaining supplies, equipment, or drugs for personal or other unauthorized use;
 - d. Employing or assigning unqualified persons to perform functions that require a licensed practitioner of nursing;
 - e. Falsifying or otherwise altering patient, employer, student, or educational program records, including falsely representing facts on a job application or other employment-related documents;
 - f. Abusing, neglecting, or abandoning patients or clients;
 - g. Delegating nursing tasks to an unlicensed person in violation of the provisions of this part;
 - 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;
 - i. Obtaining money or property of a patient or client by fraud, misrepresentation, or duress;
 - 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;

- k. Violating state laws relating to the privacy of patient information, including § 32.1-127.1:03 the Code of Virginia;
- l. Providing false information to staff or board members in the course of an investigation or proceeding;
- 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~~
- n. Engaging in conversion therapy with a person younger than 18 years of age; or
- o. Violating any provision of this chapter.

VA.R. Doc. No. R21-6475; Filed December 2, 2021, 4:10 p.m.

Final Regulation

Title of Regulation: 18VAC90-27. Regulations for Nursing Education Programs (amending 18VAC90-27-10, 18VAC90-27-60, 18VAC90-27-100).

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Effective Date: February 2, 2022.

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:

The amendments (i) define direct client care and simulation terms used in the amended regulation; (ii) require faculty who supervise clinical practice by simulation demonstrate knowledge and skills in the methodology; (iii) require simulation to account from no more than 50% of the total clinical hours in different clinical specialties and population groups across the life span; and (iv) require knowledgeable faculty to be present during the simulation experience.

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

18VAC90-27-10. Definitions.

In addition to words and terms defined in § 54.1-3000 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Accreditation" means having been accredited by an agency recognized by the U.S. Department of Education to include the Accreditation Commission for Education in Nursing, the Commission on Collegiate Nursing Education, the Commission for Nursing Education Accreditation, or a national nursing accrediting organization recognized by the board.

"Advisory committee" means a group of persons from a nursing education program and the health care community who meets regularly to advise the nursing education program on the quality of its graduates and the needs of the community.

"Approval" means the process by which the board or a governmental agency in another state or foreign country evaluates and grants official recognition to nursing education programs that meet established standards not inconsistent with Virginia law.

"Associate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or other institution and designed to lead to an associate degree in nursing, provided that the institution is authorized to confer such degree by SCHEV.

"Baccalaureate degree nursing program" or "prelicensure graduate degree program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or university and designed to lead to a baccalaureate or a graduate degree with a major in nursing, provided that the institution is authorized to confer such degree by SCHEV.

"Board" means the Board of Nursing.

"Clinical setting" means any location in which the clinical practice of nursing occurs as specified in an agreement between the cooperating agency and the school of nursing.

"Conditional approval" means a time-limited status that results when an approved nursing education program has failed to maintain requirements as set forth in this chapter.

"Cooperating agency" means an agency or institution that enters into a written agreement to provide clinical or observational experiences for a nursing education program.

"Diploma nursing program" means a nursing education program preparing for registered nurse licensure, offered by a hospital and designed to lead to a diploma in nursing, provided the hospital is licensed in this state.

"Direct client care" means nursing care provided to patients or clients in a clinical setting supervised by qualified faculty or a designated preceptor.

"Full approval" means the status granted to a nursing education program when compliance with regulations pertaining to nursing education programs has been verified.

"Initial approval" means the status granted to a nursing education program that allows the admission of students.

"National certifying organization" means an organization that has as one of its purposes the certification of a specialty in nursing based on an examination attesting to the knowledge of the nurse for practice in the specialty area.

"NCLEX" means the National Council Licensure Examination.

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"NCSBN" means the National Council of State Boards of Nursing.

"Nursing education program" means an entity offering a basic course of study preparing persons for licensure as registered nurses or as licensed practical nurses. A basic course of study shall include all courses required for the degree, diploma, or certificate.

"Nursing faculty" means registered nurses who teach the practice of nursing in nursing education programs.

"Practical nursing program" means a nursing education program preparing for practical nurse licensure that leads to a diploma or certificate in practical nursing, provided the school is authorized by the Virginia Department of Education or by an accrediting agency recognized by the U.S. Department of Education.

"Preceptor" means a licensed nurse who is employed in the clinical setting, serves as a resource person and role model, and is present with the nursing student in that setting, providing clinical supervision.

"Program director" means a registered nurse who holds a current, unrestricted license in Virginia or a multistate licensure privilege and who has been designated by the controlling authority to administer the nursing education program.

"Recommendation" means a guide to actions that will assist an institution to improve and develop its nursing education program.

"Requirement" means a mandatory condition that a nursing education program must meet to be approved or maintain approval.

"SCHEV" means the State Council of Higher Education for Virginia.

"Simulation" means an evidence-based teaching methodology utilizing an activity in which students are immersed into a realistic clinical environment or situation and in which students are required to learn and use critical thinking and decision-making skills.

"Site visit" means a focused onsite review of the nursing program by board staff, usually completed within one day for the purpose of evaluating program components such as the physical location (skills lab, classrooms, learning resources) for obtaining initial program approval, in response to a complaint, compliance with NCLEX plan of correction, change of location, or verification of noncompliance with this chapter.

"Survey visit" means a comprehensive onsite review of the nursing program by board staff, usually completed within two days (depending on the number of programs or campuses being reviewed) for the purpose of obtaining and maintaining full program approval. The survey visit includes the program's completion of a self-evaluation report prior to the visit, as well

as a board staff review of all program resources, including skills lab, classrooms, learning resources, and clinical facilities, and other components to ensure compliance with this chapter. Meetings with faculty, administration, students, and clinical facility staff will occur.

18VAC90-27-60. Faculty.

A. Qualifications for all faculty.

1. Every member of the nursing faculty, including the program director, shall (i) hold a current license or a multistate licensure privilege to practice nursing in Virginia as a registered nurse without any disciplinary action that currently restricts practice and (ii) have had at least two years of direct client care experience as a registered nurse prior to employment by the program. Persons providing instruction in topics other than nursing shall not be required to hold a license as a registered nurse.

2. Every member of a nursing faculty supervising the clinical practice of students, including simulation in lieu of direct client care, shall meet the licensure requirements of the jurisdiction in which that practice occurs. ~~Faculty and~~ shall provide evidence of education or experience in the specialty area in which they supervise student clinical experience for quality and safety. Prior to supervision of students, the faculty providing supervision shall have completed a clinical orientation to the site in which supervision is being provided. Faculty members who supervise clinical practice by simulation shall also demonstrate simulation knowledge and skills in that methodology and shall engage in ongoing professional development in the use of simulation.

3. The program director and each member of the nursing faculty shall maintain documentation of professional competence through such activities as nursing practice, continuing education programs, conferences, workshops, seminars, academic courses, research projects, and professional writing. Documentation of annual professional development shall be maintained in employee files for the director and each faculty member until the next survey visit and shall be available for board review.

4. For baccalaureate degree and prelicensure graduate degree programs:

- a. The program director shall hold a doctoral degree with a graduate degree in nursing.
- b. Every member of the nursing faculty shall hold a graduate degree; the majority of the faculty shall have a graduate degree in nursing. Faculty members with a graduate degree with a major other than in nursing shall have a baccalaureate degree with a major in nursing.

5. For associate degree and diploma programs:

- a. The program director shall hold a graduate degree with a major in nursing.

- b. The majority of the members of the nursing faculty shall hold a graduate degree, preferably with a major in nursing.
- c. All members of the nursing faculty shall hold a baccalaureate or graduate degree with a major in nursing.

6. For practical nursing programs:

- a. The program director shall hold a baccalaureate degree with a major in nursing.
- b. The majority of the members of the nursing faculty shall hold a baccalaureate degree, preferably with a major in nursing.

B. Number of faculty.

- 1. The number of faculty shall be sufficient to prepare the students to achieve the objectives of the educational program and to ensure safety for clients to whom students provide care.
- 2. When students are giving direct care to clients, the ratio of students to faculty shall not exceed 10 students to one faculty member, and the faculty shall be on site solely to supervise students.
- 3. When preceptors are utilized for specified learning experiences in clinical settings, the faculty member may supervise up to 15 students.

C. Functions. The principal functions of the faculty shall be to:

- 1. Develop, implement, and evaluate the philosophy and objectives of the nursing education program;
- 2. Design, implement, teach, evaluate, and revise the curriculum. Faculty shall provide evidence of education and experience necessary to indicate that they are competent to teach a given course;
- 3. Develop and evaluate student admission, progression, retention, and graduation policies within the framework of the controlling institution;
- 4. Participate in academic advisement and counseling of students in accordance with requirements of the Financial Educational Rights and Privacy Act (20 USC § 1232g);
- 5. Provide opportunities for and evidence of student and graduate evaluation of curriculum and teaching and program effectiveness; and
- 6. Document actions taken in faculty and committee meetings using a systematic plan of evaluation for total program review.

18VAC90-27-100. Curriculum for direct client care.

A. A nursing education program preparing a student for licensure as a registered nurse shall provide a minimum of 500 hours of direct client care supervised by qualified faculty. A nursing education program preparing a student for licensure as

a practical nurse shall provide a minimum of 400 hours of direct client care supervised by qualified faculty. Direct client care hours shall include experiences and settings as set forth in 18VAC90-27-90 B 1.

B. Licensed practical nurses transitioning into prelicensure registered nursing programs may be awarded no more than 150 clinical hours of the 400 clinical hours received in a practical nursing program. In a practical nursing to registered nursing transitional program, the remainder of the clinical hours shall include registered nursing clinical experience across the life cycle in adult medical/surgical nursing, maternal/infant (obstetrics, gynecology, neonatal) nursing, mental health/psychiatric nursing, and pediatric nursing.

C. Any observational experiences shall be planned in cooperation with the agency involved to meet stated course objectives. Observational experiences shall not be accepted toward the 400 or 500 minimum clinical hours required. Observational objectives shall be available to students, the clinical unit, and the board.

D. Simulation for direct client clinical hours.

1. No more than 25% of direct client contact hours may be simulation. For prelicensure registered nursing programs, the total of simulated client care hours cannot exceed 125 hours (25% of the required 500 hours). For prelicensure practical nursing programs, the total of simulated client care hours cannot exceed 100 hours (25% of the required 400 hours).

2. No more than 50% of the total clinical hours for any course may be used as simulation. If courses are integrated, simulation shall not be used for more than 50% of the total clinical hours in different clinical specialties and population groups across the life span.

3. Skills acquisition and task training alone, as in the traditional use of a skills laboratory, do not qualify as simulated client care and therefore do not meet the requirements for direct client care hours.

4. Clinical simulation must be led by faculty who meet the qualifications specified in 18VAC90-27-60. Faculty with education and expertise in simulation and in the applicable subject area must be present during the simulation experience.

5. Documentation of the following shall be available for all simulated experiences:

- a. Course description and objectives;
- b. Type of simulation and location of simulated experience;
- c. Number of simulated hours;
- d. Faculty qualifications; ~~and~~
- e. Methods of pre-briefing and debriefing;
- f. Evaluation of simulated experience; and

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g. Method to communicate student performance to clinical faculty.

VA.R. Doc. No. R20-5531; Filed December 2, 2021, 4:10 p.m.

Final Regulation

Title of Regulation: 18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-10, 18VAC90-30-220).

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Effective Date: February 2, 2022.

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 41 and 721 of the 2020 Acts of Assembly, the amendments (i) define conversion therapy as it is defined in § 54.1-2409.5 of the Code of Virginia and (ii) specify that the standard of practice for nurse practitioners prohibits a nurse practitioner from engaging in conversion therapy with a person younger than 18 years of age.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

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 [of the Code of Virginia].

"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.

"Conversion therapy" means any practice or treatment as defined in § 54.1-2409.5 A of the Code of Virginia.

"Licensed nurse practitioner" means an advanced practice registered nurse who has met the requirements for licensure as stated in Part II (18VAC90-30-60 et seq.) of this chapter.

"National certifying body" means a national organization that is accredited by an accrediting agency recognized by the U.S. Department of Education or deemed acceptable by the National Council of State Boards of Nursing and has as one of its purposes the certification of nurse anesthetists, nurse midwives, or nurse practitioners, referred to in this chapter as professional certification, and whose certification of such persons by examination is accepted by the committee.

"Patient care team physician" means a person who holds an active, unrestricted license issued by the Virginia Board of Medicine to practice medicine or osteopathic medicine.

"Practice agreement" means a written or electronic statement, jointly developed by the collaborating patient care team physician and the licensed nurse practitioner that describes the procedures to be followed and the acts appropriate to the specialty practice area to be performed by the licensed nurse practitioner in the care and management of patients. The

practice agreement also describes the prescriptive authority of the nurse practitioner, if applicable. For a nurse practitioner licensed in the category of certified nurse midwife, the practice agreement is a statement jointly developed with the consulting physician 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.

18VAC90-30-220. Grounds for disciplinary action against the license of a licensed nurse practitioner.

The boards may deny licensure or relicensure, revoke or suspend the license, or take other disciplinary action upon proof that the nurse practitioner:

1. Has had a license or multistate privilege to practice nursing in this Commonwealth or in another jurisdiction revoked or suspended or otherwise disciplined;
2. Has directly or indirectly represented to the public that the nurse practitioner is a physician, or is able to, or will practice independently of a physician;
3. Has exceeded the authority as a licensed nurse practitioner;
4. Has violated or cooperated in the violation of the laws or regulations governing the practice of medicine, nursing or nurse practitioners;
5. Has become unable to practice with reasonable skill and safety to patients as the result of a physical or mental illness or the excessive use of alcohol, drugs, narcotics, chemicals or any other type of material;
6. Has violated or cooperated with others in violating or attempting to violate any law or regulation, state or federal, relating to the possession, use, dispensing, administration or distribution of drugs;
7. Has failed to comply with continuing competency requirements as set forth in 18VAC90-30-105;
8. Has willfully or negligently breached the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful; ~~or~~
9. Has engaged in unauthorized use or disclosure of confidential information received from the Prescription Monitoring Program, the electronic system within the Department of Health Professions that monitors the dispensing of certain controlled substances; or
10. Has engaged in conversion therapy with a person younger than 18 years of age.

VA.R. Doc. No. R21-6476; Filed December 2, 2021, 4:11 p.m.

Final Regulation

Title of Regulation: **18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (adding 18VAC90-40-122).**

Statutory Authority: §§ 54.1-2400 and 54.1-3408.02 of the Code of Virginia.

Effective Date: February 2, 2022.

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:

The amendment adds a section to (i) reiterate the requirement that takes effect on July 1, 2020, that a prescription for a controlled substance that contains an opioid must be issued as an electronic prescription unless the prescriber qualifies for an exemption set out in the law and (ii) provides for a one-year waiver from the requirement if the practitioner can demonstrate economic hardship technological limitations or other exceptional circumstances beyond the practitioner's control.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

18VAC90-40-122. Waiver for electronic prescribing.

A. Beginning July 1, 2020, a prescription for a controlled substance that contains an opioid shall be issued as an electronic prescription consistent with § 54.1-3408.02 of the Code of Virginia, unless the prescription qualifies for an exemption as set forth in subsection C of § 54.1-3408.02.

B. Upon written request, the boards may grant a one-time waiver of the requirement of subsection A of this section for a period not to exceed one year, due to demonstrated economic hardship, technological limitations that are not reasonably within the control of the prescriber, or other exceptional circumstances demonstrated by the prescriber.

VA.R. Doc. No. R20-6115; Filed December 2, 2021, 4:12 p.m.

BOARD OF OPTOMETRY

Final Regulation

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-47).**

Statutory Authority: §§ 54.1-2400 and 54.1-3223 of the Code of Virginia.

Effective Date: February 2, 2022.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 597-4130, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

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Summary:

Pursuant to Chapter 664 of the 2019 Acts of Assembly, the amendments (i) reiterate the requirement that takes effect on July 1, 2020, that a prescription for a controlled substance that contains an opioid must be issued as an electronic prescription unless the prescriber qualifies for an exemption set out in the law; and (ii) provide for a one-year waiver from the requirement if the practitioner can demonstrate economic hardship technological limitations or other exceptional circumstances beyond the practitioner's control.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

18VAC105-20-47. Therapeutic pharmaceutical agents.

A. A TPA-certified optometrist, acting within the scope of his practice, may procure, administer, and prescribe medically appropriate therapeutic pharmaceutical agents (or any therapeutically appropriate combination thereof) to treat diseases and abnormal conditions of the human eye and its adnexa within the following categories:

1. Oral analgesics - Schedule II controlled substances consisting of hydrocodone in combination with acetaminophen and Schedules III, IV, and VI narcotic and nonnarcotic agents.
2. Topically administered Schedule VI agents:
 - a. Alpha-adrenergic blocking agents;
 - b. Alpha-adrenergic agonists;
 - c. Anesthetic (including esters and amides);
 - d. Anti-allergy (including antihistamines and mast cell stabilizers);
 - e. Anti-fungal;
 - f. Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);
 - g. Anti-infective (including antibiotics and antivirals);
 - h. Anti-inflammatory;
 - i. Cycloplegics and mydriatics;
 - j. Decongestants; and
 - k. Immunosuppressive agents.
3. Orally administered Schedule VI agents:
 - a. Aminocaproic acids (including antifibrinolytic agents);
 - b. Anti-allergy (including antihistamines and leukotriene inhibitors);
 - c. Anti-fungal;
 - d. Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);
 - e. Anti-infective (including antibiotics and antivirals);
 - f. Anti-inflammatory (including steroidal and nonsteroidal);

- g. Decongestants; and
- h. Immunosuppressive agents.

B. Schedules I, II, and V drugs are excluded from the list of therapeutic pharmaceutical agents with the exception of controlled substances in Schedule II consisting of hydrocodone in combination with acetaminophen and gabapentin in Schedule V.

C. Over-the-counter topical and oral medications for the treatment of the eye and its adnexa may be procured for administration, administered, prescribed, or dispensed.

D. Beginning July 1, 2020, a prescription for a controlled substance that contains an opioid shall be issued as an electronic prescription consistent with § 54.1-3408.02 of the Code of Virginia, unless the prescription qualifies for an exemption as set forth in subsection C of § 54.1-3408.02. Upon written request, the board may grant a one-time waiver of the requirement for electronic prescribing, for a period not to exceed one year, due to demonstrated economic hardship, technological limitations that are not reasonably within the control of the prescriber, or other exceptional circumstances demonstrated by the prescriber.

VA.R. Doc. No. R21-6199; Filed December 2, 2021, 4:12 p.m.

BOARD OF PHARMACY

Proposed Regulation

Titles of Regulations: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-150).**

18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (adding 18VAC110-21-46).

Statutory Authority: §§ 54.1-2400 and 54.1-3303.1 of the Code of Virginia.

Public Hearing Information:

February 7, 2022 - 8:45 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Commonwealth Conference Center, Suite 201, Board Room 2, Henrico, VA 23233.

Public Comment Deadline: March 4, 2022.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system. The specific statutory mandate for regulations governing the initiation of treatment by pharmacists with certain drugs and devices is found in § 54.1-3303.1 of the Code of Virginia.

Purpose: The purpose of the regulation is to ensure that a pharmacist who initiates treatment for patients follows a protocol that would render such dispensing to be low risk for patient harm. The rules establishing protocols, appropriate notification of primary care providers, maintenance of records, and patient privacy are necessary to ensure this activity protects the health and safety of patients who receive such treatment from pharmacists.

Substance: The substantive provision in the proposed regulation is the addition of 18VAC110-21-46, which sets out the listing of drugs and devices a pharmacist is authorized to initiate under § 54.1-3303.1 of the Code of Virginia and the requirements for such initiation of treatment, including adherence to established protocols, notification to medical providers, maintenance of records, and protection of patient privacy.

Issues: The advantage to the public will be access to certain prescription drugs and devices directly from a pharmacist rather than being required to go to a health care practitioner with prescriptive authority and incur additional cost. There should be no disadvantages to the public. A pharmacist who follows the protocols established for initiation of treatment would be providing drugs and devices that are considered to be low risk for any patient harm. There are no advantages or disadvantages to this agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 731 of the 2020 Acts of Assembly (legislation), an emergency regulation became effective on January 3, 2021, that allows pharmacists to dispense and administer certain drugs and devices to persons 18 years of age or older in accordance with specified requirements.

The emergency regulation will expire on July 2, 2022. Also pursuant to the legislation, the Board of Pharmacy proposes to replace the emergency regulation with an identical permanent regulation.

Background. Amongst other new text, Chapter 731 added the following to the Code of Virginia:

"§ 54.1-3303.1. Initiating of treatment with and dispensing and administering of controlled substances by pharmacists.

A. Notwithstanding the provisions of § 54.1-3303, a pharmacist may initiate treatment with, dispense, or administer the following drugs and devices to persons 18 years of age or older in accordance with a statewide protocol developed by the Board in collaboration with the Board of Medicine and the Department of Health and set forth in regulations of the Board:

1. Naloxone or other opioid antagonist, including such controlled paraphernalia, as defined in § 54.1-3466, as may be necessary to administer such naloxone or other opioid antagonist;

2. Epinephrine;

3. Injectable or self-administered hormonal contraceptives, provided the patient completes an assessment consistent with the United States Medical Eligibility Criteria for Contraceptive Use;

4. Prenatal vitamins for which a prescription is required;

5. Dietary fluoride supplements, in accordance with recommendations of the American Dental Association for prescribing of such supplements for persons whose drinking water has a fluoride content below the concentration recommended by the U.S. Department of Health and Human Services; and

6. Medications covered by the patient's health carrier when the patient's out-of-pocket cost is lower than the out-of-pocket cost to purchase an over-the-counter equivalent of the same drug."

The proposed regulation is essentially identical to the legislative text. As instructed by the legislation, statewide protocols were developed by the Board in collaboration with the Board of Medicine and the Department of Health for all of the drugs and devices listed. These protocols are currently posted on the Board's website.¹

Chapter 731 also added the following to § 54.1-3303.1.

"B. A pharmacist who initiates treatment with or dispenses or administers a drug or device pursuant to this section shall notify the patient's primary health care provider that the pharmacist has initiated treatment with such drug or device or that such drug or device has been dispensed or administered to the patient, provided that the patient consents to such notification. If the patient does not have a primary health care provider, the pharmacist shall counsel the patient regarding the benefits of establishing a relationship with a primary health care provider and, upon request, provide information regarding primary health care providers, including federally qualified health centers, free clinics, or local health departments serving the area in which the patient is located. If the pharmacist is initiating treatment with, dispensing, or administering injectable or self-administered hormonal contraceptives, the pharmacist shall counsel the patient regarding seeking preventative care, including (i) routine well-woman visits, (ii) testing for sexually transmitted infections, and (iii) pap smears."

Again, the proposed regulation is essentially identical to the legislative text.

Estimated Benefits and Costs. By mirroring the legislation, the proposed regulation essentially confers the same benefits found in the statute. Namely, by allowing pharmacists to dispense and administer the specified drugs and devices, patients potentially benefit in three ways: 1) saving the time required to obtain and go to a doctor's appointment in order to get a prescription, 2) saving the fees associated with the doctor's appointment, and 3) reducing the cost of obtaining

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medications covered by the patient's health carrier when the patient's out-of-pocket cost is lower than the out-of-pocket cost to purchase an over-the-counter equivalent of the same drug.

Naloxone is an opioid antagonist used for the complete or partial reversal of opioid overdose, including respiratory depression.² Epinephrine is used in emergencies to treat very serious allergic reactions to insect stings/bites, foods, drugs, or other substances. Epinephrine acts quickly to improve breathing, stimulate the heart, raise a dropping blood pressure, reverse hives, and reduce swelling of the face, lips, and throat.³ Enabling pharmacists to administer these drugs without a physician's prescription could potentially be lifesaving in some circumstances.

The protocols jointly created with the Board of Medicine and the Department of Health for the pharmacists to follow should help minimize risk that pharmacists would improperly initiate treatment with, dispense, or administer the specified drugs and devices. The requirement in the new § 54.1-3303.1 that the pharmacist who initiates treatment with or dispenses or administers the specified drugs or devices notifies the patient's primary health care provider, provided that the patient consents to such notification, should help continuity of care. Likewise, the requirements that if: 1) the patient does not have a primary health care provider, the pharmacist counsels the patient regarding the benefits of establishing a relationship with a primary health care provider and, upon request, provide information regarding primary health care providers, and 2) the pharmacist is initiating treatment with, dispensing, or administering injectable or self-administered hormonal contraceptives, the pharmacist counsels the patient regarding seeking preventative care, including (i) routine well-woman visits, (ii) testing for sexually transmitted infections, and (iii) pap smears, should help encourage patients to pursue and find appropriate ongoing health care services.

Businesses and Other Entities Affected. There are approximately 8,600 licensed pharmacists with a Virginia address and 1,789 pharmacies in the Commonwealth.⁴ It is unclear how many pharmacists and pharmacies will choose to provide this service to their patients. Only those that elect to initiate treatment for patients would be affected by the legislation and proposed amendments to the regulation.

Since the administering of the specified drugs and devices would be optional for pharmacists, the proposal does not produce any costs.

Small Businesses⁵ Affected. The proposed amendments do not appear to adversely affect small businesses.

Localities⁶ Affected.⁷ Localities with comparatively high opioid addiction rates may be particularly affected in that pharmacists could administer naloxone to someone brought into their pharmacy experiencing an opioid overdose. The proposal does not introduce costs for local governments.

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

Effects on the Use and Value of Private Property. The legislation and the proposed regulation would likely spur some pharmacists to dispense and administer some, in not all of the

drugs and devices specified in the legislation and proposed regulation. This may have a moderate positive impact on the value of the associated pharmacies. The proposed amendments do not affect real estate development costs.

¹See <https://www.dhp.virginia.gov/Pharmacy/>

²Source: www.rxlist.com

³Source: www.webmd.com

⁴Source: Department of Health Professions

⁵Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

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

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

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

Summary:

Pursuant to Chapter 713 of the 2020 Acts of Assembly, the proposed amendments (i) list drugs and devices that may be initiated by a pharmacist for a patient older than 18 years of age and (ii) provide the protocol to notify a primary care provider, maintain patient records, and protect patient privacy.

18VAC110-20-150. Physical standards for all pharmacies.

A. The prescription department shall not be less than 240 square feet. The patient waiting area or the area used for counseling, devices, cosmetics, and proprietary medicines shall not be considered a part of the minimum 240 square feet. The total area shall be consistent with the size and scope of the services provided.

B. Access to stock rooms, rest rooms, and other areas other than an office that is exclusively used by the pharmacist shall not be through the prescription department. A rest room in the prescription department, used exclusively by pharmacists and personnel assisting with dispensing functions, may be allowed provided there is another rest room outside the prescription department available to other employees and the public. This subsection shall not apply to prescription departments in existence prior to November 4, 1993.

C. The pharmacy shall be constructed of permanent and secure materials. Trailers or other moveable facilities or temporary construction shall not be permitted.

D. The entire area of the location of the pharmacy practice, including all areas where drugs are stored, shall be well lighted and well ventilated; the proper storage temperature shall be maintained to meet USP-NF specifications for drug storage.

E. The prescription department counter work space shall be used only for the compounding and dispensing of drugs and necessary recordkeeping.

F. A sink with hot and cold running water shall be within the prescription department. A pharmacy issued a limited-use permit that does not stock prescription drugs as part of its operation is exempt from this requirement.

G. Adequate refrigeration facilities equipped with a monitoring thermometer for the storage of drugs requiring cold storage temperature shall be maintained within the prescription department if the pharmacy stocks such drugs.

H. A pharmacy stocking drugs requiring cold storage temperature shall record the temperature daily and adjust the thermostat as necessary to ensure an appropriate temperature range. The record shall be maintained manually or electronically for a period of two years.

I. The physical settings of a pharmacy in which a pharmacist initiates treatment with, dispenses, or administers drugs and devices pursuant to § 54.1-3303.1 of the Code of Virginia and 18VAC110-21-46 shall protect patient confidentiality and comply with the Health Insurance Portability and Accountability Act, 42 USC § 1320d et seq.

18VAC110-21-46. Initiation of treatment by a pharmacist.

A. Pursuant to § 54.1-3303.1 of the Code of Virginia, a pharmacist may initiate treatment with, dispense, or administer the following drugs and devices to persons 18 years of age or older:

1. Naloxone or other opioid antagonist, including such controlled paraphernalia as defined in § 54.1-3466 of the Code of Virginia as may be necessary to administer such naloxone or other opioid antagonist;
2. Epinephrine;
3. Injectable or self-administered hormonal contraceptives, provided the patient completes an assessment consistent with the United States Medical Eligibility Criteria for Contraceptive Use;
4. Prenatal vitamins for which a prescription is required;
5. Dietary fluoride supplements, in accordance with recommendations of the American Dental Association for prescribing of such supplements for persons whose drinking water has a fluoride content below the concentration recommended by the U.S. Department of Health and Human Services; and
6. Medications covered by the patient's health carrier when the patient's out-of-pocket cost is lower than the out-of-pocket cost to purchase an over-the-counter equivalent of the same drug.

B. Pharmacists who initiate treatment with, dispense, or administer a drug or device pursuant to subsection A of this section shall:

1. Follow the statewide protocol adopted by the board for each drug or device.
2. Notify the patient's primary health care provider that treatment has been initiated with such drug or device or that such drug or device has been dispensed or administered to the patient, provided that the patient consents to such notification. If the patient does not have a primary health care provider, the pharmacist shall counsel the patient regarding the benefits of establishing a relationship with a primary health care provider and, upon request, provide information regarding primary health care providers, including federally qualified health centers, free clinics, or local health departments serving the area in which the patient is located. If the pharmacist is initiating treatment with, dispensing, or administering injectable or self-administered hormonal contraceptives, the pharmacist shall counsel the patient regarding seeking preventative care, including (i) routine well-woman visits, (ii) testing for sexually transmitted infections, and (iii) pap smears.
3. Maintain a patient record for a minimum of six years following the last patient encounter with the following exceptions:
 - a. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or the patient's personal representative; or
 - b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.
4. Perform the activities in a manner that protects patient confidentiality and complies with the Health Insurance Portability and Accountability Act, 42 USC § 1320d et seq.

VA.R. Doc. No. R21-6488; Filed December 6, 2021, 11:24 a.m.

Proposed Regulation

Titles of Regulations: 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-111).

18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (amending 18VAC110-21-10, 18VAC110-21-20, 18VAC110-21-40, 18VAC110-21-140, 18VAC110-21-150, 18VAC110-21-170, 18VAC110-21-180; adding 18VAC110-21-135, 18VAC110-21-141; repealing 18VAC110-21-160).

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

Public Hearing Information:

February 7, 2022 - 8:45 a.m. - Department of Health Professions, Perimeter Center, Commonwealth Conference

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Center, 9960 Mayland Drive, Suite 201, Board Room 2, Henrico, VA 23233

Public Comment Deadline: March 4, 2022.

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

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system. The specific statutory provisions for regulations governing registration of pharmacy technician trainees and pharmacy technicians are found in § 54.1-3321 of the Code of Virginia.

Purpose: The purpose of the regulation is to establish the requirements for registration of a pharmacy technician trainee and for the education and examination for persons registered as pharmacy technicians to ensure they can perform dispensing functions with the competency necessary for the safety and integrity of prescription drugs.

Substance: The substantive provisions of this regulatory action are the addition of (i) 18VAC110-21-135, which establishes the requirements for registration as a pharmacy technician trainee for a person enrolled in a training program and engaging in tasks that may be delegated under supervision to a technician, and (ii) 18VAC110-21-141, which sets out the requirements for registration that will be effective on July 1, 2022, including accreditation of training programs.

Issues: The advantage to the public will be more consistent training and examination of pharmacy technicians who play a vital role in filling and dispensing of prescription medications. There will also be accountability to the board for persons who are performing technician tasks while in training. There should be no disadvantages to the public. There are no advantages or disadvantages to this agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to a 2020 legislative mandate, the Board of Pharmacy (Board) proposes to amend the training requirements for pharmacy technicians in 18VAC110-21 Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (regulation).¹ Specifically, the Board seeks to: (i) create a new requirement for the registration of pharmacy technician trainees, and (ii) specify accreditation requirements for pharmacy technician training programs. The registration requirement for pharmacy technician trainees became effective on January 3, 2021, through an emergency regulation.² The accreditation requirements for training programs will become effective July 1, 2022. The Board also proposes to amend 18VAC110-20 Regulations Governing the Practice of Pharmacy to update the requirements for

pharmacies that hire pharmacy technician trainees such that they reflect the new trainee registration requirements.

Background. Chapters 102 and 237 of the 2020 Acts of Assembly define the term "pharmacy technician trainee" and update the requirements for individuals who wish to be registered as pharmacy technicians.³ Under the new legislation, pharmacy technicians must demonstrate successful completion of a pharmacy technician training program that is either (i) accredited by a body approved by the Board, or (ii) accredited by the Department of Education's Career and Technical Education program, or (iii) operated through a federal agency or branch of the military. The applicant must also provide evidence of passing a national certification examination administered by the Pharmacy Technician Certification Board (PTCB) or the National Healthcareer Association (NHA). The required accreditation of pharmacy technician training programs has a delayed effective date of July 1, 2022.

In keeping with the mandate, the Board proposes to maintain the current pharmacy technician registration requirements until July 1, 2022, under which pharmacy technicians must provide evidence of (i) completing a board-approved training program and passing a board-approved examination, OR (ii) passing a national certification examination administered by the PTCB or NHA.

The Board also proposes to add a new section 141, which would become effective July 1, 2022. In addition to the existing requirements to submit an application and a fee, the Board would now require that the applicant provide evidence of passing a national certification examination administered by the PTCB or the NHA. In addition, pharmacy technician applicants would be required to demonstrate successful completion of a pharmacy technician training program that is either (i) jointly accredited by the American Society of Health System Pharmacists (ASHP) and Accreditation Council for Pharmacy Education (ACPE), or (ii) accredited by the Department of Education's Career and Technical Education program, or (iii) operated through a federal agency or branch of the military, or (iv) accredited by another body approved by the Board. The Board reports that ASHP and ACPE were approved as the accreditation bodies because their joint accreditation program is the only one currently available for pharmacy technician training programs. However, option (iv) retains some flexibility for the Board to approve other accrediting bodies in the future.

Further, in accordance with the legislation, the proposed amendments would allow individuals who complete or are enrolled in a board-approved (but not necessarily accredited) pharmacy technician training program as of July 1, 2022, to register provided they pass the PTCB or NHA examinations. Similarly, individuals who obtain PTCB or NHA certification prior to July 1, 2022, would be allowed to register after that date even if they had not completed an accredited training program. Lastly, pharmacy technicians who had previously practiced in other states would be allowed to register in

Virginia upon documentation of previous practice and having passed the PTCB or NHA examinations.

The legislation also outlines the requirements for registration as a pharmacy technician trainee, and provided the Board with the authority to promulgate emergency regulations. To implement the requirements outlined in the legislation, the Board proposes to add a new section 135 Registration as a pharmacy technician trainee, which establishes registration as a requirement that must be fulfilled before a trainee can engage in any practical work experience as a pharmacy technician. The proposed language specifies that in order to be eligible to register as a pharmacy technician trainee the applicant shall already be enrolled in a pharmacy technician training program. However, it does not specifically require that the program be accredited, which allows individuals currently enrolled in non-accredited but Board-approved programs to register and complete the practical experience requirement of their training. Prior to the emergency regulation, pharmacy technician trainees who were enrolled in Board-approved training programs could perform pharmacy technician duties under a pharmacist's supervision for up to nine consecutive months to obtain practical experience as part of their training. The onus of enforcing the nine-month limit and ensuring that the individual was still enrolled and progressing towards completion of the training program fell on the pharmacies that employed trainees. The proposed language in section 135 specifies that the registration be assigned an expiration date not to exceed two years, which is intended to allow sufficient time for trainees to meet the practical training requirements of the training program in which they are enrolled. The language makes clear that the registration would be invalid if the trainee were no longer enrolled in the training program for any reason and that trainees cannot be employed without registration.

Estimated Benefits and Costs. Pharmacy technician training programs would incur the costs of accreditation, which they are likely to pass at least partially on to individuals seeking to obtain training. The Department of Health Professions (DHP) reports that many of the 119 pharmacy technician training programs currently approved by the Board are run by pharmacy chains or hospital systems and are already accredited by ASHP/ACPE.⁴ DHP also reports that the initial application fees for accreditation range from \$720 per hospital to \$6,000 for distance learning programs to \$10,000 for retail pharmacy chains. Pharmacy technician trainees would incur a \$20 fee for registration, and may face higher training costs due to the accreditation requirements. However, DHP reports that distance learning is a popular option for pharmacy technician training for individuals who may not be able to access it through employment at a pharmacy chain or hospital system, and that most distance learning programs are already accredited.

Because the proposed regulatory text closely mirrors the legislation, the benefits of the proposed amendments are mainly to conform the regulation to the Code of Virginia. The

Board states that the public would benefit from more consistent training and examination of pharmacy technicians, who play a vital role in filling and dispensing of prescription medications, as well as accountability for persons who are performing technician tasks while in training.

Businesses and Other Entities Affected. The proposed amendments primarily affect current and future pharmacy technician trainees, individuals seeking to register as pharmacy technicians on or after July 1, 2022, and pharmacy technician training programs. Current and future pharmacy technician trainees would be affected by the registration requirements. DHP reports that 845 trainees had registered as of March 31, 2021. Individuals considering pharmacy technician training in the future would be affected by the accreditation requirements, to the extent that those requirements change the options available to them for obtaining training. DHP reports that there are currently 119 Board-approved pharmacy technician training programs, but did not have information on how many of those programs were already accredited or how many were affiliated with a hospital, a retail pharmacy, or provided distance learning.

Small Businesses⁵ Affected. The proposed amendments are unlikely to adversely affect any small businesses. Pharmacies in Virginia that are independently operated small businesses would benefit from standardized education requirements for pharmacy technicians to the extent that it results in a better-trained pool of potential employees.

Localities⁶ Affected.⁷ The proposed amendments do not introduce new costs for local governments and are unlikely to affect any locality in particular.

Projected Impact on Employment. The proposed amendments are unlikely to impact the number of pharmacy technicians in the workforce or the employment rates of pharmacy technicians.

Effects on the Use and Value of Private Property. The proposed amendments would not affect the use or value of private property. Real estate development costs are not affected.

¹See <https://townhall.virginia.gov/l/viewmandate.cfm?mandateid=1058> for information on the mandate.

²The emergency regulation took effect on January 3, 2021 and expires on July 2, 2022. See <https://townhall.virginia.gov/l/ViewStage.cfm?stageid=9137>.

³See <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=ch102> and <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=ch237>, respectively.

⁴Agency Background Document, page 8. See https://townhall.virginia.gov/l/GetFile.cfm?File=30\5603\9243\AgencyStatement_DHP_9243_v1.pdf.

⁵Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

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

Regulations

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

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

Summary:

The proposed amendments conform regulation to Chapters 102 and 237 of the 2020 Acts of Assembly, including (i) establishing the requirements for registration as a pharmacy technician trainee for a person enrolled in a training program and engaging in tasks that may be delegated to a technician; (ii) specifying the certification examinations that are acceptable for registration as a pharmacy technician; and (iii) setting out the requirement for accreditation of training programs that will become effective on July 1, 2022.

18VAC110-20-111. Pharmacy technicians.

A. Every pharmacy that employs or uses pharmacy technicians shall maintain a site-specific training program and manual for training pharmacy technicians to work at that pharmacy. The program shall include training consistent with that specific pharmacy practice to include, ~~but not be limited to,~~ training in proper use of site-specific computer programs and equipment, proper use of other equipment used at the pharmacy in performing technician duties, and pharmacy calculations consistent with the duties at that pharmacy.

B. Every pharmacy shall maintain documentation of successful completion of the site specific training program for each pharmacy technician for the duration of the employment and for a period of two years from date of termination of employment. Documentation for currently employed pharmacy technicians shall be maintained on site or at another location where the records are readily retrievable upon request for inspection. After employment is terminated, such documentation may be maintained at an off-site location where it is retrievable upon request.

C. Every pharmacy that employs or uses a person enrolled in ~~an approved~~ a pharmacy technician training program pursuant to § 54.1-3321 ~~of~~ of the Code of Virginia shall allow such person to conduct tasks restricted to pharmacy technicians ~~for no more than nine months without that person becoming registered as a pharmacy technician with the board as set forth in 18VAC110-20-101. Every pharmacy using such a person shall have documentation on site and available for inspection showing that the person is currently enrolled in an approved training program and the start date for each pharmacy technician in training only if the person is currently registered as a pharmacy technician trainee.~~

18VAC110-21-10. Definitions.

In addition to words and terms defined in §§ 54.1-3300 and 54.1-3401 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"ACPE" means the Accreditation Council for Pharmacy Education.

"ASHP" means the American Society of Health-System Pharmacists.

"Board" means the Virginia Board of Pharmacy.

"CE" means continuing education as required for renewal of licensure by the board.

"CEU" means a continuing education unit awarded for credit as the equivalent of 10 contact hours.

"Contact hour" means the amount of credit awarded for 60 minutes of participation in and successful completion of a continuing education program.

"Foreign school of pharmacy" means a school outside the United States and its territories offering a course of study in basic sciences, pharmacology, and pharmacy of at least four years in duration resulting in a degree that qualifies a person to practice pharmacy in that country.

"FPGEC certificate" means the certificate given by the Foreign Pharmacy Equivalency Committee of NABP that certifies that the holder of such certificate has passed the Foreign Pharmacy Equivalency Examination and a credential review of foreign training to establish educational equivalency to board approved schools of pharmacy and has passed approved examinations establishing proficiency in English.

"Inactive license" means a license that is registered with the Commonwealth but does not entitle the licensee to practice, and the holder of which is not required to submit documentation of CE necessary to hold an active license.

"NABP" means the National Association of Boards of Pharmacy.

"NHA" means National Healthcareer Association.

"Pharmacy technician trainee" means a person who is registered with the board and is currently enrolled in an approved pharmacy technician training program ~~and is performing to perform~~ duties restricted to pharmacy technicians for the purpose of obtaining practical experience in accordance with provisions of subsection G of § 54.1-3321 ~~of~~ of the Code of Virginia.

"PTCB" means the Pharmacy Technician Certification Board, co-founded by the American Pharmaceutical Association and the American Society of Health System Pharmacists, as the national organization for the voluntary examination and certification of pharmacy technicians.

18VAC110-21-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Unless otherwise provided, any fees for taking required examinations shall be paid directly to the examination service as specified by the board.

C. Initial application fees.

1. Pharmacist license	\$235
2. Pharmacy intern registration	\$20
3. <u>Pharmacy technician trainee registration</u>	<u>\$20</u>
4. Pharmacy technician registration	\$35
4. <u>5.</u> Approval of a pharmacy technician training program	\$200
5. <u>6.</u> Approval of a continuing education program	\$130

D. Annual renewal fees.

1. Pharmacist active license – due no later than December 31	\$120
2. Pharmacist inactive license – due no later than December 31	\$60
3. Pharmacy technician registration – due no later than December 31	\$35
4. Pharmacy technician training program	\$100 every two years

E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license or registration within one year of the expiration date or within two years in the case of a pharmacy technician training program. In addition, engaging in activities requiring a license or registration after the expiration date of such license or registration shall be grounds for disciplinary action by the board.

1. Pharmacist license	\$40
2. Pharmacist inactive license	\$20
3. Pharmacy technician registration	\$15
4. Pharmacy technician training program	\$20

F. Reinstatement fees. Any person or entity attempting to renew a license or registration more than one year after the expiration date, or more than two years after the expiration date in the case of a pharmacy technician training program, shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

1. Pharmacist license	\$275
2. Pharmacist license after revocation or suspension	\$650
3. Pharmacy technician registration	\$45
4. Pharmacy technician <u>or pharmacy technician trainee</u> registration after revocation or suspension	\$165
5. A pharmacy technician training program that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus a reinstatement fee of \$75. A pharmacy technician training program that ceases operation and wishes to resume shall not be eligible for reinstatement but shall apply for a new registration.	

G. Miscellaneous fees.

1. Duplicate wall certificate	\$50
2. Returned check	\$35
3. Duplicate license or registration	\$15
4. Verification of licensure or registration	\$35

18VAC110-21-40. Unprofessional conduct.

The following practices shall constitute unprofessional conduct within the meaning of § 54.1-3316 of the Code of Virginia:

1. Failing to comply with provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records or related to providing patient records to another practitioner or to the patient or the patient's personal representative;
2. Willfully or negligently breaching the confidentiality of a patient unless otherwise required or permitted by applicable law;
3. Failing to maintain the confidentiality of information received from the Prescription Monitoring Program, obtaining such information for reasons other than to assist in determining the validity of a prescription to be filled, or misusing information received from the program;
4. Engaging in disruptive or abusive behavior in a pharmacy or other health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient;

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5. Engaging or attempting to engage in a relationship with a patient that constitutes a professional boundary violation in which the practitioner uses his professional position to take advantage of the vulnerability of a patient or the patient's family, including sexual misconduct with a patient or a member of the patient's family or other conduct that results or could result in personal gain at the expense of the patient;
6. Failing to maintain adequate safeguards against the diversion of controlled substances;
7. Failing to appropriately respond to a known dispensing error in a manner that protects the health and safety of the patient;
8. Delegating a task within the practice of pharmacy to a person who is not adequately trained to perform such a task;
9. Failing by the pharmacist in charge to ensure that pharmacy interns ~~and~~, pharmacy technicians, and pharmacy technician trainees working in the pharmacy are registered and that such registration is current;
10. Failing to exercise professional judgment in determining whether a prescription meets the requirements of law before dispensing;
11. Obtaining money or property of a patient or client by fraud or misrepresentation;
12. Providing false information or failing to cooperate with an employee of the Department of Health Professions in the conduct on an investigation or inspection;
13. Violating any provision of this chapter, 18VAC110-20, or Chapter 33 (§ 54.1-3300 et seq.) or 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia;
14. Performing any act likely to deceive, defraud, or harm the public; or
15. Having a restriction of a license to practice pharmacy or a registration as a pharmacy technician in another jurisdiction in the United States.

18VAC110-21-135. Registration as a pharmacy technician trainee.

A. A person desiring to gain practical pharmacy experience toward completion of a pharmacy technician training program in Virginia shall first register with the board as a pharmacy technician trainee on a form provided by the board prior to engaging in the duties of a pharmacy technician pursuant to § 54.1-3321 of the Code of Virginia.

B. In order to be eligible to register as a pharmacy technician trainee, an applicant shall be enrolled in a pharmacy technician training program. An expiration date, not to exceed two years, shall be assigned to the registration to cover the estimated time period for the trainee to complete the practical pharmacy experience required for completion of the training program and pass the required examination. If the trainee is no longer

enrolled in the training program, takes a voluntary break from the program, or is otherwise not actively progressing toward completion of such program, the registration is no longer valid and shall be returned to the board immediately.

C. A pharmacy technician trainee shall be directly monitored by a supervising pharmacist who holds a current active license and assumes full responsibility for the training and supervision of the trainee.

D. A pharmacy technician trainee shall notify the board in writing of any change in address of record within 14 days of such change.

18VAC110-21-140. Application for registration as a pharmacy technician (Effective until July 1, 2022).

A. Any person wishing to apply for registration as a pharmacy technician shall submit the application fee and an application on a form approved by the board.

B. To be registered as a pharmacy technician, an applicant shall provide evidence of the following:

1. Satisfactory completion of a board-approved training program; and
2. A passing score on a board-approved examination.

C. In lieu of the requirements of subsection B of this section, an applicant may provide evidence of current PTCB certification or NHA certification.

~~D. A pharmacy technician trainee enrolled in an approved pharmacy technician training program pursuant to § 54.1-3321 of the Code of Virginia may perform tasks restricted to pharmacy technicians for no more than nine consecutive months from the date the trainee begins performing duties restricted to a pharmacy technician without becoming registered as a pharmacy technician.~~

18VAC110-21-141. Requirements for pharmacy technician training (Effective July 1, 2022).

A. Any person wishing to apply for registration as a pharmacy technician shall submit the application fee and an application on a form approved by the board.

B. To be registered as a pharmacy technician, an applicant shall provide evidence of the following:

1. Completion of a pharmacy technician training program that is:
 - a. Jointly accredited by the ASHP and ACPE;
 - b. An accredited training program operated through the Department of Education's Career and Technical Education Program;
 - c. Operated through a federal agency or branch of the military; or
 - d. Accredited by an accreditation body approved by the board.

2. Successfully having passed a national certification examination administered by PTCB or NHA.

C. A pharmacy technician who has previously practiced in another United States jurisdiction may be eligible to obtain registration as a pharmacy technician upon documentation of previous practice and having passed a national certification examination administered by PTCB or NHA.

D. A person who successfully completed or was enrolled in a board-approved pharmacy technician training program but did not successfully pass a national examination prior to July 1, 2022, may be eligible to obtain registration as a pharmacy technician after successfully passing a national certification examination administered by PTCB or NHA and submitting to the board documentation of such completion or enrollment in a board-approved pharmacy technician training program and passing examination score.

E. A person who passed a national certification examination administered by PTCB or NHA but did not complete a board-approved pharmacy technician training program prior to July 1, 2022, may be eligible to obtain registration as a pharmacy technician upon documentation of having passed such examination.

18VAC110-21-150. Criteria for approval for training programs (Effective until July 1, 2022).

A. Any person wishing to apply for approval of a pharmacy technician training program shall submit the application fee, a sample certificate, and an application on a form approved by the board and meet the criteria established in this section.

B. The curriculum of a training program for pharmacy technicians shall include instruction in applicable current laws and regulations and in the tasks that may be performed by a pharmacy technician to include the following or any other task restricted to pharmacy technicians in regulation:

1. The entry of prescription information and drug history into a data system or other recordkeeping system;
2. The preparation of prescription labels or patient information;
3. The removal of the drug to be dispensed from inventory;
4. The counting, measuring, or compounding of the drug to be dispensed;
5. The packaging and labeling of the drug to be dispensed and the repackaging thereof;
6. The stocking or loading of automated dispensing devices or other devices used in the dispensing process; and
7. The acceptance of refill authorization from a prescriber or the prescriber's authorized agent provided there is no change to the original prescription.

C. Each program shall have a program director who shall be either (i) a pharmacist with a current license in any jurisdiction and who is not currently suspended or revoked in any jurisdiction in the United States; (ii) a pharmacy technician with at least one year of experience performing technician tasks who holds a current registration in Virginia or current PTCB certification and who is not currently suspended or revoked as a pharmacy technician in any jurisdiction; or (iii) other person approved and deemed qualified by the board to be a program director.

D. Instructors for the core components listed in subsection B of this section shall meet the requirements for the program director listed in subsection C of this section. The program director may serve as an instructor.

E. The length of the program shall be sufficient to prepare a program participant to sit for the board-approved examination and demonstrate entry-level competency.

F. The program shall maintain records of program participants either on site or at another location where the records are readily retrievable upon request for inspection. A program shall provide a certificate of completion, including the program approval number, to participants who successfully complete the program and provide verification of completion of the program for a participant upon request by the board. Records shall be maintained for two years from date of completion or termination of program.

G. The program shall report within 14 days any substantive change in the program to include a change in program name, program certificate, program director, instructors, name of institution or business if applicable, address, program content, length of program, or location of records.

H. A pharmacy technician training program approval expires after two years, after which the program may apply for renewal. For continued approval, the program shall submit the renewal application, renewal fee, and a self-evaluation report on a form provided by the board at the time of renewal notification. Renewal of a program's approval is at the discretion of the board, and the decision to renew shall be based on documentation of continued compliance with the criteria set forth in this section.

18VAC110-21-160. Examination. (Repealed.).

~~A. The board shall approve one or more examinations to test entry level competency for pharmacy technicians. In order to be approved, a competency examination shall be developed in accordance with and meet the recognized acceptable test measurement standards of the Joint Technical Standards for Education and Psychological Testing (American Psychological Association, current edition), and shall be administered by an independent third party.~~

Regulations

~~B. The board may contract with an examination service for the development and administration of a competency examination.~~

~~C. The board shall determine the minimum passing standard on the competency examination.~~

~~D. Any requests for testing accommodations under the Americans with Disabilities Act shall be in accordance with the provisions of 18VAC110-21-80 F.~~

18VAC110-21-170. Renewal and reinstatement of registration.

A. Pharmacy technician registrations expire on December 31 and shall be renewed annually prior to that date by the submission of a renewal fee, renewal form, and an e-profile number issued by NABP. A pharmacy technician newly registered on or after July 1 shall not be required to renew that registration until December 31 of the following year. Failure to receive the application for renewal shall not relieve the pharmacy technician of the responsibility for renewing the registration by the expiration date.

B. A pharmacy technician who fails to renew his registration by the expiration date may renew his registration at any time within one year of its expiration by submission of the renewal fee and late fee, renewal form, and attestation of having met the continuing education requirements.

C. A pharmacy technician who fails to renew his registration for more than one year following expiration and who wishes to reinstate such registration shall submit an application for reinstatement, pay the current renewal fee and a reinstatement fee, and submit documentation showing compliance with continuing education requirements. Reinstatement is at the discretion of the board and may be granted by the executive director of the board provided no grounds exist to deny said reinstatement. Practicing as a pharmacy technician with a lapsed registration shall be illegal and may subject the registrant to disciplinary action by the board.

~~D. A person who fails to reinstate a pharmacy technician registration within five years of expiration shall not be eligible for reinstatement and shall repeat an approved training program and repeat and pass the examination or hold current PTCB certification before applying to be reregistered;~~

~~1. Take and pass a national certification examination administered by PTCB or NHA;~~

~~2. Document completion of 20 hours of continuing education; and~~

~~3. Pay the current renewal fee and a reinstatement fee.~~

18VAC110-21-180. Requirements for continued competency.

A. A pharmacy technician shall be required to have completed a minimum of 0.5 CEUs or five contact hours of

approved continuing education for each annual renewal of registration. Hours in excess of the number required for renewal may not be transferred or credited to another year.

B. An approved continuing education program shall meet the requirements as set forth in 18VAC110-21-120 B or 18VAC110-21-130 B.

C. Upon written request of a pharmacy technician, the board may grant an extension of up to one year in order for the pharmacy technician to fulfill the continuing education requirements for the period of time in question. The granting of an extension shall not relieve the pharmacy technician from complying with current year requirements. Any subsequent extension shall be granted for good cause shown.

D. Up to one hour of the five hours required for annual renewal may be satisfied through delivery of pharmacy services as a pharmacy technician, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

E. ~~Original documentation~~ Documentation showing successful completion of continuing education programs shall be maintained by the pharmacy technician for a period of two years following the renewal of his registration. The pharmacy technician shall provide such documentation to the board upon request in a manner to be determined by the board.

VA.R. Doc. No. R20-6513; Filed December 6, 2021, 11:25 a.m.

Action Withdrawn

Title of Regulation: **18VAC110-60, Regulations Governing Pharmaceutical Processors.**

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

The Board of Pharmacy has WITHDRAWN the regulatory action for **18VAC110-60, Regulations Governing Pharmaceutical Processors**, which was published as a Notice of Intended Regulatory Action in [37:14 VA.R. 1465 March 1, 2021](#). The action was initiated to consider amendments requested in a petition for rulemaking from the Virginia Medical Cannabis Coalition affecting the operation of pharmaceutical processors. The action is being withdrawn because all of the matters included in the Notice of Intended Regulatory Action have now been addressed through either legislative or regulatory actions.

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

VA.R. Doc. No. R20-59; Filed December 7, 2021, 2:42 p.m.

BOARD OF COUNSELING

Fast-Track Regulation

Title of Regulation: 18VAC115-30. Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling Assistants (amending 18VAC115-30-60, 18VAC115-30-140).

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 2, 2022.

Effective Date: February 17, 2022.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Basis: Regulations of the Board of Counseling are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations. The specific mandate for the Board of Counseling to regulate certified substance abuse counselors (CSACs) is found in § 54.1-3505 of the Code of Virginia, and the scope of practice for these professions is found in § 54.1-3507.1. of the Code of Virginia.

Purpose: The board has added more specificity about the requirement that CSACs practice under supervision and are prohibited from representing themselves as independent, autonomous practitioners. By doing so, clients receiving substance abuse counseling services are more assured of the oversight for those working under supervision. The additional standard of conduct and causes for disciplinary action will provide further guidance to counselors on the expectations for ethical practice and give the board more explicit grounds on which to discipline practitioners for the purpose of protecting the health, safety, and welfare of the public they serve.

Rationale for Using Fast-Track Rulemaking Process: The rulemaking should not be controversial because it constitutes a clarification of the statutory prohibition against independent and autonomous practice.

Substance: The board has amended 18VAC115-30-140 to clarify that a CSAC must practice in accordance with provisions of § 54.1-3507.1 of the Code of Virginia, which prohibits practice as independent, autonomous practitioners. It further clarifies that CSACs cannot directly bill for their services or represent themselves as independent or autonomous.

Issues: The primary advantage of the amendment is for clarification about the role of certified substance abuse counselors who are working under supervision with persons who have substance abuse issues. There are no disadvantages.

There are no advantages or disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Counseling (Board) proposes to clarify that certified substance abuse counselors (CSACs) who, by law, are allowed to provide counseling only under supervision and CSAC trainees shall not directly bill for services rendered or in any way represent themselves as independent, autonomous practitioners.

Background. This action results from a 2020 petition for rulemaking,¹ which requested that the Board amend the regulations "to specify that CSACs (certified substance abuse counselors) cannot engage in independent or autonomous practice regardless of supervision and that such practice may be grounds for disciplinary action."

Section 54.1-3507.1 of the Code of Virginia² governs "Scope of practice, supervision, and qualifications of certified substance abuse counselors." Section 54.1-3507.1 specifically states that CSACs shall perform their work under supervision and that they shall not engage in independent or autonomous practice. Moreover, to be certified as CSAC an applicant must have supervised experience. Thus, a CSAS trainee must work under supervision for a certain number of hours to become certified, and once a CSAS trainee is certified, must continue to provide counseling as a certified counselor still under the supervision of a licensed substance abuse treatment practitioner.

Consistent with the petitioner's request, the Board proposes additional language to clarify that trainees who are not yet certified but are working under supervision to gain practical experience necessary for certification as a CSAC, cannot directly bill for their services or represent themselves as independent or autonomous practitioners. In addition, the proposal would clarify that working without supervision or billing independently would violate the standards of conduct for certified counselors. Section 54.1-3507.1 does not specifically prohibit independent billing, however the Board reaches that conclusion based on the fact that the statute prohibits CSACs from providing counseling independently, without supervision. Therefore, the Board concludes "it is logical that persons under supervision are also prohibited from directly billing or representing themselves as autonomous practitioners."

Estimated Benefits and Costs. In practice, CSACs or CSAC trainees are not currently allowed to provide counseling without supervision or to bill independently. The proposed changes reflect what the current practice is and are not expected to create any economic impact other than improving the clarity of the text about the prohibition on autonomous and independent practice and independent billing to avoid confusion within the regulated community and the general public.

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Businesses and Other Entities Affected. According to the Department of Health Professions (DHP), there are 1,876 certified substance abuse counselors and 1,965 substance abuse trainees. CSACs are prohibited from practicing independently or autonomously so it is unknown how many practices would constitute a small business. DHP notes that many CSACs are employed by government agencies.

The proposed amendments do not appear to have an adverse economic impact³ or disproportionate impact on any entity.

Small Businesses⁴ Affected. The proposed amendments do not appear to adversely affect small businesses.

Localities⁵ Affected.⁶ The proposed amendments do not affect localities.

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

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

¹<https://townhall.virginia.gov/L/ViewPetition.cfm?petitionId=327>

²<http://law.lis.virginia.gov/vacode/title54.1/chapter35/section54.1-3507.1/>

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

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

⁵"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁶§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

The amendments clarify that (i) both a certified substance abuse counselor (CSAC) and a person under supervision to be certified as a CSAC (supervisee) must practice in accordance with provisions of § 54.1-3507.1 of the Code of Virginia, which prohibits practice as independent, autonomous practitioners and (ii) CSACs or supervisees cannot directly bill for their services or represent themselves as independent or autonomous.

18VAC115-30-60. Experience requirements for substance abuse counselors.

A. Registration. Supervision in Virginia shall be registered and approved by the board prior to the beginning of supervised experience in order to be counted toward certification. Supervision will not be accepted if it does not meet the requirements set forth in subsections B and C of this section. To register supervision for board approval prior to obtaining

the supervised experience, an applicant shall submit in one package:

1. A supervisory contract;
2. Attestation of the supervisor's education and experience as required under subsections C and D of this section;
3. The registration fee;
4. An official transcript documenting attainment of a bachelor's or post-baccalaureate degree; and
5. Evidence of completion of at least 120 hours of didactic education as required by 18VAC115-30-50 B.

B. Experience requirements.

1. An applicant for certification as a substance abuse counselor shall have had 2,000 hours of supervised experience in the practice of substance abuse counseling services.

2. The supervised experience shall include a minimum of one hour and a maximum of four hours per 40 hours of work experience between the supervisor and the applicant to total 100 hours within the required experience. No more than half of these hours may be satisfied with group supervision. One hour of group supervision will be deemed equivalent to one hour of individual supervision.

3. The supervised experience shall be completed in not less than 12 months and not more than 60 months.

a. Supervisees who began a supervised experience before February 19, 2020, shall complete the supervised experience by February 19, 2025.

b. An individual who does not complete the supervised experience within 60 months may request an extension and shall submit evidence to the board demonstrating the extenuating circumstances that prevented completion of the supervised experience within the required timeframe.

4. Supervised experience obtained more than 10 years from (February 19, 2020, shall not be accepted for certification by examination. The board may make an exception for an applicant who has been providing substance abuse counseling for a minimum of 2,000 hours within the past 60 months and who can submit evidence of such experience.

5. During the supervised experience, supervisees shall use their names and the title "supervisee" in all written communications. Clients shall be informed in writing of the supervisee's status and the supervisor's name, professional address, and phone number. Supervisees shall not directly bill for their services or represent themselves as independent or autonomous practitioners.

6. The supervised experience shall consist of 160 hours of experience performing the following tasks with substance abuse clients. Each of the following tasks shall be performed

for at least eight hours under supervision as verified by the supervisor on an application for certification:

- a. Screening clients to determine eligibility and appropriateness for admission to a particular program;
- b. Intake of clients by performing the administrative and initial assessment tasks necessary for admission to a program;
- c. Orientation of new clients to program's rules, goals, procedures, services, costs, and the rights of the client;
- d. Assessment of client's strengths, weaknesses, problems, and needs for the development of a treatment plan;
- e. Treatment planning with the client to identify and rank problems to be addressed, establish goals, and agree on treatment processes;
- f. Counseling the client utilizing specialized skills in both individual and group approaches to achieve treatment goals and objectives;
- g. Case management activities that bring services, agencies, people, and resources together in a planned framework of action to achieve established goals;
- h. Crisis intervention responses to a client's needs during acute mental, emotional, or physical distress;
- i. Education of clients by providing information about drug abuse and available services and resources;
- j. Referral of clients in order to meet identified needs unable to be met by the counselor and assisting the client in effectively utilizing those resources;
- k. Reporting and charting information about a client's assessment, treatment plan, progress, discharge summaries, and other client-related data; and
- l. Consultation with other professionals to assure comprehensive quality care for the client.

C. Supervisor qualifications. A board-approved clinical supervisor shall hold an active, unrestricted license or certification and shall be:

1. A licensed substance abuse treatment practitioner;
2. A licensed professional counselor, licensed clinical psychologist, licensed clinical social worker, licensed marriage and family therapist, medical doctor, or registered nurse who has either:
 - a. A board-recognized national certification in substance abuse counseling obtained by standards substantially equivalent to those set forth in this chapter;
 - b. A certification as a substance abuse counselor issued by this board; or
 - c. A minimum of one year of experience in substance abuse counseling and at least 100 hours of didactic training covering the areas outlined in 18VAC115-30-50 B 2 a through 2 m; or

3. A substance abuse counselor certified by the Virginia Board of Counseling who has two years of experience as a Virginia board-certified substance abuse counselor.

D. Supervisor training. In order to be approved by the board after February 19, 2021, a clinical supervisor shall obtain professional training in supervision consisting of three credit hours or four quarter hours in graduate-level coursework in supervision or at least 20 hours of continuing education in supervision offered by a provider approved under 18VAC115-30-50.

E. Supervisory responsibilities.

1. Supervisors shall assume responsibility for the professional activities of the supervisee under their supervision.

2. Supervisors shall not provide supervision for activities for which supervisees have not had appropriate education.

3. Supervisors shall provide supervision only for those substance abuse counseling services that they are qualified to render.

4. At the time of the application for certification by examination, the board-approved supervisor shall document minimal competencies in the areas in 18VAC115-30-60 B 6, the total hours of supervision, and any needs for additional supervision or training. The supervisor shall document successful completion of the applicant's supervised experience on the Verification of Supervision Form and shall maintain documentation for five years post supervision.

5. Supervision by any individual whose relationship to the supervisee compromises the objectivity of the supervisor is prohibited.

18VAC115-30-140. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board.

B. Persons certified by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare.

2. Be able to justify all services rendered to clients as necessary for diagnostic or therapeutic purposes.

3. Practice only within the competency area for which they are qualified by training or experience.

4. Report to the board known or suspected violations of the laws and regulations governing the practice of certified substance abuse counselors or certified substance abuse counseling assistants.

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5. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services. Make appropriate consultations and referrals based on the best interest of clients.

6. Stay abreast of new developments, concepts, and practices that are necessary to providing appropriate services.

7. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making arrangements for the continuation of treatment for clients when necessary, following termination of a counseling relationship.

8. Not willfully or negligently breach the confidentiality between a practitioner and a client. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

9. Not engage in conversion therapy with any person younger than 18 years of age.

10. Practice under supervision as specified in § 54.1-3507.1 of the Code of Virginia. Substance abuse counselors shall not directly bill for services rendered, or in any way represent themselves as independent, autonomous practitioners.

C. In regard to client records, persons certified by the board shall:

1. Disclose counseling records to others only in accordance with applicable law.

2. Maintain client records securely, inform all employees of the requirements of confidentiality, and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality.

3. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from the client or the client's legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third-party observation, or (iv) using identifiable client records and clinical materials in teaching, writing, or public presentations.

4. Maintain timely, accurate, legible, and complete written or electronic records for each client, to include counseling dates and identifying information to substantiate the substance abuse counseling plan, client progress, and termination.

5. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the counseling relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18 years);

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have been transferred to another mental health service provider or given to the client or the client's legally authorized representative.

D. In regard to dual relationships, persons certified by the board shall:

1. Not engage in dual relationships with clients, former clients, supervisees, and supervisors that are harmful to the client's or supervisee's well-being or that would impair the substance abuse counselor's, substance abuse counseling assistant's, or supervisor's objectivity and professional judgment or increase the risk of client or supervisee exploitation. This prohibition includes such activities as counseling close friends, former sexual partners, employees, or relatives or engaging in business relationships with clients.

2. Not engage in sexual intimacies or romantic relationships with current clients or supervisees. For at least five years after cessation or termination of professional services, certified substance abuse counselors and certified substance abuse counseling assistants shall not engage in sexual intimacies or romantic relationships with a client or those included in collateral therapeutic services. Because sexual or romantic relationships are potentially exploitative, certified substance abuse counselors and certified substance abuse counseling assistants shall bear the burden of demonstrating that there has been no exploitation. A client's consent to, initiation of, or participation in sexual behavior or involvement with a certified substance abuse counselor or certified substance abuse counseling assistants does not change the nature of the conduct nor lift the regulatory prohibition.

3. Recognize conflicts of interest and inform all parties of obligations, responsibilities, and loyalties to third parties.

E. Upon learning of evidence that indicates a reasonable probability that another mental health provider is or may be guilty of a violation of standards of conduct as defined in statute or regulation, persons certified by the board shall advise their clients of their right to report such misconduct to the Department of Health Professions in accordance with § 54.1-2400.4 of the Code of Virginia.

VA.R. Doc. No. R22-6684; Filed December 2, 2021, 4:20 p.m.

BOARD OF PSYCHOLOGY

Proposed Regulation

Title of Regulation: **18VAC125-20. Regulations Governing the Practice of Psychology (amending 18VAC125-20-10, 18VAC125-20-150, 18VAC125-20-160).**

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

Public Hearing Information:

February 17, 2022 - noon - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Conference Center, Richmond, VA

Public Comment Deadline: March 4, 2022.

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

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Psychology the authority to promulgate regulations to administer the regulatory system. The Psychological Interjurisdictional Compact is created by § 54.1-3606.2 of the Code of Virginia.

Purpose: The amendments to 18VAC125-20-150 and 18VAC125-20-160 are essential to ensure that psychologists who are clinically practicing on patients or clients in Virginia are accountable for the same standards of care as psychologists who hold a Virginia license. Otherwise, psychological services for Virginia citizens by persons practicing through the compact would potentially be harmful to their health, safety, or welfare.

Substance: Amendments add definitions consistent with the compact and revise the standards of practice and the grounds for disciplinary action to ensure that they cover persons practicing with an E.Passport or temporary authorization to practice in Virginia through the compact.

Issues: The advantage to the public is assurance that psychologists practicing in Virginia through the Psychology Interjurisdictional Compact will be held to the same standards of conduct as Virginia licensees; there are no disadvantages to the public. There are no specific advantages or disadvantages to the agency.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Commonwealth adopted the Psychology Interjurisdictional Compact (Compact) through Chapter 1162 of the 2020 Acts of the Assembly (Chapter 1162).¹ The Compact is an interstate agreement designed to facilitate the practice of telepsychology² and the temporary in-person, face-to-face practice of psychology across state boundaries.³ Pursuant to Chapter 1162, an emergency regulation became effective on January 3, 2021, to help enable Virginia's participation in the Compact.⁴

The emergency regulation will expire on July 2, 2022. Also pursuant to the legislation, the Board of Psychology (Board) proposes to replace the emergency regulation with an identical permanent regulation.

Background.

Legislation, Commission, and Rules. Chapter 1162 defines "Psychology Interjurisdictional Compact Commission (Commission)" as "the national administration of which all Compact States are members." Chapter 1162 essentially consists of the standard statutory language provided by the Commission for states joining the Compact to adopt. The legislation defines "Rule" as "a written statement by the Psychology Interjurisdictional Compact Commission" that is of general applicability, implements, interprets, or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission and has the force and effect of statutory law in a Compact State (emphasis added).

As described in the Compact, an E.Passport allows a psychologist to practice telepsychology in other Compact states, and an interjurisdictional practice certificate (IPC) allows him or her to provide in-person psychological services for up to 30 days per calendar year in another Compact state. Note: psychologists licensed in Virginia can practice telepsychology in the Commonwealth without obtaining an E.Passport.⁵

In order to qualify and obtain an E.Passport to provide telepsychology services in other Compact states, the Commission's rules state that a psychologist must:⁶

- Have a current active psychology license based on a doctoral degree in at least one Compact state;
- Have no disciplinary action listed on any psychology license;
- Have a doctoral degree in psychology from an accredited program⁷;
- Have a score on the Examination for Professional Practice in Psychology that meets or exceeds the established Association of State and Provincial Psychology Boards' recommended passing score; and
- Pay the \$400 E.Passport application fee.

In order to renew the E.Passport annually, the psychologist must demonstrate three hours of continuing education relevant to the use of technology in psychology and pay a \$100 renewal fee.

The Commission's rules also state that in order to be granted an IPC, the psychologist must (with one exception) meet the same non-fee requirements needed for the E.Passport.⁸ The one exception is that there is no Examination for Professional Practice in Psychology score requirement. The application fee for IPC is \$200. The annual renewal fee for the IPC is \$50 and there is no continuing education requirement.

Participating States. The following states and the District of Columbia are current participants in the Compact: Alabama, Arizona, Colorado, Delaware, Georgia, Illinois, Kentucky, Maryland, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Virginia, and West Virginia. Arkansas, Kansas, and Maine have enacted legislation to join

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the Compact and will begin participation in the coming months.

Numbers of Participating Psychologists.⁹ As of August 3, 2021, there were 3,452 psychologists who had an active E.Passport throughout the Compact states, which allows them to practice telepsychology in any Compact state, including Virginia.¹⁰ As of August 3, 2021, there were 110 psychologists who had an active IPC, allowing them to practice for up to 30 days per calendar year in person temporarily in any Compact state.¹¹

Regulation. The Board proposes to amend the Regulations Governing the Practice of Psychology to: 1) state that the standards of practice apply to persons practicing in Virginia with an E.Passport or an IPC as well as persons directly licensed by the Board, 2) state that the causes for which the Board may take disciplinary action against a licensee also apply to authorization to practice in Virginia with an E.Passport or an IPC, and 3) add definitions.

Estimated Benefits and Costs. The proposed amendments to the regulation are necessary for Virginia's participation in the Compact. The Commonwealth's participation in the Compact appears to be beneficial for Virginia consumers of psychological services in that it increases the number of qualified psychologists available to provide these services. This may moderately reduce the difficulty some Virginians may have finding mental health services.

The Commonwealth's participation in the Compact can also be potentially beneficial for Virginia psychologists who are interested in adding patients, because they could legally provide services to potential patients in any Compact state rather than just Virginia. According to a July 2020 report (the most recent available) from the Virginia Healthcare Workforce Data Center, two percent of Virginia's licensed clinical psychologists reported experiencing unemployment within the past year.¹² By greatly increasing the population of potential patients that can be legally served, participation in the Compact facilitated by the proposed amendments may help reduce unemployment for Virginia-licensed psychologists. On the other hand, psychologists licensed in other Compact states can provide psychological services to Virginians with the Commonwealth's participation in the Compact. This potential increase in competition in providing psychological services may limit any positive impact on unemployment.

Businesses and Other Entities Affected. The 4,130 clinical psychologists and 29 applied psychologists licensed in Virginia,¹³ employers of psychologists, and consumers of psychological services are all potentially affected. According to survey data from the July 2020 Virginia Healthcare Workforce Data Center report, the primary types of employers of clinical psychologists in the Commonwealth are distributed as follows:¹⁴

Establishment Type	Percentage
Private Practice, Solo	24%
Private Practice, Group	24%
Academic Institution (Teaching Health Professions Students)	9%
Mental Health Facility, Outpatient	7%
Hospital, General	7%
Hospital, Psychiatric	4%
Community-Based Clinic or Health Center	4%
School (Providing Care to Clients)	4%
Community Services Board	2%
Administrative or Regulatory	2%
Corrections/Jail	2%
Physician Office	1%
Residential Mental Health/Substance Abuse Facility	1%
Rehabilitation Facility	1%
Long-Term Care Facility, Nursing Home	1%
Other Practice Setting	8%

Similar data is not available for applied psychologists.

Small Businesses¹⁵ Affected.

Types and Estimated Number of Small Businesses Affected. The proposed amendments, which facilitate participation in the Compact, affect small businesses that employ licensed psychologists. No data are available on the number of small businesses.

Costs and Other Effects. For those small businesses that employ psychologists, the proposed amendments, which enable Virginia's participation in the Compact, increase the potential supply of labor. With more potential qualified employees to choose from, these firms may be able to employ psychologists at lower cost.

Participation in the Compact also increases the potential number of clients that businesses that provide psychological services may serve. Conversely, participation in the Compact introduces potential competition from firms in other Compact states that provide psychological services. Due to these

countervailing factors, some small businesses that provide psychological services may in net increase their number of clients, while others may encounter decreased net business. Most would not likely be substantively affected. If there are small firms that encounter reduced net demand for their psychological services due Virginia's Compact participation that is not outweighed by potential reduction in labor cost, these small firms would be determined to receive adverse impact¹⁶ from the proposed amendments.

Alternative Method that Minimizes Adverse Impact. There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities¹⁷ Affected.¹⁸ All Virginians, regardless of location within the Commonwealth, could potentially choose to receive psychological services from a psychologist licensed in another Compact state. Nevertheless, it may be more likely in practice that residents of localities near the border of neighboring states or the District of Columbia hear recommendations for psychologists licensed in the nearby jurisdiction but not in the Commonwealth. Similarly, Virginia-licensed psychologists who practice near the border may be more likely to be recommended to potential clients in neighboring states. All states bordering Virginia, as well as the District of Columbia, are participants in the Compact. Thus, localities on or near Virginia's borders with other states and the District of Columbia may be particularly affected. Likewise, Virginians living in medically underserved areas, which are predominately rural, may also benefit from improved access.¹⁹

The proposed amendments do not appear to introduce costs for local governments.

Projected Impact on Employment. As discussed earlier the proposed amendments enable the Commonwealth's participation in the Compact, which greatly increases the population of patients who may be legally served by Virginia-licensed psychologists, but also allows psychologists licensed in other Compact states to serve Virginia patients. The former may have a positive impact on employment for Virginia psychologists, while latter may have a negative impact. Information is not available to determine the net impact.

Effects on the Use and Value of Private Property. For those businesses that employ psychologists, the proposed amendments, which enable Virginia's participation in the Compact, increase the potential supply of labor. With more potential qualified employees to choose from, these firms may be able to find more productive or less costly people to hire. Also, participation in the Compact increases the potential number of clients that businesses that provide psychological services may serve. These two factors may moderately increase the value of some businesses. On the other hand, participation in the Compact introduces potential competition from firms in other Compact states that provide psychological services, which may have a moderate negative impact on the value of some firms.

The proposed amendments do not appear to affect real estate development costs.

¹See <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1162>

²Chapter 1162 defines telepsychology as "the provision of psychological services using telecommunication technologies."

³See <https://psypact.site-ym.com/page/About>

⁴See <https://townhall.virginia.gov/l/ViewStage.cfm?stageid=9019>

⁵See <https://www.dhp.virginia.gov/psychology/guidelines/125-7.docx>

⁶Technically to provide telepsychology services in other Compact states the psychologist must also obtain "Authority to Practice Interjurisdictional Telepsychology" by: 1) possessing an active E.Passport, 2) holding a full, unrestricted license in a Compact state, 3) providing attestations in regard to areas of intended practice, conformity with standards of practice, competence in telepsychology technology; criminal background; and knowledge and adherence to legal requirements in the home and receiving states, and 4) paying a one-time \$40 fee.

⁷See the following website for specifics on what qualifies as an accredited program: <https://psypact.site-ym.com/page/PracticeUnderPSYPACT>

⁸Technically to provide in-person psychological services for up to 30 days per calendar year in another Compact state the psychologist must also obtain "Temporary Authority to Practice" by: 1) possessing an active IPC, 2) holding a full, unrestricted license in a Compact state, 3) providing attestations in regard to areas of intended practice and work experience, and 4) paying a one-time \$40 fee.

⁹Data source: Department of Health Professions

¹⁰Technically "Authority to Practice Interjurisdictional Telepsychology" is also needed. See footnote 6 for more detail.

¹¹Technically, "Temporary Authority to Practice" is also needed. See footnote 8 for more detail.

¹²See <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/behsci/0810CP2020.pdf>

¹³Data source: <https://www.dhp.virginia.gov/about/stats/2021Q3/04CurrentLicenseCountQ3FY2021.pdf>

¹⁴See footnote 12.

¹⁵Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

¹⁶Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

¹⁷"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁸§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

¹⁹See <https://www.vdh.virginia.gov/health-equity/shortage-designations-and-maps/>

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

Summary:

Chapter 1162 of the 2020 Acts of Assembly mandates membership of the Commonwealth of Virginia in the Psychology Interjurisdictional Compact and requires the Board of Psychology to promulgate regulations to implement the provisions. The proposed amendments add

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definitions consistent with the compact and revise the standards of practice and the grounds for disciplinary action to cover persons practicing with an E.Passport or temporary authorization to practice in Virginia through the compact.

18VAC125-20-10. Definitions.

The following words and terms, in addition to the words and terms defined in § §§ 54.1-3600 and 54.1-3606.2 of the Code of Virginia, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"APA" means the American Psychological Association.

"APPIC" means the Association of Psychology Postdoctoral and Internship Centers.

"ASPPB" means the Association of State and Provincial Psychology Boards.

"Board" means the Virginia Board of Psychology.

"CAEP" means Council for the Accreditation of Educator Preparation.

"Compact" means the Psychology Interjurisdictional Compact.

"Conversion therapy" means any practice or treatment as defined in § 54.1-2409.5 A of the Code of Virginia.

"CPA" means Canadian Psychological Association.

"Demonstrable areas of competence" means those therapeutic and assessment methods and techniques for the populations served and for which one can document adequate graduate training, workshops, or appropriate supervised experience.

"E.Passport" means a certificate issued by ASPPB that authorizes telepsychology services in a compact state.

"Face-to-face" means in person.

"Intern" means an individual who is enrolled in a professional psychology program internship.

"Internship" means an ongoing, supervised, and organized practical experience obtained in an integrated training program identified as a psychology internship. Other supervised experience or on-the-job training does not constitute an internship.

"IPC" means an interjurisdictional practice certificate issued by ASPPB that grants temporary authority to practice in a compact state.

"NASP" means the National Association of School Psychologists.

"Practicum" means the pre-internship clinical experience that is part of a graduate educational program.

"Practicum student" means an individual who is enrolled in a professional psychology program and is receiving pre-internship training and seeing clients.

"Professional psychology program" means an integrated program of doctoral study in clinical or counseling psychology or a master's degree or higher program in school psychology designed to train professional psychologists to deliver services in psychology.

"Regional accrediting agency" means one of the six regional accrediting agencies recognized by the U.S. Secretary of Education established to accredit senior institutions of higher education.

"Residency" means a post-internship, post-terminal degree, supervised experience approved by the board.

"Resident" means an individual who has received a doctoral degree in a clinical or counseling psychology program or a master's degree or higher in school psychology and is completing a board-approved residency.

"School psychologist-limited" means a person licensed pursuant to § 54.1-3606 of the Code of Virginia to provide school psychology services solely in public school divisions.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented individual consultation, guidance, and instruction with respect to the skills and competencies of the person supervised.

"Supervisor" means an individual who assumes responsibility for the education and training activities of a person under supervision and for the care of such person's clients and who provides supervision consistent with the training and experience of both the supervisor and the person under supervision and with the type of services being provided.

18VAC125-20-150. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Psychologists respect the rights, dignity, and worth of all people and are mindful of individual differences. Regardless of the delivery method, whether face-to-face or by use of technology, these standards shall apply to the practice of psychology.

B. Persons regulated by the board and persons practicing in Virginia with an E.Passport or an IPC shall:

1. Provide and supervise only those services and use only those techniques for which they are qualified by education, training, and appropriate experience;
2. Delegate to persons under their supervision only those responsibilities such persons can be expected to perform competently by education, training, and experience;
3. Maintain current competency in the areas of practices through continuing education, consultation, or other

procedures consistent with current standards of scientific and professional knowledge;

4. Accurately represent their areas of competence, education, training, experience, professional affiliations, credentials, and published findings to ensure that such statements are neither fraudulent nor misleading;

5. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services. Make appropriate consultations and referrals consistent with the law and based on the interest of patients or clients;

6. Refrain from undertaking any activity in which their personal problems are likely to lead to inadequate or harmful services;

7. Avoid harming, exploiting, misusing influence, or misleading patients or clients, research participants, students, and others for whom they provide professional services and minimize harm when it is foreseeable and unavoidable;

8. Not engage in, direct, or facilitate torture, which is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, or in any other cruel, inhuman, or degrading behavior that causes harm;

9. Withdraw from, avoid, adjust, or clarify conflicting roles with due regard for the best interest of the affected party and maximal compliance with these standards;

10. Make arrangements for another professional to deal with emergency needs of clients during periods of foreseeable absences from professional availability and provide for continuity of care when services must be terminated;

11. Conduct financial responsibilities to clients in an ethical and honest manner by:

a. Informing clients of fees for professional services and billing arrangements as soon as is feasible;

b. Informing clients prior to the use of collection agencies or legal measures to collect fees and provide opportunity for prompt payment;

c. Obtaining written consent for fees that deviate from the practitioner's usual and customary fees for services;

d. Participating in bartering only if it is not clinically contraindicated and is not exploitative; and

e. Not obtaining, attempting to obtain, or cooperating with others in obtaining payment for services by misrepresenting services provided, dates of service, or status of treatment;

12. Be able to justify all services rendered to clients as necessary for diagnostic or therapeutic purposes;

13. Construct, maintain, administer, interpret, and report testing and diagnostic services in a manner and for purposes that are current and appropriate;

14. Design, conduct, and report research in accordance with recognized standards of scientific competence and research ethics. Practitioners shall adhere to requirements of § 32.1-162.18 of the Code of Virginia for obtaining informed consent from patients prior to involving them as participants in human research, with the exception of retrospective chart reviews;

15. Report to the board known or suspected violations of the laws and regulations governing the practice of psychology;

16. Accurately inform a client or a client's legally authorized representative of the client's diagnoses, prognosis, and intended treatment or plan of care. A psychologist shall present information about the risks and benefits of the recommended treatments in understandable terms and encourage participation in the decisions regarding the patient's care. When obtaining informed consent treatment for which generally recognized techniques and procedures have not been established, a psychologist shall inform clients of the developing nature of the treatment, the potential risks involved, alternative treatments that may be available, and the voluntary nature of their participation;

17. Clearly document at the outset of service delivery what party the psychologist considers to be the client and what, if any, responsibilities the psychologist has to all related parties;

18. Determine whether a client is receiving services from another mental health service provider, and if so, document efforts to coordinate care;

19. Document the reasons for and steps taken if it becomes necessary to terminate a therapeutic relationship (e.g., when it becomes clear that the client is not benefiting from the relationship or when the psychologist feels endangered). Document assistance provided in making arrangements for the continuation of treatment for clients, if necessary, following termination of a therapeutic relationship; and

20. Not engage in conversion therapy with any person younger than 18 years of age.

C. In regard to confidentiality, persons regulated by the board shall:

1. Keep confidential their professional relationships with patients or clients and disclose client information to others only with written consent except as required or permitted by law. Psychologists shall inform clients of legal limits to confidentiality;

2. Protect the confidentiality in the usage of client information and clinical materials by obtaining informed consent from the client or the client's legally authorized

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representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using clinical information in teaching, writing, or public presentations; and

3. Not willfully or negligently breach the confidentiality between a practitioner and a client. A disclosure that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

D. In regard to client records, persons regulated by the board shall:

1. Maintain timely, accurate, legible, and complete written or electronic records for each client. For a psychologist practicing in an institutional setting, the recordkeeping shall follow the policies of the institution or public facility. For a psychologist practicing in a noninstitutional setting, the record shall include:

- a. The name of the client and other identifying information;
- b. The presenting problem, purpose, or diagnosis;
- c. Documentation of the fee arrangement;
- d. The date and clinical summary of each service provided;
- e. Any test results, including raw data, or other evaluative results obtained;
- f. Notation and results of formal consults with other providers; and
- g. Any releases by the client;

2. Maintain client records securely, inform all employees of the requirements of confidentiality and dispose of written, electronic, and other records in such a manner as to ensure their confidentiality; and

3. Maintain client records for a minimum of five years or as otherwise required by law from the last date of service, with the following exceptions:

- a. At minimum, records of a minor child shall be maintained for five years after attaining 18 years of age;
- b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or
- c. Records that have been transferred pursuant to § 54.1-2405 of the Code of Virginia pertaining to closure, sale, or change of location of one's practice.

E. In regard to dual relationships, persons regulated by the board shall:

1. Not engage in a dual relationship with a person under supervision that could impair professional judgment or increase the risk of exploitation or harm. Psychologists shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent,

consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;

2. Not engage in sexual intimacies or a romantic relationship with a student, supervisee, resident, intern, therapy patient, client, or those included in collateral therapeutic services (such as a parent, spouse, or significant other of the client) while providing professional services. For at least five years after cessation or termination of professional services, not engage in sexual intimacies or a romantic relationship with a therapy patient, client, or those included in collateral therapeutic services. Consent to, initiation of, or participation in sexual behavior or romantic involvement with a psychologist does not change the exploitative nature of the conduct nor lift the prohibition. Because sexual or romantic relationships are potentially exploitative, psychologists shall bear the burden of demonstrating that there has been no exploitation, based on factors such as duration of therapy, amount of time since therapy, termination circumstances, client's personal history and mental status, and adverse impact on the client;

3. Not engage in a personal relationship with a former client in which there is a risk of exploitation or potential harm or if the former client continues to relate to the psychologist in his professional capacity; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

F. Upon learning of evidence that indicates a reasonable probability that another mental health provider is or may be guilty of a violation of standards of conduct as defined in statute or regulation, persons licensed by the board shall advise their clients of their right to report such misconduct to the Department of Health Professions in accordance with § 54.1-2400.4 of the Code of Virginia.

18VAC125-20-160. Grounds for disciplinary action or denial of licensure.

The board may take disciplinary action or deny a license or registration or authorization to practice in Virginia with an E.Passport or an IPC for any of the following causes:

1. Conviction of a felony, or a misdemeanor involving moral turpitude (i.e., relating to lying, cheating, or stealing);
2. Procuring or attempting to procure or maintaining a license or registration by fraud or misrepresentation;
3. Conducting practice in such a manner so as to make it a danger to the health and welfare of clients or to the public;
4. Engaging in intentional or negligent conduct that causes or is likely to cause injury to a client;
5. Performing functions outside areas of competency;

6. Demonstrating an inability to practice psychology with reasonable skill and safety to clients by reason of illness or substance misuse, or as a result of any mental, emotional, or physical condition;
7. Failing to comply with the continuing education requirements set forth in this chapter;
8. Violating or aiding and abetting another to violate any statute applicable to the practice of the profession, including § 32.1-127.1:03 of the Code of Virginia relating to health records;
9. Knowingly allowing persons under supervision to jeopardize client safety or provide care to clients outside of such person's scope of practice or area of responsibility;
10. Performing an act or making statements that are likely to deceive, defraud, or harm the public;
11. Having a disciplinary action taken against a health or mental health license, certification, registration, or application in Virginia or other jurisdiction or surrendering such a license, certification, or registration in lieu of disciplinary action;
12. Failing to cooperate with an employee of the Department of Health Professions in the conduct of an investigation;
13. Failing to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia, or abuse of aged and incapacitated adults as required in § 63.2-1606 of the Code of Virginia; or
14. Violating any provisions of this chapter, including practice standards set forth in 18VAC125-20-150.

VA.R. Doc. No. R21-6421; Filed December 10, 2021, 11:20 a.m.

BOARD OF SOCIAL WORK

Proposed Regulation

Title of Regulation: 18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-50).

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

Public Hearing Information:

January 14, 2022 - 10:05 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room 2, Richmond, VA 23233

Public Comment Deadline: March 4, 2022.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Social Work the authority to promulgate regulations to administer the regulatory system.

Purpose: The regulatory change is intended to reduce the burden on supervisors of persons who are gaining experience necessary to become licensed clinical social workers by lowering the number of continuing education requirements needed every five years. The purpose of this regulatory change is to protect the public health and safety in the clinical practice of social work by ensuring that licensed clinical social workers who are responsible for supervisees and the clients they serve are appropriately trained and knowledgeable.

Substance: The board proposes amending 18VAC140-20-50 B 2 to reduce the number of continuing education hours necessary for a supervisor of licensed clinical social workers to obtain from 14 hours within five years immediately preceding registration of supervision to seven hours every five years.

Issues: The advantage to the public is that persons seeking supervisors for clinical experience in order to become licensed in Virginia may find a greater supply of supervisors if the continuing education requirements are less burdensome and expensive; there are no disadvantages to the public. There are no specific advantages or disadvantages to the agency.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Social Work (Board) proposes to reduce the required number of hours of continuing education (CE) in supervision that must be completed by supervisors of persons who are gaining experience necessary to become licensed clinical social workers (LCSWs).

Background. In order to gain licensure, clinical social workers must have supervised experience. In order for someone to qualify to provide such supervision, that person must hold an active, unrestricted license as a clinical social worker with at least two years of post-licensure clinical social work experience and have completed professional training in supervision. After such initial professional training in supervision, every five years the person must complete CE in supervision. The current regulation requires 14 hours of such CE every five years. The Board proposes to lower the required number of hours to seven.

Estimated Benefits and Costs. The National Association of Social Workers Virginia (NASWVA) offers a variety of courses to meet the training requirements for supervisors. The Foundation of Supervision (14-hour course) is recommended for first-time supervisors. Then NASWVA offers several seven-hour courses to expand the participant's evidence-based knowledge of best practices in supervision. Reducing the requirement to seven hours within a five-year period would allow a supervisor to take relevant courses without repetition. Additionally, the Board believes that seven hours of CE in supervision is sufficient for continuing competency in supervision.

As stated, supervisors must hold an active, unrestricted license as clinical social worker. In order to renew such a license the

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supervisor must complete 30 hours of CE every two years. CE in supervision does count toward the required 30 hours of CE. Thus, reducing the required number of hours of CE specifically in supervision does not affect the total number of hours of required CE but does allow the supervisory LCSW to spend more of that supervisor's CE hours on topics the supervisor may find more personally productive.

Additionally, though the proposed amendment does not effectively reduce the total number of required CE hours, it may allow the licensee to obtain seven hours of the required CE every five years at a lower cost. While the Board accepts coursework offered by other approved providers as listed in 18VAC140-20-105,¹ according to the Department of Health Professions (DHP) NASWVA is most commonly used as the source for CE in supervision. Other known courses on supervision are offered by community services boards, the Association of Social Work Boards, or schools of social work.² A seven-hour credit course with NASWVA costs \$151.25 for members and \$192.50 for nonmembers.³ Thus, the proposed reduction in required CE hours in supervision could save supervisors some or all of that amount in dollars depending on if they substituted a lower-cost means of obtaining the seven hours or a no-dollar-cost method.⁴

According to DHP, there is a need for more LCSWs to serve as clinical supervisors, and there is a strong need for more licensees. Reducing the cost of continuing to be a supervisor may encourage more LCSWs to become or remain supervisors. This would be beneficial in that more supervisors would help more LCSW candidates obtain the supervised experience they need to become licensed.

Businesses and Other Entities Affected. The proposed amendment affects the 184 LCSWs registered to provide supervision to supervisees in clinical social work,⁵ providers of CE in supervision, LCSW candidates who are seeking registered supervisors, and entities that employ social workers. According to survey data from a July 2020 report (the most recent available) from the Virginia Healthcare Workforce Data Center,⁶ the primary employers of LCSWs in the Commonwealth are distributed as follows:

Establishment Type	Percentage
Private Practice, Solo	16%
Private Practice, Group	13%
Mental Health Facility, Outpatient	13%
Community Services Board	10%
School (Providing Care to Clients)	7%
Hospital, General	7%

Community-Based Clinic or Health Center	7%
Hospital, Psychiatric	3%
Residential Mental Health/Substance Abuse Facility	2%
Administrative or Regulatory	2%
Academic Institution (Teaching Health Professions Students)	2%
Other Practice Setting	17%

Categorized by sector, the report presents the types of employers of LCSWs in Virginia as follows:

Sector	Percentage
For-Profit	48%
Non-Profit	21%
State/Local Government	22%
Veterans Administration	4%
U.S. Military	3%
Other Federal Government	1%

The proposed amendment would likely lead to reduced revenue for providers of CE in supervision. Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. Thus, an adverse impact is indicated.

Small Businesses⁷ Affected.

Types and Estimated Number of Small Businesses Affected. While NASWVA is most commonly used as the source for continuing education in supervision, according to DHP there are private companies approved to provide CE, including in supervision. The agency is not aware of the specific number of such firms and how many are small businesses.

Costs and Other Effects. The proposed amendment would likely moderately reduce revenue for small businesses that provide CE in supervision.

Alternative Method that Minimizes Adverse Impact. There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities⁸ Affected.⁹ Local governments that are having difficulty finding enough qualified LCSWs to employ may be particularly affected by the proposed amendment in that it may result in a moderate increase in the supply of LCSWs. The

proposed amendment does not appear to introduce costs for local governments.

Projected Impact on Employment. The proposed reduction in required supervision CE hours may encourage more LCSWs to become or remain supervisors. This may in turn allow more LCSW candidates to obtain the supervised experience they need to become licensed. Hence, the proposal may moderately increase the supply of LCSWs, leading to a modest increase in the employment of LCSWs.

Effects on the Use and Value of Private Property. As discussed, the proposed amendment may lead to a moderate increase in the supply of LCSWs. This may moderately reduce the cost to firms of hiring social workers, which may in turn have a small positive impact on their value. As also discussed, the proposed amendment would likely lead to some reduced revenue for providers of CE in supervision. This could have a small negative impact on their value.

The proposed amendments do not affect real estate development costs.

¹See <https://law.lis.virginia.gov/admincode/title18/agency140/chapter20/section105/>

²Source: DHP

³Source: DHP

⁴Workshops, seminars, conferences, or courses in the behavioral health field offered by federal, state or local social service agencies, public school systems, or licensed health facilities and licensed hospitals would count for CE. Some of these could potentially be offered free of charge. Various other entities may also offer CE if approved by specified organizations. Some of this CE could also be free of charge.

⁵Data source: DHP

⁶See <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/behsci/0904LCSW2020.pdf>

⁷Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

⁸"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁹§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board of Social Work concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

The proposed amendments reduce the number of continuing education (CE) hours necessary to continue being approved as a supervisor, retaining the requirement for 14 hours of CE for the initial registration of supervision but changing to seven hours of CE relating to provision of supervision every five years thereafter.

18VAC140-20-50. Experience requirements for a licensed clinical social worker.

A. Supervised experience. Supervised post-master's degree experience without prior written board approval will not be accepted toward licensure, except supervision obtained in another United States jurisdiction may be accepted if it met the requirements of that jurisdiction. Prior to registration for supervised experience, a person shall satisfactorily complete the educational requirements of 18VAC140-20-49.

1. Registration. An individual who proposes to obtain supervised post-master's degree experience in Virginia shall, prior to the onset of such supervision, or whenever there is an addition or change of a supervisor:

- a. Register on a form provided by the board;
- b. Submit a copy of a supervisory contract completed by the supervisor and the supervisee;
- c. Submit an official transcript documenting a graduate degree and clinical practicum as specified in 18VAC140-20-49; and
- d. Pay the registration of supervision fee set forth in 18VAC140-20-30.

2. Hours. The applicant shall have completed a minimum of 3,000 hours of supervised post-master's degree experience in the delivery of clinical social work services and in ancillary services that support such delivery. A minimum of one hour and a maximum of four hours of face-to-face supervision shall be provided per 40 hours of work experience for a total of at least 100 hours. No more than 50 of the 100 hours may be obtained in group supervision, nor shall there be more than six persons being supervised in a group unless approved in advance by the board. The board may consider alternatives to face-to-face supervision if the applicant can demonstrate an undue burden due to hardship, disability, or geography.

- a. Supervised experience shall be acquired in no less than two nor more than four consecutive years.
- b. Supervisees shall obtain throughout their hours of supervision a minimum of 1,380 hours of supervised experience in face-to-face client contact in the delivery of clinical social work services. The remaining hours may be spent in ancillary services supporting the delivery of clinical social work services.

3. An individual who does not complete the supervision requirement after four consecutive years of supervised experience may request an extension of up to 12 months. The request for an extension shall include evidence that demonstrates extenuating circumstances that prevented completion of the supervised experience within four consecutive years.

B. Requirements for supervisors.

Regulations

1. The supervisor shall hold an active, unrestricted license as a licensed clinical social worker in the jurisdiction in which the clinical services are being rendered with at least two years of post-licensure clinical social work experience. The board may consider supervisors with commensurate qualifications if the applicant can demonstrate an undue burden due to geography or disability or if supervision was obtained in another United States jurisdiction.

2. The supervisor shall have received professional training in supervision, consisting of a three credit-hour graduate course in supervision or at least 14 hours of continuing education offered by a provider approved under 18VAC140-20-105. ~~The~~ After the initial graduate course or 14 hours of continuing education in supervision, at least seven hours of continuing education in supervision shall be obtained by a supervisor within five years immediately preceding registration of supervision.

3. The supervisor shall not provide supervision for a family member or provide supervision for anyone with whom he has a dual relationship.

4. The board may consider supervisors from jurisdictions outside of Virginia who provided clinical social work supervision if they have commensurate qualifications but were either (i) not licensed because their jurisdiction did not require licensure or (ii) ~~were~~ not designated as clinical social workers because the jurisdiction did not require such designation.

C. Responsibilities of supervisors. The supervisor shall:

1. Be responsible for the social work activities of the supervisee as set forth in this subsection once the supervisory arrangement is accepted;

2. Review and approve the diagnostic assessment and treatment plan of a representative sample of the clients assigned to the applicant during the course of supervision. The sample should be representative of the variables of gender, age, diagnosis, length of treatment, and treatment method within the client population seen by the applicant. It is the applicant's responsibility to assure the representativeness of the sample that is presented to the supervisor;

3. Provide supervision only for those social work activities for which the supervisor has determined the applicant is competent to provide to clients;

4. Provide supervision only for those activities for which the supervisor is qualified by education, training, and experience;

5. Evaluate the supervisee's knowledge and document minimal competencies in the areas of an identified theory base, application of a differential diagnosis, establishing and monitoring a treatment plan, development and appropriate use of the professional relationship, assessing the client for

risk of imminent danger, understanding the requirements of law for reporting any harm or risk of harm to self or others, and implementing a professional and ethical relationship with clients;

6. Be available to the applicant on a regularly scheduled basis for supervision;

7. Maintain documentation, for five years post-supervision, of which clients were the subject of supervision; and

8. Ensure that the board is notified of any change in supervision or if supervision has ended or been terminated by the supervisor.

D. Responsibilities of supervisees.

1. Supervisees may not directly bill for services rendered or in any way represent themselves as independent, autonomous practitioners, or licensed clinical social workers.

2. During the supervised experience, supervisees shall use their names and the initials of their degree, and the title "Supervisee in Social Work" in all written communications.

3. Clients shall be informed in writing of the supervisee's status and the supervisor's name, professional address, and phone number.

4. Supervisees shall not supervise the provision of clinical social work services provided by another person.

5. While providing clinical social work services, a supervisee shall remain under board approved supervision until licensed in Virginia as a licensed clinical social worker.

VA.R. Doc. No. R21-6721; Filed December 3, 2021, 12:07 p.m.



TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Fast-Track Regulation

Title of Regulation: **24VAC30-200. Vegetation Control Regulations on State Rights-of-Way (amending 24VAC30-200-20).**

Statutory Authority: § 33.2-210 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 2, 2022.

Effective Date: February 18, 2022.

Agency Contact: Jo Anne P. Maxwell, Regulatory Coordinator, Policy Division, Department of Transportation, 1401 East Broad Street, 11th Floor, Richmond, VA 23219,

telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

Basis: The Department of Transportation (VDOT), through the Commissioner of Highways and Commonwealth Transportation Board, has the authority to promulgate this regulation pursuant to § 33.2-210 of the Code of Virginia, which gives the board the power and duty to make regulations that are not in conflict with the laws of the Commonwealth for the protection of and covering traffic on and for the use of systems of state highways. Section 33.2-1221 B 3 of the Code of Virginia authorizes the department to issue and charge fees for pruning permits.

Purpose: Upon conducting a periodic review of the regulation, it was determined that the inconsistency between the requirements for cutting and pruning in front of businesses and in front of outdoor advertising made enforcement unequal. VDOT has also determined through surveying VDOT roadside managers that the less than two-inch diameter limitation for cutting and pruning vegetation in front of businesses is too restrictive and is impractical in many cases due to the rate of vegetation growth. Therefore, VDOT contends that the regulation should be amended to allow the equal treatment and regulation of both outdoor advertising signs and businesses. Allowing businesses to be more visible increases the number of potential consumers that can see those businesses, increasing the economic transactions for the business, benefiting public welfare.

Rationale for Using Fast-Track Rulemaking Process: The action is considered noncontroversial because it provides equal enforcement between vegetation control in front of businesses and outdoor advertising. Allowing businesses to be more visible from highways increases the potential for customers to see the businesses, which businesses support. The requirement that any vegetation cut be replaced remains in the regulation, which should satisfy those persons concerned with the environmental impacts of cutting vegetation.

Substance: In 24VAC30-200-20 B, the restriction on cutting vegetation in front of businesses will be amended from trunks two inches in diameter to trunks six inches in diameter, and the restriction on pruning vegetation in front of businesses will be amended from limbs two inches in diameter to limbs four inches in diameter.

Issues: One advantage to the public of the proposed amendments is allowing businesses to be more visible from highways increasing the potential for customers to see the businesses. There is no disadvantage to the public. The advantage to the Commonwealth is more consistent rules between businesses and outdoor advertising leads to simpler enforcement procedures. There is no disadvantage to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As a result of a 2019 periodic review,¹ the Commonwealth

Transportation Board (Board) proposes to allow cutting of larger trees (trunk base diameters of less than six inches vs. two inches) and pruning of larger branches (pruning of limbs up to four inches in diameter vs. two inches) to make a business more visible from a highway.

Background. The Virginia Department of Transportation (VDOT) or its contractors are authorized to cut or prune vegetation that may obscure off-premises business signage (almost exclusively billboards under this regulation) along highways and also vegetation that may obscure businesses that are visible from any VDOT maintained highway; these practices are referred to as "daylighting." Currently, to make a billboard more visible from a highway trees up to six inches in diameter and branches up to four inches in diameter may be cleared. However, businesses are only allowed to cut trees or branches that are less than two inches in diameter. VDOT has determined that the regulation currently treats business-related vegetation removal differently than that of outdoor advertising signs, thus treating the regulation of outdoor advertising signs and businesses unequally. As a result, the Board proposes to allow businesses to also use the less restrictive cutting and pruning standards currently used for outdoor advertising. VDOT will maintain the requirements for replacing cut vegetation under a landscape plan.

Estimated Benefits and Costs. Increasing the diameter of trees and branches that can be cleared to daylight a business location from two inches to six inches for trunk base and to four inches for branches can spark new interest from owners of businesses alongside the roadways. According to VDOT, the current two inch-diameter standard for trunk bases as well as the branches makes it impractical in many cases to undertake any such effort due to rate of vegetation growth. Thus, an increase in permit applications for daylighting a business may be expected. There were six permits issued by VDOT in 2020 to daylight businesses. However, unlike daylighting billboards, which is exclusively handled by VDOT, VDOT delegates its authority to localities for activities pertaining to daylighting businesses in cities. Therefore, it is likely there were more than six business daylighting projects permitted in 2020, but VDOT does not have those statistics.

The main benefit of the proposed change is allowing businesses to make their business frontage more visible from the roadway if they are interested in doing so. VDOT states that daylighting a business is unlikely to distract drivers, in part because a landscape plan will still be required. However, VDOT notes that any cutting and pruning would still require setting up a road-work zone and may create the usual work road hazard to drivers in that area while the work is being done. Given that the current two-inch diameter standard makes daylighting impractical in some instances, the new standard may result in an increase in road-work zones to the extent that it encourages new daylighting activity.

Businesses and Other Entities Affected. The proposed changes apply to any business wishing to improve their visibility from

Regulations

a highway. There were six permits issued by VDOT in 2020 to daylight a business location. However, localities are delegated authority to issue permits to daylight businesses as well, but information on permits issued by localities is lacking. No adverse impact² on businesses is indicated.

Small Businesses³ Affected. The proposed amendments do not appear to adversely affect small businesses.

Localities⁴ Affected.⁵ The proposed changes could potentially lead to an increase in applications being received by localities, especially cities, to daylight a business location. Localities are authorized to collect \$400 per permit application. Assuming that the permit fee is sufficient to cover administrative costs of the locality, no adverse impact on localities is expected. The proposed regulation does not introduce costs for local governments.

Projected Impact on Employment. The proposed changes could lead to an increase in tree clearing and landscaping work and demand for such labor, but it does not appear that it would significantly affect total employment.

Effects on the Use and Value of Private Property. The proposed changes would allow more visibility from highways if a business is interested in daylighting its location. Increased visibility could lead to name recognition, more sales, and higher asset value. The proposed amendments do not appear to directly affect real estate development costs.

¹<https://townhall.virginia.gov/ViewPReview.cfm?PRid=1847>

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

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

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

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

Agency's Response to Economic Impact Analysis: The agency agrees with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The amendments allow cutting of larger trees (trunk base diameters of less than six inches) and pruning of larger branches (pruning of limbs up to four inches in diameter) to make a business more visible from a highway.

24VAC30-200-20. General provisions.

A. Permits will be issued by the department to control vegetation in front of a ~~sign/structure~~ sign or structure that is not exempt from the provisions of § 33.2-1204 of the Code of Virginia or business that is visible from any highway as defined in § 33.2-1200 of the Code of Virginia and regulated by the territorial limitations as defined in § 33.2-1202 of the

Code of Virginia provided the vegetation control work meets the criteria set forth in § 33.2-1221 and this chapter. An application may be filed with the Commissioner of Highways by an agent, including ~~but not limited to~~ companies that trim trees. In all other areas the local government official shall issue the permits.

B. All cutting to make an outdoor advertising structure more visible from the roadway shall be limited to vegetation with trunk base diameters of less than six inches. All cutting to make a business more visible from the roadway shall be limited to vegetation with trunk base diameters of less than ~~two~~ six inches. All stumps shall be treated with a cut-stump pesticide applied by a licensed pesticide applicator with a license issued by the Virginia Department of Agriculture and Consumer Services in Category 6. All pesticides shall be approved by the department or local government official prior to use. Selective thinning in accordance with specifications or removal of unsightly vegetation will be allowed on an individual basis to enhance the health and growth of the best trees or to eliminate roadway hazards if recommended by the certified arborist supervising the work and agreed to by the department or local government official. Trees that are diseased, damaged by insects, unsightly, or that pose a safety hazard may be removed when recommended by the certified arborist supervising the work and approved by the department or local government official. When tree removal is recommended by the certified arborist and approved by this permit, the permittee shall provide a list of suitable trees and shrubs and a landscape plan to replace vegetation removed to the inspector or local government official for review and approval prior to issuance of the permit. The certified arborist and the department or local government official shall agree on size and species of replacement vegetation. The permittee shall plant, at ~~his~~ the permittee's expense, all replacement vegetation at the locations shown on the landscape plan in accordance with the specifications. The establishment period for replacement vegetation shall be in accordance with § 605.05 of the specifications. No pruning of vegetation to make an outdoor advertising sign more visible from the roadway will be permitted if the cut at the point of pruning will exceed four inches in diameter. No pruning of vegetation to make a business more visible from the roadway will be permitted if the cut at the point of pruning will exceed ~~two~~ four inches in diameter. No leader branches shall be cut off in such a manner as to retard the normal upright growth of the tree unless recommended by the certified arborist and approved by the department or local government official. All trees and brush removed shall be cut at ground level. Dogwood or other small flowering trees on the site shall not be removed. The use of climbing irons or spurs is positively forbidden in any tree.

C. When daylighting signs, every effort shall be made to form a picture frame around the sign with remaining vegetation so as to accent the beauty of the surrounding roadside. A picture frame effect shall be achieved by leaving vegetation in place

that will cover the sign structure supports below the face as seen from the main-traveled way.

D. A permit must be obtained from the department or local government official prior to any vegetation control work on the state's rights-of-way. All work shall be performed by the permittee at his expense, including permit and inspection fees.

E. A violation of this chapter shall, in addition to penalties provided in § 33.2-1229 of the Code of Virginia, result in a permittee or its agent or both losing its vegetation control permit privilege for five years. Additionally, the bond amount used to secure the permit will be used for any reparations to the site. Inadvertent violations of this permit will require replacement on a four-to-one basis with other suitable small trees approved by the department or local government official to enhance the roadside beauty. The department or local government official shall have full authority to determine specie and size of all replacement vegetation if inadvertent cutting occurs.

VA.R. Doc. No. R22-6261; Filed December 2, 2021, 4:02 p.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

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

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

BOARD OF DENTISTRY

Titles of Documents: [Chart on Delegable Duties to Dental Assistants.](#)

[Guidance on Sedation Inspections and Permits.](#)

[Policy on Recovery of Disciplinary Costs.](#)

Public Comment Deadline: February 2, 2022.

Effective Date: February 3, 2022.

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

STATE BOARD OF EDUCATION

Title of Document: [Guidelines for Mentor Teacher Programs for Beginning and Experienced Teachers.](#)

Public Comment Deadline: February 2, 2022.

Effective Date: February 3, 2022.

Agency Contact: Joan Johnson, Assistant Superintendent for Teacher Education and Licensure, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 371-2522, or email joan.johnson@doe.virginia.gov.

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Title of Document: [Guidelines for Use of Undesignated Stock Albuterol in Schools.](#)

Public Comment Deadline: February 2, 2022.

Effective Date: February 3, 2022.

Agency Contact: Jim Chapman, Regulatory and Legal Coordinator, Department of Education, James Monroe Building, 25th Floor, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2540, or email jim.chapman@doe.virginia.gov.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Titles of Documents: [Agreed-Upon Procedures for Certified Public Accountant Attestation Instruction Manual.](#)

[Job Creation Grant Instruction Manual.](#)

[Real Property Investment Grant Instruction Manual.](#)

Public Comment Deadline: February 2, 2022.

Effective Date: February 3, 2022.

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

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: [DD Waivers - Grid of Compatible and Incompatible Services.](#)

Public Comment Deadline: February 2, 2022.

Effective Date: February 3, 2022.

Agency Contact: Emily McClellan, Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, or email emily.mcclellan@dmas.virginia.gov.

BOARD OF PHARMACY

Title of Document: [Continuing Education Audit.](#)

Public Comment Deadline: February 2, 2022.

Effective Date: February 3, 2022.

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

STATE BOARD OF SOCIAL SERVICES

Title of Document: [Child and Family Services Manual, Chapter E, Foster Care.](#)

Public Comment Deadline: February 2, 2022.

Effective Date: February 3, 2022.

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.

* * *

Title of Document: [Child and Family Services Manual, Chapter F, Adoption.](#)

Public Comment Deadline: February 2, 2022.

Effective Date: February 3, 2022.

Agency Contact: Karin Clark, Regulatory Coordinator, Department of Social Services, 801 East Main Street, Room 1507, Richmond, VA 23219, telephone (804) 726-7017, or email karin.clark@dss.virginia.gov.

VIRGINIA WASTE MANAGEMENT BOARD

Title of Document: [Director's Determination for New Solid Waste Management Facility Permits and Modifications for Expansions and Increases in Capacity.](#)

Public Comment Deadline: February 2, 2022.

Effective Date: February 3, 2022.

Agency Contact: Kathryn Perszyk, Land Protection and Revitalization Division Director, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4047, or email kathryn.perszyk@deq.virginia.gov.

STATE WATER CONTROL BOARD

Title of Document: [Local Water Quality Protections for Nonpoint Source Nutrient Credit Use for Regulated Land Disturbing Activities.](#)

Public Comment Deadline: February 2, 2022.

Effective Date: February 3, 2022.

Agency Contact: Sara Felker, Nonpoint Source Trading Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4203, or email sara.felker@deq.virginia.gov.

GENERAL NOTICES

DEPARTMENT OF ENVIRONMENTAL QUALITY

Sweet Sue Solar Center Withdrawal of Notice of Intent for Small Renewable Energy Project (Solar) - King William County

Sweet Sue Solar Center has withdrawn the notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) pursuant to 9VAC15-60. The original notice of intent was published in the Virginia Register of Regulations on March 12, 2021.

Contact Information: 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.

Two Oaks Solar Notice of Intent for Small Renewable Energy Project (Solar) -Louisa County

Two Oaks Solar has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Louisa County. Two Oaks Solar will be located in the community of Mineral in Louisa County to the north of Davis Highway and in between Chalklevel and Chopping Roads. Latitude 38.035399°; Longitude -77.944230°. The project will be constructed on 1,234 acres of property and produce 118 megawatts using approximately 350,520 panels.

Contact Information: 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.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Announcement of Intent to Amend the Virginia State Plan for Medical Assistance Pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13)) - Clinical Trials

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 § 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.

This notice is available for public review on the Virginia Regulatory Town Hall on the General Notices page at <https://townhall.virginia.gov/L/generalnotice.cfm>.

Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80)

The state plan is being revised to include reimbursement for coverage for routine patient costs furnished in connection with a member's participation in a qualifying clinical trial in accordance with the Centers for Medicare and Medicaid Services (CMS) State Medicaid Director (SMD) letter #21-005. Per the SMD letter, DMAS will cover any item or service provided to the individual under the qualifying clinical trial, including any item or service provided to prevent, diagnose, monitor, or treat complications resulting from participation in the qualifying clinical trial, to the extent that the provision of such items or services to the beneficiary would otherwise be covered outside the course of participation in the qualifying clinical trial under the state plan or waiver, including a demonstration project under § 1115 of the Social Security Act. Such routine services and costs also include any item or service required to administer the investigational item or service.

Costs for these changes are indeterminate at this time. However, DMAS does not anticipate a change in total annual expenditures.

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, TDD (800) 343-0634, or email emily.mcclellan@dmass.virginia.gov.

BOARD OF PHARMACY

Comment on Proposed Regulations for Pharmaceutical Processors

In accordance with § 54.1-3442.6 N of the Code of Virginia, the Board of Pharmacy is providing an opportunity to comment on a draft of proposed regulation for pharmaceutical processors that will be considered for adoption as an exempt action.

The proposed regulation addresses access to data in order to determine eligibility to enter a pharmaceutical processor or cannabis dispensing facility (18VAC110-60-210) and labeling of dispensed cannabis products (18VAC110-60-310).

Section 54.1-3442 N requires posting of a notice 60 days in advance of submittals for public comment. The Board of Pharmacy is scheduled to meet on March 15, 2022, with the intent of adopting amendments to Regulations Governing Pharmaceutical Processors (18VAC110-60) by exempt action.

The board will receive public comment from January 3, 2022, to March 4, 2022. Comments received during that period will be included in the board's agenda package for the March meeting.

Comments may be sent to Elaine J. Yeatts, Agency Regulatory Coordinator, Board of Pharmacy, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

Proposed amendments to Regulations Governing Pharmaceutical Processors (18VAC110-60)

18VAC110-60-210. General provisions.

A. A pharmaceutical processor or cannabis dispensing facility shall only sell cannabis products in a child-resistant, secure, and light-resistant container. Upon a written request from the registered patient, parent, legal guardian, or registered agent, the product may be dispensed in a non-child-resistant container so long as all labeling is maintained with the product.

B. Only a pharmacist may dispense cannabis products to registered patients or parents or legal guardians of patients who are minors or incapacitated adults and who are registered with the board, or to a registered agent. A pharmacy technician who meets the requirements of 18VAC110-60-170 C may assist, under the direct supervision of a pharmacist, in the dispensing and selling of cannabis products.

C. The PIC, pharmacist, responsible party, or person who is qualified to provide supervision in accordance with 18VAC110-60-170 on duty shall restrict access to the pharmaceutical processor or cannabis dispensing facility to:

1. A person whose responsibilities necessitate access to the pharmaceutical processor or cannabis dispensing facility and then for only as long as necessary to perform the person's job duties; or
2. A person who is a registered patient, parent, legal guardian, registered agent, or a companion of the patient, in which case such person shall not be permitted behind the service counter or in other areas where Cannabis plants, extracts, or cannabis products are stored.

D. A pharmacist, pharmacy technician, or an employee of the pharmaceutical processor or cannabis dispensing facility who has routine access to confidential patient data and who has signed a patient data confidentiality agreement with the processor or dispensing facility, may determine eligibility for access to the processor or facility by verifying through a verification source recognized by the board, that the registration of the patient, parent, legal guardian, or registered agent is current.

E. All pharmacists and pharmacy technicians shall at all times while at the pharmaceutical processor or cannabis dispensing facility have their current license or registration available for inspection by the board or the board's agent.

F. While inside the pharmaceutical processor or cannabis dispensing facility, all employees shall wear name tags or similar forms of identification that clearly identify them, including their position at the pharmaceutical processor or cannabis dispensing facility.

G. A pharmaceutical processor or cannabis dispensing facility shall be open for registered patients, parents, legal guardians, or registered agents to purchase cannabis products for a minimum of 35 hours a week, except as otherwise authorized by the board.

H. A pharmaceutical processor or cannabis dispensing facility that closes the dispensing area during its normal hours of operation shall implement procedures to notify registered patients, parents, legal guardians, and registered agents of when the pharmaceutical processor or cannabis dispensing facility will resume normal hours of operation. Such procedures may include telephone system messages and conspicuously posted signs. If the cultivation, production, or dispensing area of the pharmaceutical processor or if a cannabis dispensing facility is or will be closed during its normal hours of operation for longer than two business days, the pharmaceutical processor or cannabis dispensing facility shall immediately notify the board.

I. A pharmacist shall counsel registered patients, parents, legal guardians, and registered agents, if applicable, regarding the use of cannabis products. Such counseling shall include information related to safe techniques for proper use and storage of cannabis products and for disposal of the products in a manner that renders them nonrecoverable.

J. The pharmaceutical processor or cannabis dispensing facility shall establish, implement, and adhere to a written alcohol-free, drug-free, and smoke-free work place policy that shall be available to the board or the board's agent upon request.

18VAC110-60-310. Dispensing of cannabis products.

A. A pharmacist in good faith may dispense cannabis products to any registered patient, parent, or legal guardian as indicated on the written certification or to a registered agent for a specific patient.

1. Prior to the initial dispensing of cannabis products pursuant to each written certification, the pharmacist or pharmacy technician at the location of the pharmaceutical processor or cannabis dispensing facility shall view in person or by audiovisual means a current photo identification of the patient, parent, legal guardian, or registered agent. The pharmacist or pharmacy technician shall verify in the Virginia Prescription Monitoring Program of the Department of Health Professions or other program recognized by the board that the registrations are current, the written certification has not expired, and the date and quantity of the last dispensing of cannabis products to the registered patient.

2. A pharmacist or pharmacy technician employed by the processor or cannabis dispensing facility shall make a paper or electronic copy of the current written certification that provides an exact image of the document that is clearly

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legible and shall maintain it on site or by electronic means for two years.

3. Prior to any subsequent dispensing, the pharmacist or pharmacy technician shall verify that the written certification on file has not expired. An employee or delivery agent shall view a current photo identification and current registration of the patient, parent, legal guardian, or registered agent and shall maintain record of such viewing in accordance with policies and procedures of the pharmaceutical processor or cannabis dispensing facility.

B. A pharmacist may dispense a portion of a registered patient's 90-day supply of cannabis product. The pharmacist may dispense the remaining portion of the 90-day supply of cannabis products at any time except that no registered patient, parent, legal guardian, or registered agent shall receive more than a 90-day supply of cannabis products for a patient in a 90-day period from any pharmaceutical processor or cannabis dispensing facility. A pharmaceutical processor or cannabis dispensing facility may dispense more than one cannabis product to a patient at one time. However, no more than four ounces of botanical cannabis shall be dispensed for each 30-day period for which botanical cannabis is dispensed. In determining the appropriate amount of cannabis product to be dispensed to a patient, a pharmacist shall consider all cannabis products dispensed and adjust the amount dispensed accordingly.

C. A dispensing record shall be maintained for three years from the date of dispensing, and the pharmacist or pharmacy technician under the direct supervision of the pharmacist shall affix a label to the container of cannabis product that contains:

1. A serial number assigned to the dispensing of the product;
2. The brand name of cannabis product that was registered with the board pursuant to 18VAC110-60-285 and its strength;
3. The serial number assigned to the product during production;
4. The date of dispensing the cannabis product;
5. The quantity of cannabis products dispensed;
6. A terpenes profile and a list of all active ingredients, including:
 - a. Tetrahydrocannabinol (THC);
 - b. Tetrahydrocannabinol acid (THC-A);
 - c. Cannabidiol (CBD); and
 - d. Cannabidiolic acid (CBDA);

For botanical cannabis products, only the total cannabidiol (CBD) and total tetrahydrocannabinol (THC) are required;

7. A pass rating based on the laboratory's microbiological, mycotoxins, heavy metals, residual solvents, pesticide

chemical residue analysis, and for botanical cannabis, the water activity and moisture content analysis;

8. The name and registration number of the registered patient;

9. The name and registration number of the certifying practitioner;

10. Directions for use as may be included in the practitioner's written certification or otherwise provided by the practitioner;

11. For botanical cannabis, the amount recommended by the practitioner or dispensing pharmacist;

12. The name or initials of the dispensing pharmacist;

13. Name, address, and telephone number of the pharmaceutical processor or cannabis dispensing facility;

14. Any necessary cautionary statement; ~~and~~

15. A prominently printed expiration date based on stability testing and the pharmaceutical processor's or cannabis dispensing facility's recommended conditions of use and storage that can be read and understood by the ordinary individual; and

16. The pharmaceutical processor's or cannabis dispensing facility's recommended conditions of use and storage that can be read and understood by the ordinary individual.

D. The label shall be exempt from containing the items listed in subdivisions 6, 7 and 15 of subsection C if the items are included on the batch label as required in 18VAC110-60-290 and are clearly visible to the patient.

E. A pharmaceutical processor shall not label cannabis products as "organic" unless the Cannabis plants have been organically grown and the cannabis oil products have been produced, processed, manufactured, and certified to be consistent with organic standards in compliance with 7 CFR Part 205.

~~E.~~ F. The cannabis products shall be dispensed in child-resistant packaging, except as provided in 18VAC110-60-210 A. A package shall be deemed child-resistant if it satisfies the standard for "special packaging" as set forth in the Poison Prevention Packaging Act of 1970 Regulations, 16 CFR 1700.1(b)(4).

~~F.~~ G. No person except a pharmacist or a pharmacy technician operating under the direct supervision of a pharmacist shall alter, deface, or remove any label so affixed.

~~G.~~ H. A pharmacist shall be responsible for verifying the accuracy of the dispensed product in all respects prior to dispensing and shall document that each verification has been performed.

~~H.~~ I. A pharmacist shall document a registered patient's self-assessment of the effects of cannabis products in treating the

registered patient's diagnosed condition or disease or the symptoms thereof. If the authorization for botanical cannabis for a minor is communicated verbally or in writing to the pharmacist at the time of dispensing, the pharmacist shall also document such authorization. A pharmaceutical processor or cannabis dispensing facility shall maintain such documentation in writing or electronically for three years from the date of dispensing and such documentation shall be made available in accordance with regulation.

¶ J. A pharmacist shall exercise professional judgment to determine whether to dispense cannabis products to a registered patient, parent, legal guardian, or registered agent if the pharmacist suspects that dispensing cannabis products to the registered patient, parent, legal guardian, or registered agent may have negative health or safety consequences for the registered patient or the public.

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

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Hampton Roads Marine Services Inc. t/a Coastal Services

An enforcement action has been proposed for Hampton Roads Marine Services Inc. t/a Coastal Services, for violations of the State Water Control Law and regulations related to a discharge of oily wastewater at Steamboat Creek located in Norfolk, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov.

Contact Information: Russell Deppe, Enforcement Specialist, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, telephone (757) 647-8060, FAX (804) 698-4178, or email russell.deppe@deq.virginia.gov.

Proposed Enforcement Action for PM Properties Inc. c/o CrossAmerica Partners

An enforcement action has been proposed for CrossAmerica Partners for violations at the VA0118 Store, located at 2231 West Beverley Street, in the City of Staunton, Virginia. The State Water Control Board proposes to issue a consent order with penalty to PM Properties Inc. c/o CrossAmerica Partners 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 <https://www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders>. The staff contact will accept comments by email, fax, or postal mail from January 3, 2022, to February 2, 2022.

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.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <https://commonwealthcalendar.virginia.gov>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumulatab.pdf>.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

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 3855, 12VAC5-481-1760, subdivision 1, line 4, after "subdivision" change "4" to "3"

Page 3861, 12VAC5-481-1980, subdivision 1, line 4, after "in" change "subdivisions" to "subdivision" and after "(7)" remove "and 3"

Page 3864, 12VAC5-481-2001, subdivision 3, line 2, after "NRC" insert "and" and line 5, after "section;" remove "and"

Page 3865, 12VAC5-481-2016 C, line 1, after "must" change "return" to "retain"

Page 3867, 12VAC5-481-2040 A 1, line 4, after "subdivision" change "3" to "4"

VA.R. Doc. No. R21-6434; Filed December 21, 2021, 5:26 p.m.